

**ORIGINAL**

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO**

**AND**

**ENVIRONMENTAL SCIENCE ASSOCIATES**

**FOR**

**AS-NEEDED ENVIRONMENTAL SERVICES CONTRACT FOR THE  
TRANSPORTATION & STORM WATER DEPARTMENT**

**CONTRACT NUMBER: H176898**

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# AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

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**DESIGN 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 - City Council Green Building Policy 900-14
- Exhibit H - Consultant Evaluation Form
- Exhibit I - Contractor Standards Pledge of Compliance
- Exhibit J - Regarding Information Requested under the California Public Records Act
- Exhibit K - Americans With Disabilities Act (ADA) Compliance Certification

**AS-NEEDED AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND ENVIRONMENTAL SCIENCE ASSOCIATES  
FOR DESIGN PROFESSIONAL SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Environmental Science Associates [Design Professional] to provide Professional Services to the City for environmental services on an as-needed basis.

**RECITALS**

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

The Design 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 Design Professional [Parties] want to enter into an Agreement whereby the City will retain the Design Professional to provide, and the Design 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  
DESIGN PROFESSIONAL SERVICES**

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

**1.1 Scope of Services.** The scope of services will be determined by the City on an as-needed basis and presented to Professional as an individual Task [Task]. The Design 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, Design 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 Design Professional agrees that this Agreement is non-exclusive and that the City may enter into agreements with other Design 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 Design Professional has been issued a Task Order, that Design Professional will be placed at the end of the list for consideration to perform the next Task Order.

**1.2 Task Administrator.** The Transportation & Storm Water Department is the task administrator for this Agreement. The Design Professional shall provide the Professional Services under the direction of a designated representative of the Transportation & Storm Water Department. The City's designated representative will communicate with the Design Professional on all matters related to the administration of this Agreement and the Design 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 Design Professional's cost of, or the time required for, the performance of any of the Professional Services, the Design Professional shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Design 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 Design Professional shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Design 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 Design 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 Design Professional, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Design 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 Design Professional, at the time that it was disclosed to the Design Professional by the City, (b) subsequently becomes publicly known through no act or omission of the Design Professional, or (c) otherwise becomes known to the Design 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.

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

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

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Design Professional for performance of all Professional Services rendered in accordance with this Agreement,

including all reasonably related expenses, in an amount not to exceed \$7,500,000. The City agrees to issue at least one or more Task Orders with a minimum aggregate value of \$1,000.00 to the Design Professional.

**3.2 Manner of Payment.** The City shall pay the Design Professional in accordance with the Compensation and Fee Schedule [Exhibit C]. For the duration of this Agreement, the Design Professional shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Design Professional shall submit one invoice per calendar month in a form acceptable to the City in accordance with the Compensation and Fee Schedule. The Design 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 Design Professional's errors or omissions, and may include Design Professional, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Design Professional shall not be paid for the Professional Services required due to the Design Professional's errors or omissions, and the Design 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 Design Professional. Whether or not there are any monies due, or becoming due, the Design Professional shall reimburse the City for Additional Costs due to the Design Professional's errors or omissions.

**3.4 Eighty Percent Notification.** The Design 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 DESIGN PROFESSIONAL'S OBLIGATIONS**

**4.1 Industry Standards.** The Design 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 environmental planning and engineering 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 Design 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 Design Professional's and any Subcontractor's premises to review and audit the Design 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 Design 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 Design 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 Design Professional and all Subcontractors shall maintain complete and accurate records in accordance with Generally Accepted Accounting Practices in the industry. The Design 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 Design 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 Design 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 Design 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 Design 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 Design 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. Design Professional's liabilities, including but not limited to Design 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 Design 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 Design 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 Design 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 Design Professional's automobiles including owned, hired and non-owned automobiles, the Design 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 Design Professional's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Design 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 Design 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 Design Professional's employees who are subject to this Agreement, the Design 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 Design 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 Design 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 Design 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 Design 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 Design 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 Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design

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 Design 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 Design 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 Design Professional shall list on the Subcontractor List (Exhibit D, Attachment CC) all Subcontractors known to the Design Professional at the time this Agreement is entered. If at any time after this Agreement is entered into, the Design Professional identifies a need for addition, deletion, or substitution of Subcontractor Services, the Design Professional must submit a written notice to the City requesting approval for the change modifying the Subcontractor Services. The Design 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 Design 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** Design 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 Design Professional proportionate to the services performed by the Subcontractor.

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

**4.4.1.4** In any dispute between the Design Professional and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding

to resolve the dispute. The Design Professional agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Design 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 Design 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 Design 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 Design 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.** Design 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.** Design 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 Design 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 Design Professional shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design

Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors.

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

**4.6.3 Compliance Investigations.** Upon the City's request, the Design 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 Design 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 Design Professional for each subcontract or supply contract. The Design 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 Design 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 Design Professional up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Design 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 Design 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 Design 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 Design Professional's Notice to Employees.** The Design 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 Design 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 Design Professional shall post the drug-free policy in a prominent place.



**4.7.4 Subcontractor's Agreements.** The Design 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. Design Professionals and Subcontractors shall be individually responsible for their own drug-free work place program.

**4.8 Title 24/Americans with Disabilities Act Requirements.** Design Professional has sole responsibility for ensuring that all design services as contained in issued Task Orders comply with all accessibility requirements under Title 24 of the California Code of Regulations, known as the California Building Code (Title 24), and under the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in effect at the time the designs are submitted to the City for review. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Design Professional (i.e., that which provides the most access). Design Professional warrants and certifies that any and all plans and specifications prepared for the City in accordance with this agreement shall meet all requirements under Title 24 and ADAAG. Design Professional understands that while the City will be reviewing Design Professional's designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's access review process and its acceptance of Design Professional's designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG.

**4.9 Product Endorsement.** The Design 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 Design 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 Design 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 Design 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 Design 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 Design 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** The Design Professional and its Subcontractors having subcontracts amounting to 1% or more of the value of the Professional Services agreed to under this Agreement are precluded from participating in design services on behalf of the contractor, construction management, and any other construction services related in any way to these Professional Services without the prior written consent of the City.

**4.10.4** The Design Professional's personnel employed on the Project shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Design Professional shall not recommend or specify any product, supplier, or contractor with whom the Design 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 Design 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 Design 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 Design Professional, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Design 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 Design 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 Design Professional, its agents, officers, and employees, the Design Professional shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Design 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 Design Professional or its agents, officers, and employees may incur expenses and/or costs. The Design 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 Energy Conservation Specifications.** Technological advances in energy conservation devices such as Lighting and Heating, Ventilation, and Air Conditioning (HVAC), enable additional energy savings over that required by the State of California's Energy Efficiency Standards (Title 24, Part 6 of the California Code of Regulations). The Design Professional shall model the energy performance of the building using an acceptable computer model such as Energy Pro, EQuest, DOE-2, Power DOE, HAP 3.22, etc. and present the summary data to the City at or prior to 100 percent design. This analysis should include life cycle cost analysis showing recovery of construction costs through operation and maintenance costs (e.g., electricity and gas savings.) The Design Professional shall prepare a cost savings matrix that lists each device being considered and one, three, five and ten-year Project savings. The comparison shall include, but not be limited to, the following equipment: Lighting, HVAC, Water Heating, and Motors.

The Design Professional shall contact the SDG&E New Construction Program at (858) 636-5725 or the San Diego Regional Energy Office at (619) 595-5634 to integrate them into the design process to ensure maximum energy performance and access to technical resources. Design Professional shall endeavor to obtain from SDG&E a UTIL-1 (Utility Incentive Worksheet) to estimate energy savings and incentives available based on the design team energy modeling.

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

**4.16 Sustainable Building Policy.** The Project design and construction shall comply with City Council Green Building Policy 900-14 [Exhibit G]. All new or significantly remodeled City facilities shall be designed and constructed to achieve at a minimum the Leadership in Energy and Environmental Design (LEED) "Silver" Level Certification.

**4.17 Design-Build Competition Eligibility.** Any architectural firms, engineering firms, Design Professionals, or individuals retained by the City to assist the City with developing criteria or preparing the preliminary design or the request for proposals for a Design-Build competition shall not be eligible to participate with any Design-Build Entity in that Design-Build competition. Additionally, the City may determine in its sole discretion that a Subcontractor hired to assist with a Design-Build competition, regardless of whether the Subcontractor was hired by the City or hired by an architectural firm, engineering firm, Design Professional, or individual retained by the City, has a competitive advantage and as such is ineligible to participate in that Design-Build competition.

**4.18 Storm Water Management Discharge Control.** Design 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. Design Professional warrants and certifies that any and all plans, reports, and specifications prepared for the City in accordance with this agreement shall meet all requirements of the San Diego Municipal Code and Storm Water Standards Manual. Design Professional understands that while the City will be reviewing Design Professional's designs for storm water permit compliance prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's Storm Water review process and its acceptance of Design Professional's designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements of the San Diego Municipal Code and MS4 Permit.

The Design Professional shall review the completed Storm Water Applicability Checklist (DS-560) to confirm the project's appropriate storm water requirements. For all applicable projects, and to the maximum extent practicable, the Design Professional shall incorporate and include Source Control and Low Impact Development (LID) design features or Site Design BMPs on the construction plans. In addition, for Priority Development projects, the Design Professional shall prepare a Storm Water Quality Management Plan in accordance with the requirements of the Storm Water Standards Manual and prepare a BMP plan showing all permanent BMPs, LID designs, hydromodification management plan facilities, and include sufficient details and cross sections for construction.

Design Professional shall attend the Pre-construction meeting. The Project Manager will coordinate with the Design Professional on the inspection of the permanent BMP(s) during installation. Design Professional shall inspect and confirm that the permanent BMP was installed in accordance with the details on the plans and that the permanent BMP functions to meet the requirements of the MS4 Permit. Upon notification by the Project Manager, the Design Professional shall sign and stamp the Permanent BMP Self Certification on the plans or the Permanent BMP Self Certification Form (DS-563) prior to final acceptance by the City.

For projects requiring soil-disturbance work such as geotechnical borings, street coring and potholing as component of the design, the Design Professional shall complete a Minor Water Pollution Control Plan (DS-570), if applicable.

**4.19 ADA Certification.** The Design Professional hereby certifies [Exhibit K] 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 Design 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 Design 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>. Design 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.** Design 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.** Design 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. Design Professional shall require its subconsultants to also comply with section 1776. Design Professional and its subconsultants shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Design 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 Design 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.** Design 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. Design 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.** Design 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 hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**4.20.6 Required Provisions for Subcontracts.** Design 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.** Design 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, Design 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 Design 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 Design 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 725.5; 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, Design 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 Design 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 Design 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 Design Professional or unregistered subcontractor(s) on ALL public works until the unregistered Design 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 Design 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 Design Professional shall provide the list within ten (10) working days of the City's request. Additionally, Design 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 Design Professional until at least 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 Design Professional shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

**4.20.12.1 Registration.** The Design 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 Design Professional will need to keep those records for at least three years following the completion of the Agreement. (Labor Code section 1771.4).

## **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, Design 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 Design 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 Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design 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 Design Professional Services Indemnification and Defense.**

**6.2.1 Design 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 Design Professional services, Design 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 Design Professional or Design Professional's officers or employees.

**6.2.2 Design 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 Design Professional or Design 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 Design 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 Design 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 Design Professional's work on behalf of the City without prior written consent of the City.

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

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

**8.8 Enforcement Costs.** The Design 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: Transportation & Storm Water Department, c/o Catherine Rom ([crom@sandiego.gov](mailto:crom@sandiego.gov)), 2781 Caminito Chollas, San Diego, CA 92105 and notice to the Design Professional shall be addressed to: Environmental Science Associates, David Pohl, 550 West C Street, Suite 750, San Diego, CA 92101, [dpohl@esassoc.com](mailto:dpohl@esassoc.com), (619) 719-4185.

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

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

**9.5 Design Professional and Subcontractor Principals for Professional Services.** It is understood that this Agreement is for unique Professional Services. Retention of the Design Professional's Professional Services is based on the particular professional expertise of the following members of the Design Professional's team: David Pohl (ESA), Eric Ruby (ESA), Barbra Calantas (ESA); Lindsey Cavallaro (ESA); Julie Stout (ESA); Jim Prine (ESA); Michael Bever (ESA); Jayne Janda-Timba (Rick Engineering); Monique Chen (Chen Ryan Associates); Greg Farrand (Ninyo & Moore); Darren Bertrand (River Focus); Seth Reimers (Blackhawk Environmental); Michael McGrath (McGrath Consulting); Sani Sutanto

**(Allied Geotechnical); Alice Brewster (PanGIS)** [Project Team]. Accordingly, performance of Professional Services under this Agreement may not be delegated to other members of the Design 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 Design 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 Design Professional, to require any of the Design Professional's employees or agents to be removed from performance of the Scope of Services.

**9.6 Additional Design Professionals or Contractors.** The City reserves the right to employ, at its own expense, such additional Design 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 Design 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 Design 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 Design Professional, shall be deemed to be both covenants and conditions.

**9.9 Compliance with Controlling Law.** The Design 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 Design 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 Design 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 Design Professional Evaluation.** City will evaluate Design Professional's performance of Professional Services on the Project using the Consultant Evaluation Form [Exhibit H].

**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-20148. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit I. The Contractor Standards are available online at [www.sandiego.gov/purchasing/vendor/index.shtml](http://www.sandiego.gov/purchasing/vendor/index.shtml) or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

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

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

**9.25 Precluded Participation.** In order to avoid any conflicts of interest, the Design Professional, and all subconsultants, shall be precluded from participating in any future contract for services, that is subsequently required/created as a result of the contract services provided under this Agreement.

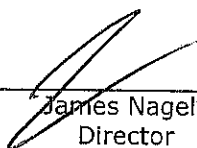
**9.26 Equal Pay Ordinance.** Unless an exception applies, Design Professional shall comply with the Equal Pay Ordinance (EPO) codified in the San Diego Municipal Code (SDMC) at section 22.4801 through 22.4809. Design Professional shall require all of its subconsultants to certify compliance with the EPO in their written subcontracts. Design 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, Design 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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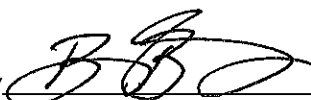
**IN WITNESS WHEREOF**, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution Number R 311487, authorizing such execution, and by the Design Professional pursuant to Environmental Science Associates' signature authority document.

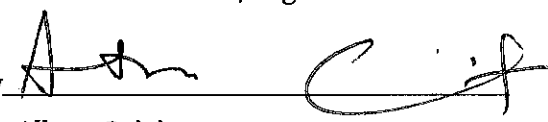
Dated this 13 day of February, 2018.

THE CITY OF SAN DIEGO  
Mayor or Designee

By:   
James Nagelvoort  
Director  
Public Works Department


I HEREBY CERTIFY I can legally bind Environmental Science Associates and that I have read all of this Agreement, this 16<sup>th</sup> day of October, 2017.

By   
Bobbette Biddulph  
Sr. Vice President/Regional Director

By   
Albert Cuisinot  
Chief Financial Officer

I HEREBY APPROVE the form of the foregoing Agreement this 14<sup>th</sup> day of February, 2018.

MARA W. ELLIOTT, City Attorney

By   
Deputy City Attorney

**DESIGN PROFESSIONAL AS-NEEDED**  
**EXHIBITS**



# SCOPE OF SERVICES

## 1.0 PROJECT BACKGROUND

The City of San Diego (City) operates and maintains an extensive urban storm water management system to convey storm water and urban runoff for the purpose of reducing flood risk and to provide essential public services. The City's Municipal Separate Storm Sewer System (MS4) includes nearly 700 miles of drainage pipes; 84 miles of drainage channels; over 48,000 storm drain structures; and 15 pump stations distributed over a 342 square-mile metropolitan area.

The inspection, cleaning, maintenance, and repair of the MS4 is the responsibility of the Transportation & Storm Water Department (Department) Storm Water Division, Operations and Maintenance (O&M) Section. O&M staff includes engineers, planners, and city crews working together to ensure the City's existing storm water facilities operates and is maintained adequately. Typical O&M projects include: dredging, excavation and/or depositing of fill material within natural and engineered channels; removal of non-storm water discharges (e.g. spills, dumping, and disposal of materials other than storm water); repair and maintenance of public storm water facilities (channels, pump stations, pipes, inlets/outfalls, etc.); installation of erosion and sediment control best management practices (BMPs), on-going maintenance of permanent access and staging areas; implementation of compensatory mitigation projects; management of invasive plant control; rehabilitation and restoration of stream, channel, and/or habitat; as well as the construction of low impact development and green infrastructure projects.

In addition, to streamline the environmental permitting process, the Transportation & Storm Water Department (T&SWD) has developed a Master Storm Water System Maintenance Program (MMP or Master Maintenance Program) and associated Programmatic Environmental Impact Report (PEIR) for channel maintenance activities. Efforts are currently underway to replace the MMP with a new program called the Waterways Maintenance

Plan (WMP). The City anticipates the WMP to provide project-level analysis for approximately 25 miles of channel facilities and 23 outfalls of subsequent on-going maintenance be conducted on an as-needed basis.

**2.0 PROJECT DESCRIPTION**

Certain types of proposed projects related to the MS4 are in or adjacent to environmentally sensitive and jurisdictional areas that can trigger compliance with various local, regional, State, and federal regulations and policies. Depending on the type of activity and its location, these projects may be regulated and require permits. If potential impacts to environmental resources are identified, implementation of mitigation strategies may be necessary to avoid, reduce or eliminate temporary and/or permanent impacts.

Services under this contract will require specialized subject matter experts and environmental regulatory expertise to satisfy State and Federal compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), as well as local, State, and federal environmental compliance, and could include the following:

- Planning & Permitting
- Mitigation
- Monitoring & Reporting

**3.0 SCOPE OF SERVICES**

The City reserves the right to modify or substitute as-needed tasks as necessary to meet the goals of the City during the contract period of performance.

**3.1 PLANNING & PERMITTING SUPPORT**

O&M projects may require the Design Professional to prepare reports or site-specific technical studies during the planning phase to address potential impacts to natural resources (land use, geology, hydrology, etc.) and/or non-renewable resources (biological, historical, paleontological, etc.)

3.1.1 Preliminary Environmental Analysis

Portions of the MS4 in need of priority maintenance have yet to be evaluated for potential impacts to sensitive resources. The Design Professional will provide technical guidance to evaluate the potential significance of a project's environmental impact and provide a consistent and objective basis for determining the level of impacts.

This evaluation will support a determination of whether the proposed activities will require regulatory or environmental permits with an associated NEPA/CEQA document/determination. The level of impact depends upon a multitude of factors such as project setting, design, methodology, etc. The Design Professional must know the development standards, regulations and codes of the City in order to evaluate current regulatory restrictions and develop recommendations for changes that will facilitate better local programs for storm water management.

- 3.1.2 Site-specific surveys may be necessary to identify the environmental constraints and opportunities of a project. Potential restrictions outlined in a survey report must be complied with, and incorporated into, the project. The Design Professional shall have qualified personnel to conduct the required surveys at the appropriate times and prepare the necessary technical reports to meet regulatory requirements. A Geographic Information Systems (GIS) specialist with familiarity of local GIS databases and GIS resources may be necessary to illustrate project constraints on appropriate maps and figures. Environmental surveying, monitoring and reporting include specialized areas of expertise related to biological resources, historical (archaeological/paleontological) resources, noise, air quality, water quality, and spoil (waste) management.

## EXHIBIT A

- 3.1.3 Assist with the preparation of California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documentation for projects and/or the technical studies, per CEQA, NEPA and City of San Diego standard guidelines. Environmental documentation shall include Initial Studies (IS), Environmental Impact Reports (EIRS), Negative Declarations (NDs/MNDs); and/or Environmental Assessments (EAs) leading to lower level NEPA clearances such as Categorical Exclusions (CEs) and Findings of No Signification Impact Statements (FONSI), and/or higher level Environmental Impact Statements (EISs). Such work shall include the preparation of environmental technical studies that provide resource and impact analyses; as well as assistance in developing mitigation strategies, plans, and language for documents regulatory agencies prepare. Environmental disciplines may include land use, aesthetics/neighborhood character, biological resources, historical (cultural) resources, paleontological, noise, traffic, geology/soils, hydrology, water quality, and waste management. Analyses may involve site surveys, preparing technical reports, and completing determinations of significance in accordance with environmental regulations. Design Professional may also be asked to respond to various regulatory agency and public comments, as needed.
- 3.1.4 The City plans to replace the MMP with the new WMP upon approval anticipated in the Fall of Year 2018. The WMP will likely streamline the technical documentation that is now required under the MMP by providing the project-level analysis in the plan and the associated Environmental Impact Report. Regulatory permits associated with the WMP will define the methodology and subsequent reviews required under this new plan.
- 3.1.5 As part of the environmental permitting process, the Design

## EXHIBIT A

Professional will support O&M in working with the public, various stakeholders, non-governmental organizations (NGO's), environmental groups, and several regulatory agencies that are responsible to enforce those laws and may require a specific permit/approval and associated environmental document to condition an activity to avoid, minimize, and/or mitigate impacts. Design Professional must also provide follow-up and assistance to close permits with any agencies as determined by project specific-requirements.

Projects submitted for review include all of the information City staff needs to determine project conformance with, but not limited to:

### *City Of San Diego*

- Municipal Code
- Land Development Code Manual
  - CEQA Significance Thresholds
  - Biology Guidelines
  - Historical Resources Guidelines
  - Storm Water Standards
  - Drainage Design Manual
  - Landscape Standards
- Multiple Species Conservation Program (MSCP) Subarea Plan

### *State Law*

- CEQA
- California Fish and Game Code
- California Endangered Species Act
- Porter-Cologne Act
- California Coastal Act

*Federal Law*

- NEPA
- Clean Water Act
- Endangered Species Act
- Migratory Bird Treaty Act

**3.2 MITIGATION SERVICES**

Unavoidable impacts (both temporary and permanent) associated with a regulated O&M project will be analyzed in conformance with local, State and federal regulations and appropriate mitigation may be required. The Design Professional will need to know the specific requirements to meet mitigation obligations and procedures to minimize and/or impacts to sensitive environmental resources from concept to project completion. Mitigation strategies and requirements vary based on the environmental resource, including but not limited to:

- Biological Resources
- Historical Resources (Archeology and Built-environment)
- Paleontological Resources
- Air Quality
- Water Quality
- Noise
- Waste Management
- Traffic/Circulation
- Geology

**3.3 ON-SITE MONITORING & REPORTING SERVICES**

After the necessary regulatory permit/approval(s) are issued, O&M

staff is responsible to carry out the project, including the implementation of specific protocols and mitigation measures prior to, during, and after the start of a project.

**3.3.1 Monitoring**

Construction/maintenance monitoring requires Design Professional staff to be on call to provide services quickly and at random intervals. Specialized environmental monitors as mandated by City, State, and Federal regulations must meet the minimum qualifications, requirements, and certifications.

Monitoring may also include ensuring that the construction contractor/City forces do not perform work outside the pre-approved limits of construction, and complies with conditions of the project's environmental documents and permits. Construction/maintenance monitoring requires Design Professional staff to be on-call to provide services quickly and at random intervals. Specialized environmental monitors as mandated by City, State, and federal regulations must meet the minimum qualifications, requirements and certifications. This monitoring may include biological monitoring of wetland or upland revegetation, water quality monitoring, etc. Experience in monitoring a wide scope of project types in upland and wetland southern California habitats will be required.

**3.3.2 Reporting**

Reporting requirements vary based on what information needs to be tracked by each regulatory agency. One agency may require weekly reports and status of updates; whereas, another agency may require engineered (as-built) drawings documenting the work that was performed and completed. Design Professional shall draft all required and requested reports on behalf of the City.

**3.4 AS-NEEDED EMERGENCY ENVIRONMENTAL PERMIT PREPARATION & MONITORING**

Design Professional shall be on-call/available 24 hours a day 7 days a week for any permit applications, processing, and on-site monitoring required during unplanned emergency storm water projects occurring in environmentally sensitive or jurisdictional areas.

**3.5 ENGINEERING SUPPORT**

Design Professional will provide support to O&M engineers and EPP staff to prepare hydrology, hydraulic and water quality technical studies for storm water infrastructure projects. These projects could be related to the permitted activities associated with the MMP, proposed WMP, Municipal Permit, and/or Watershed Asset Management Plan.

3.5.1 Work closely with assigned City staff, contractors (construction, revegetation/restoration/landscape, etc.), and other agencies to ensure proper coordination and installation of BMPs to protect water quality and/or sensitive environmental resources (e.g. habitat) are proposed an in place.

3.5.2 Prepare Hydraulic and Hydrology Studies to determine the need to conduct maintenance based on the capacity of storm water facility and flooding risk. This work may also involve determining the potential effects or impacts that may result from planned maintenance and/or repair of a facility.

3.5.3 Prepare Water Pollution Control Plan (WPCP), Storm Water Pollution Prevention Plan (SWPPP) or any other documentation required to be in conformance with the City's Storm Water Standards.

3.5.4 Prepare as-built drawings in conformance with City



standards for the construction of storm water conveyance facilities.

- 3.5.5 Prepare prioritization and maintenance frequency analysis. The prioritization analysis will be used to determine the hierarchy of maintenance based on the frequency of flooding and the consequence of failure associated with each channel. The frequency analysis will track the historical maintenance performed on the City's channels as well as help predict the frequency of maintenance for each channel to optimize flood conveyance capacity and better predict when permit preparation will need to begin.

#### **4.0 PROJECT TEAM MEMBERS**

The project team (Prime Design Professional and Subconsultants) shall include a number of levels of experts and technical staff whose expertise may lie in one or more members of the team. Substitutions to key staff during the contract period will require proof of equal or greater competence, skills, and experience. The team required to perform the various tasks above shall include, at minimum, the following:

- **Regulatory Permitting Specialists**

Regulatory permitting specialists with a minimum of ten (10) years' experience completing permit application packages and successfully obtaining project-specific permits from the various local, State and Federal resource and regulatory agencies.

- **Biologists/Environmental Specialists**

Biologists/Environmental specialists qualified to perform detailed plant and animal species surveys, and with documented training and local experience with local native plant and animal species. These individuals must be experienced (at least 3 years of experience) in field vegetation sampling and monitoring as well as the design of native wetland and upland habitat restoration projects. In addition,

biologists and other environmental specialists must be qualified to perform wetland delineations in compliance with ACOE guidelines. Design Professional shall be able to implement focused sensitive species surveys. Design Professional must possess appropriate certifications from Federal and State resource agencies.

- **Hydrologist or Certified Hydrogeologist**

Hydrologist or Certified Hydrogeologist qualified to analyze the potential impacts to local and regional surface water, groundwater, water quality, and certified to prepare subsequent reports.

- **Registered Civil Engineers**

Registered Civil Engineers qualified to develop, review and certify hydrologic and hydraulic assessments as well as review and develop construction or maintenance plans.

- **Registered Landscape Architect**

Registered Landscape Architect or Registered Civil Engineers with local environmental expertise qualified to prepare site restoration plans and construction plans and estimates.

- **Registered Geologist/ Geotechnical Engineer**

Registered Geologist/Geotechnical Engineer or other geotechnical expert qualified to identify potential impacts and mitigation strategies related to spoil management, soils and geology, and certified to prepare subsequent reports.

- **Archaeologists**

Archaeologists qualified to conduct surveys inventories and significance determinations for both CEQA and NEPA compliance.

- **Paleontologists**

Paleontologists qualified to conduct surveys, inventories and

significance determinations for both CEQA and NEPA compliance.

- **Noise Specialist**

Noise specialist qualified to quantify existing and predicted noise levels associated with project implementation.

- **Air Quality Expert**

Air Quality expert in greenhouse gases and other airborne particulates regulated by federal, State or local laws.

- **WPCP/SWPPP Developer & Practitioner**

California Qualified SWPPP Developer and California Qualified SWPPP practitioner to develop and implement WPCP/SWPPP.

- **Traffic Specialist or Traffic Engineer**

Traffic specialist or Traffic Engineer knowledgeable in the preparation of City of San Diego Transportation Standards and Traffic Control Plans for construction purposes.

- **GIS Specialist**

GIS specialist with familiarity of local GIS databases and GIS resources.

## **5.0 DELIVERABLES**

The Design Professional will:

- Conduct site-specific environmental surveys and prepare technical studies that address a particular environmental resource such as biology, hydrology, water quality, air quality, noise, archaeology, paleontology, waste management, geology, visual and/or land use issues such as coastal resources,
- Produce project/permit application packages with technical studies, reports, and proposed project scope(s) to be submitted by the City to the regulatory agencies,

- Design native revegetation plans and/or wetland habitat mitigation plans with 2-5 year maintenance/monitoring,
- Generate monitoring/survey reports for maintenance and mitigation as required by the City, regulatory agencies, interested parties, and/or designated committees.

**6.0 MEETINGS**

Attendance at various meetings including, but not limited to: project scoping, community group, pre-bid, pre-construction (pre-con), public hearings, regulatory agency, progress, etc. for support, as necessary. These include both office and field meetings.

**7.0 INVOICING AND PROGRESS REPORTS**

An invoice shall be prepared to detail all labor rates, labor hours, Design Professional staff, and general task invoiced for each task item in each task order for each labor classification invoiced for that period. For each task order, the Design Professional shall prepare regular monthly invoices. Design Professional shall provide the following information:

**8.0 IDENTIFYING INFORMATION**

- City of San Diego Purchase Order Number,
- City Project Manager name,
- Task Order No,
- Design Professional's Project Manager's Name, and
- Period for costs invoiced.

**9.0 COST AND BUDGET INFORMATION**

Submit a table outlining the cost information below:

- Estimates Percentage of each task item completed,

- Budget and budget remaining of each task item, and
- Other Directs Costs including copies of invoices and backup. Where the Design Professional realized costs invoiced before the invoking period, these costs and associated work effort must be noted in the invoices under an invoice item titled Exceptions.

**10.0 PROGRESS REPORT**

A progress report shall be included or accompany the invoice which will, at minimum, summarize the following:

- Task item name and description of work,
- Work performed during the period covered by the invoice,
- Narrative of accomplishments, milestones and deliverable for each task item,
- Problems identified, solved, and/or unresolved during the reporting period,
- Discussion of any anticipated delays, deviations from the schedule or scope of work, and
- Descriptions of the actions to be taken to ensure that the project is completed as scheduled.

Progress reports that do not comply with the requirements detailed herein shall be returned to the Design Professional and the related invoice withheld from payment until a properly completed progress report is submitted and approved by the City. Progress report information (10.0) noted above shall follow the format provided by City engineering and/or planning project managers for which tasks are assigned and prepared.

**END OF SCOPE OF SERVICES**

**TASK ORDER AUTHORIZATION FOR  
PROFESSIONAL SERVICES [TASK ORDER]**

<b>Consultant:</b>	
<b>Agreement:</b>	
<b>Task Order No.:</b>	<b>Date:</b>
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.	
<b>Part A</b>	<b>Scope of Services</b>
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.
<b>Part B</b>	<b>Task Order Compensation</b>
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 \$ _____.	
<b>Part C</b>	<b>Personnel Commitment</b>
The Scope of Services shall be performed by Consultant's personnel in the number and classifications required by City.	
<b>Part D</b>	<b>Time Sequence</b>
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.	
<b>City of San Diego</b>	<b>Consultant</b>
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

## ESA Contract Rates

ESA Contract Labor Category	ESA Rate
Principal	\$222
Project (Task) Manager	\$200
Senior Civil Engineer	\$ 210
Senior Planner	\$185
Associate Planner	\$145
Principal Permitting Specialist	\$199
Senior Environmental Scientist	\$194
Associate Environmental Scientist	\$160
Junior Environmental Scientist	\$113
Staff Scientist	\$80
Senior Hydrologist	\$206
Staff Hydrologist	\$160
Drafting Technician	\$145
Senior Graphics Artist	\$115
Staff Graphics Artist	\$90
Senior Technical Editor	\$98
Contract Administrator	\$120
Administrative/Clerical	\$75

# COMPENSATION AND FEE SCHEDULE

## Exhibit C

### Sub Consultant Contract Rates

Contract Labor Category	Allied Geotechnical Engineers, Inc.	Blackhawk Environmental	Chen Ryan	D&D Wildlife Habitat Restoration, Inc.	McGrath Consulting	Ninyo & Moore	PanGIS	Rick Engineering Company	River Focus	Weston Solutions
Principal	\$175		\$225	\$136		\$178		\$220	\$228.78	\$200
Project (Task) Manager			\$210	\$115		\$163	\$110	\$180	\$198.28	\$160
Senior Civil Engineer	\$150		\$180					\$165	\$179.97	\$180
Senior Planner			\$155					\$185		
Associate Planner			\$125 <sup>7</sup>					\$130		
Principal Permitting Specialist		\$125						\$165		
Senior Environmental Scientist		\$100			\$135 <sup>1</sup>		\$90 <sup>ii</sup>	\$117		\$130
Associate Environmental Scientist		\$92				\$156	\$75 <sup>iii</sup>	\$112		\$110
Junior Environmental Scientist		\$85					\$65 <sup>iv</sup>	\$107		\$100
Staff Scientist		\$90				\$142		\$84		\$90
Senior Hydrologist	\$150							\$130	\$167.77	
Staff Hydrologist								\$120	\$137.27	
Drafting Technician	\$75		\$100			\$92	\$65 <sup>v</sup>	\$85		
Senior Graphics Artist			\$125				\$85 <sup>vi</sup>	\$110		
Staff Graphics Artist			\$90					\$90		
Senior Technical Editor			\$110					\$70	\$99.14	\$75
Contract Administrator			\$70					\$70		\$84
Administrative/Clerical	\$63		\$70	\$58	\$55	\$68		\$60	\$76.26	\$65
Senior Geotechnical Engineer	\$150									
Senior Geologist	\$150									
Field Inspector	\$120.95									
Field Supervisor								\$180		
Laboratory Technician	\$98									
Qualified SWPP Developer (QSD)					\$185					



**EXHIBIT C**

Qualified Stormwater Practitioner (QSP)					\$165					
Licensed Pest Control Applicator (Non-Prevailing Wage Rate)				\$49						
Two-person Survey Party								\$292		
Three-person Survey Party								\$434		
Licensed Pest Control Applicator (State - Prevailing Wage Rate)				\$77						

- <sup>i</sup> Environmental Specialist
- <sup>ii</sup> Senior Archaeologist
- <sup>iii</sup> Associate Archaeologist
- <sup>iv</sup> Archaeologist
- <sup>v</sup> GIS Tech
- <sup>vi</sup> GIS Specialist
- <sup>vii</sup> Traffic Engineer

**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>).
- 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.

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. The remedies available to the City under Council Policy 100-10 are cumulative to all other rights and remedies available to the City.

#### VI. Definitions.

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

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

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

Americans, Hispanic Americans, Asian Americans, and other minorities, or individual found to be disadvantaged by the Small Business Administration pursuant to Section 8 of the Small Business Reauthorization Act.

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

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

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

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

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

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

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

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

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

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

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

**VII. Certifications.**

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

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

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

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

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

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

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

**VIII. List of Attachments.**

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

**DISCLOSURE OF DISCRIMINATION COMPLAINTS**

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

CHECK ONE BOX ONLY.

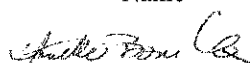
- The undersigned certifies that within the past 10 years the Design Professional has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Design Professional discriminated against its employees, subcontractors, vendors or suppliers.
- The undersigned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

DATE OF CLAIM	LOCATION	DESCRIPTION OF CLAIM	LITIGATION (Y/N)	STATUS	RESOLUTION/REMEDIAL ACTION TAKEN

Design Professional Name Environmental Science Associates

Certified By Annette Bonilla Title Vice President

Name



Signature

Date 10/16/2017

**USE ADDITIONAL FORMS AS NECESSARY**



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

**WORK FORCE REPORT**

**ADMINISTRATIVE**

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

**NO OTHER FORMS WILL BE ACCEPTED**

**CONTRACTOR IDENTIFICATION**

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

Name of Company: Environmental Science Associates

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

Address (Corporate Headquarters, where applicable): 550 Kearny Street, Suite 800

City San Francisco County San Francisco State CA Zip 94108

Telephone Number: (415) 896-5900 FAX Number: (415) 262-2300

Name of Company CEO: Leslie Moulton-Post

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):  
 Address: 550 West C Street, Suite 750

City San Diego County San Diego State CA Zip 92101

Telephone Number: 619 719-4200 FAX Number: 619 419-4201 Email: \_\_\_\_\_

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

The Company has appointed: Nathan Rapp  
 as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:  
 Address: 550 Kearny Street, Suite 800, San Francisco, CA 94108

Telephone Number: (415) 896-5900 FAX Number: (415) 262-2300 Email: nrapp@esassoc.com

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


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

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

I, the undersigned representative of Environmental Science Associates

San Diego, CA (Firm Name)  
 (County) (State) hereby certify that information provided

herein is true and correct. This document was executed on this 16th day of October, 2017.

\_\_\_\_\_  
 (Authorized Signature)  Bobbette Biddulph, Sr. Vice President/Regional Director  
 (Print Authorized Signature)



WORK FORCE REPORT – NAME OF FIRM: Environmental Science Associates DATE: 10/16/2017

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										1	3	1		1
Professional					1						6	10		1
A&E, Science, Computer														
Technical						1						1		
Sales														
Administrative Support				2								3		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column			2		1	1				1	9	15		2
--------------------	--	--	---	--	---	---	--	--	--	---	---	----	--	---

Grand Total All Employees 31

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: N/A

Board of Directors														
Volunteers														
Artists														



# CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

## HISTORY

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

## WORK FORCE & BRANCH WORK FORCE REPORTS

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

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

## MANAGING OFFICE WORK FORCE

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

## TYPES OF WORK FORCE REPORTS

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

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

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

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

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

### **Management & Financial**

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

### **Professional**

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

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

### Architecture & Engineering, Science, Computer

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

### Technical

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

### Sales

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

### Administrative Support

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

### Services

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

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

### Crafts

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

### Operative Workers

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

### Transportation

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

### Laborers

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

## SUBCONTRACTOR PARTICIPATION LIST

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

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

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	SLBE/ELBE (MBE/ WBE/DBE/ DVBE/OBE*)	WHERE CERTIFIED**
Allied Geotechnical Engineers, Inc. 9500 Cuyamaca Street, #102 Santee, CA 92071	Geotechnical Engineering	2%	ELBE	City of San Diego
Blackhawk Environmental, Inc. 1720 Midvale Dr. San Diego, CA 92105	Biological Resources On-site Monitoring)	4%	ELBE	City of San Diego
Chen Ryan Associates, Inc. 239 Laurel Street, #203 San Diego, CA 92101	Traffic	2%	ELBE	City of San Diego
D&D Wildlife Habitat Restoration, Inc. 9143 Harness Street Spring Valley, CA 91977	Habitat Restoration Plans & Implementation	5%	ELBE	City of San Diego
McGrath Consulting: P.O. Box 2488 El Cajon, CA 92021	SWPPPs and Water Pollution Control Plan	4%	ELBE	City of San Diego
Ninyo & Moore 5710 Ruffin Road San Diego, CA 92123	Geotechnical Engineering (Hazardous Assessment)	0-2%	MBE	City and County of Los Angeles
PanGIS, Inc. 2038 Corte Del Nogal, Suite 110 Carlsbad, CA 92011	Cultural and Paleontological Resources (On-site Monitoring, Emergency Permitting & GIS)	6%	SLBE/ELBE	City of San Diego
Rick Engineering Company 5620 Friars Road San Diego, CA 92110	Hydrologic, Hydraulic Analyses and Modeling	0-3%	OBE	N/A
River Focus, Inc. 9314 Madison Ave. La Mesa, CA 91941	Hydrologic, Hydraulic Analysis and Modeling	2%	ELBE	City of San Diego
Weston Solutions, Inc. 5817 Dryden Place, Suite 101 Carlsbad, CA 92008	Water Quality (Sampling and Aquatic Biology)	0-2%	OBE	N/A

List of Abbreviations:

**Small Local Business Enterprise**  
**Emerging Local Business Enterprise**  
 Certified Minority Business Enterprise  
 Certified Woman Business Enterprise  
 Certified Disadvantaged Business Enterprise  
 Certified Disabled Veteran Business Enterprise  
 Other Business Enterprise

**SLBE**  
**ELBE**  
 MBE\*  
 WBE\*  
 DBE\*  
 DVBE\*  
 OBE\*

\* Listed for informational purposes only.

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

**CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE**

**PROJECT TITLE:** As-Needed Environmental Services Contracts for the Transportation & Storm  
Water Department (H176898)

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:

Environmental Science Associates

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 

Printed Name Bobbette Biddulph

Title Senior Vice President

Date 11/22/2017

**INSTRUCTION SHEET FOR**  
**DISCLOSURE DETERMINATION FOR CONSULTANT**  
**(Form CC-1671)**

Use the "Disclosure Determination for Consultant" form (CC-1671) to report the disclosure requirement for any consultant hired to provide services to the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction.

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency, either makes a governmental decision or serves in a staff capacity with the state or local government agency and in that capacity participates in making a governmental decision. For the complete definition of "consultant", refer to Government Code section 18701(a)(2). This section can be located at:

[http://www.fppc.ca.gov/index.html?ID=52&r\\_id=/legal/regs/18701.htm](http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm)

The "Disclosure Determination for Consultant" form is completed for all consultants under contract with the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction. Please follow the step-by-step directions:

1. List the department, board, commission or agency requesting the consultant service.
2. List the consulting company. If known, also list the individual(s) who will be providing the consultant services.
3. List the mailing address.
4. List the e-mail address of individual(s) providing the consultant service.
5. Provide the date the individual(s) will start providing the consultant service.
6. List all duties/responsibilities the consultant will have. This list will enable you to determine the disclosure requirement for the consultant.
7. Determine the consultant's disclosure category. Your consultant should be required to disclose only those economic interests which could potentially create a conflict of interest as he/she performs his/her contractual obligations. For ideas about possible disclosure categories, review those in your department's, board's, commission's or agency's conflict of interest code, available at:

[www.sandiego.gov/city-clerk/elections/eid/codes.shtml](http://www.sandiego.gov/city-clerk/elections/eid/codes.shtml)

Please fill out the entire "Disclosure Determination for Consultant" form, and have it signed by the appropriate authority. (Individuals with signing authority are described in your conflict of interest code as part of the disclosure requirement for Consultants.) Forward the original form to the City Clerk's Office, MS 2A.

**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: Transportation & Storm Water Department
- 2. Name of Specific Consultant & Company: ESA
- 3. Address, City, State, ZIP: 550 West C Street, Suite 750, San Diego, CA 92101
- 4. Project Title (as shown on 1472, "Request for Council Action"): As-Needed Consultant Agreement for T&SW SWD (ESA No.176898)
- 5. Consultant Duties for Project: Provide T&SW specialized environmental strategic planning, design, and permitting services.  
Provide professional environmental services in various disciplines (biological, cultural, historical, air quality, noise, landscape plans, & hydraulic/hydrology)  
Prepare various environmental documents and technical studies

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: Kris McFadden  
[Kris McFadden, Director]\*

10/19/17  
[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.*

**DEFINITION OF "CONSULTANT"**

2 California Code of Regulations defines a "consultant" as an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
1. Approve a rate, rule or regulation;
  2. Adopt or enforce a law;
  3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
  4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
  5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
  6. Grant City approval to a plan, design, report, study, or similar item;
  7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.



CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

SUBJECT: SUSTAINABLE BUILDING POLICY  
POLICY NO.: 900-14  
EFFECTIVE DATE: May 20, 2003

BACKGROUND:

Existing buildings and the building development industry consume nearly half of the total energy used in the United States. The City of San Diego's commitment to become increasingly efficient with resources, including energy, water, and materials associated with construction projects, is demonstrated in Council Policy 900-14 "Green Building Policy" adopted in 1997, Council Policy 900-16 "Community Energy Partnership," adopted in 2000, and the updated Council Policy 900-14 "Sustainable Buildings Expedite Program" adopted in 2001.

On April 16, 2002, the Mayor and City Council adopted CMR 02-060 which requires City projects to achieve the U.S. Green Building Council's LEED silver standard for all new buildings and major renovations over 5,000 square feet. This places San Diego among the most progressive cities in the nation in terms of sustainable building policies.

As a participant in the International Council for Local Environmental Initiatives (ICLEI) Cities for Climate Protection Program, as a Charter member in the California Climate Action Registry and as an active member of the U.S. Green Building Council, the City of San Diego is committed to reducing greenhouse gas emissions by implementing more sustainable practices, including green building technologies.

PURPOSE:

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

POLICY:

The following principles will be required for all newly constructed facilities and major building renovation projects for City facilities:

LEED (Leadership in Energy and Environmental Design):

The LEED (Leadership in Energy and Environmental Design) Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. Members of the U.S. Green Building Council representing all segments of the building industry developed LEED and continue to contribute to its evolution.

The City of San Diego is committed to achieving LEED "Silver" Level Certification for all new City facilities and major building renovation projects over 5,000 square feet.

SUSTAINABLE BUILDING MEASURES:

In addition to achieving LEED "Silver" Level Certification, Council Policy 900-14 encourages the following sustainable building measures for all newly constructed facilities and major renovation projects regardless of square footage:

1. Design and construct mechanical and electrical systems to achieve the maximum energy efficiency achievable with current technology. Consultants shall use computer modeling programs, (Energy Pro) to analyze the effects of various design options and select the set of options producing the most efficient integrated design. Energy efficiency measures shall be selected to achieve energy efficiencies at least 22.51% better than California's Title 24.2001 standards for both new construction and major renovation projects.
2. Incorporate self-generation using renewable technologies to reduce environmental impacts associated with fossil fuel energy use. Newly constructed City facilities shall generate a minimum of 10%, with a goal of 20% from renewable technologies (e.g., photovoltaic, wind and fuel cells).
3. Eliminate the use of CFC based refrigerants in newly constructed facilities and major building renovations and retrofits for all heating, ventilation, air conditioning and refrigerant-based building systems.
4. Incorporate additional commissioning and measurement and verification procedures as outlined by LEED 2.0 Rating System, Energy and Atmospheres, credit 3 and credit 5 for all projects over 20,000 sq. ft.
5. Reduce the quantity of indoor air contaminants that are odorous or potentially irritating to provide installer(s) and occupant(s) health and comfort. Low-emitting materials will include adhesives, paints, coatings carpet systems, composite wood and agri-fiber products.
6. In order to maximize energy efficiency measures within these requirements, projects will combine energy efficiency measures requiring longer payback periods, with measures requiring shorter payback periods to determine the overall project period.

Comply with the storm water development requirements in the Storm Water Management and Discharge Control Ordinance (Municipal Code § 43.03), and the City's grading and drainage regulations and implementing documents (MC § 142.01 and 142.02, respectively).

In addition to achieving the minimum sustainable building measure this Council Policy encourages the following measures be incorporated into newly constructed facilities and major renovation projects whenever possible:

## EXHIBIT G

1. Use high efficiency irrigation technology, drought tolerant native plants and recycled site water to reduce potable water for irrigation by 50%. Additionally, building water consumption should be reduced by 30%.
2. Limit disruption of natural water flows and minimize storm water runoff by minimizing building footprints and other impervious areas, increasing on-site infiltration, preserving and/or restoring natural drainage systems, and reducing contaminants introduced into San Diego's bays, beaches and the ocean.
3. Facilitate the reduction of waste generated by building occupants that is hauled to and disposed of in landfills. Provide an easily accessible area that serves the entire building and is dedicated to the separation, collection and storage of materials for recycling. Recycling should include paper, glass, plastic and metals at a minimum.
4. Incorporate building products that have recycled content reducing the impacts resulting from the extraction of new materials. Newly constructed City facilities shall have a minimum of 25% of building materials that contain in aggregate, a minimum weighted average of 20% post consumer recycled content materials.
5. Reduce the use and depletion of finite raw and long-cycle renewable materials by replacing them with rapidly renewable materials. Newly constructed City facilities should consider incorporating rapidly renewable building materials for 5% of the total building materials.
6. Establish minimum indoor air quality (IAQ) performance to prevent the development of indoor air quality problems in buildings, maintaining the health and well being of the occupants. Newly constructed City facilities will comply with IAQ by conforming to ASHRAE 62-1999.
7. City buildings will be designed to take the maximum advantage of passive and natural sources of heat, cooling, ventilation and light.

The Environmental Services Department, Energy Conservation and Management Division has been designated by this Council Policy as the clearing authority for issues relating to energy for the City of San Diego. The Energy Conservation and Management Division will enter into a Memorandum of Understanding with those City Departments who design, renovate and build new city owned facilities to insure all new City facilities reflect the intent of Council Policy 900-14.

PRIVATE-SECTOR/INCENTIVES:

It shall be the policy of the City Council to expedite the ministerial process for projects which meet the following criteria:

1. Residential projects that provide 50% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
2. Commercial and industrial projects that provide 30% of their projected total energy use utilizing renewable energy resources, (e.g., photovoltaic, wind and fuel cells).
3. Residential and commercial and industrial projects that exceed the State of California Title 24 energy requirements by:
  - a. 15% better than California's Title 24.2001 for Residential Buildings.
  - b. 10% better than California's Title 24.2001 for Commercial and Industrial Buildings.

It shall be the policy of the City Council to expedite the discretionary process for projects which meet the following criteria:

1. Incorporate the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) 2.0 Rating System "Silver" Level Certification for commercial development projects.
2. Incorporate self-generation through renewable technologies (e.g., photovoltaic, wind and fuel cells) to reduce environmental impacts associated with fossil fuel energy use for commercial and industrial projects generating a minimum of 30% or more of the designed energy consumption from renewable technologies such as photovoltaic, wind and fuel cells.
3. Residential discretionary projects of 4 units or more within urbanized communities as defined in the Progress Guide and General Plan that provide 50% of their projected total energy use utilizing renewable energy resources.

HEALTH AND RESOURCE CONSERVATION:

1. Projects will be designed to avoid inflicting permanent adverse impact on the natural state of the air, land and water, by using resources and methods that minimize pollution and waste, and do not cause permanent damage to the earth, including erosion.
2. Projects will include innovative strategies and technologies such as porous paving to conserve water, reduce effluent and run-off, thus recharging the water table.
3. When feasible, native plants will be used in landscaping to reduce pesticide, fertilizer, and water usage.
4. Buildings will be constructed and operated using materials, methods, mechanical and electrical systems that ensure a healthful indoor air quality, while avoiding contamination by carcinogens, volatile organic compounds, fungi, molds, bacteria, and other known toxins.

## EXHIBIT G

5. Projects will be planned to minimize waste through the use of a variety of strategies such as: a) reuse of materials or the highest practical recycled content; b) raw materials derived from sustainable or renewable sources; c) materials and products ensuring long life/durability and recyclability; d) materials requiring the minimum of energy and rare resources to produce and use; and e) materials requiring the least amount of energy to transport to the job site.

### OUTREACH / EDUCATION:

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

### IMPLEMENTATION:

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

### LEGISLATION:

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

### REFERENCES:

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

### HISTORY:

Adopted by Resolution R-289457 11/18/1997  
Amended by Resolution R-295074 06/19/2001  
Amended by Resolution R-298000 05/20/2003

**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):  1b. Brief Description:  1c. Budgeted Cost: \$ _____ WBS/IO: _____	2a. Name and address of Consultant:  2b. Consultant's Project Manager: 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"/> )																			
<b>4. Design Phase</b>																			
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:  <table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">% of Design Phase Completion</td> <td style="text-align: center;">%</td> <td style="text-align: center;">%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>Agreed Delivery Date:</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Actual Delivery Date:</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Acceptance of Plans/Specs.:</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>		% of Design Phase Completion	%	%	100%	Agreed Delivery Date:	_____	_____	_____	Actual Delivery Date:	_____	_____	_____	Acceptance of Plans/Specs.:	_____	_____	_____	Final Construction Est. Completion: _____ Actual Completion: _____
% of Design Phase Completion	%	%	100%																
Agreed Delivery Date:	_____	_____	_____																
Actual Delivery Date:	_____	_____	_____																
Acceptance of Plans/Specs.:	_____	_____	_____																
<b>5. Construction Support</b>																			
5a. Contractor _____ (name and address)		Phone (____) _____																	
5b. Superintendent _____																			
5c. Notice to Proceed _____ (date)  5d. Working days _____ (number)  5e. Actual Working days _____ (number)	5f. Change Orders: Errors/Omissions _____ % of const. cost \$ _____ 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 Compliance with Contract & Budget Responsiveness to City Staff	<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"/>																
6b. Overall Rating _____																			
7. AUTHORIZING SIGNATURES																			
7a. Project Manager _____	Date _____																		
7b. Section Head _____	Date _____																		

Section II		SPECIFIC RATING							
DESIGN EVALUATION	EXCELLENT	SATISFACTORY	POOR	NA	CONSTRUCTION SUPPORT EVALUATION	EXCELLENT	SATISFACTORY	POOR	NA
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 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:**

As-Needed Environmental Services Contracts for the Transportation & Storm Water Department (H176898)

**B. BIDDER/PROPOSER INFORMATION:**

<u>Environmental Science Associates</u>			
Legal Name		DBA	
<u>550 West C Street, Suite 750</u>	<u>San Diego</u>	<u>CA</u>	<u>92101</u>
Street Address	City	State	Zip
<u>Bobbette Biddulph</u>	<u>(619) 719-4200</u>	<u>(619) 4719-4201</u>	
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

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

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

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

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

**D. BUSINESS ORGANIZATION/STRUCTURE:**

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

**Corporation** Date incorporated: 07 / 07 / 1969 State of incorporation: California

List corporation's current officers: President: Leslie Moulton-Post  
 Vice Pres: Deanna Hansen  
 Secretary: \_\_\_\_\_  
 Treasurer: Albert Cuisinot



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:

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

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

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

List names of all firm partners:

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

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

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

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

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**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 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

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: First American Bank

Point of Contact: Jamie M. Walrack

Address: 1650 Louis Avenue, Elk Grove, IL 60007-2350

Phone Number: (847) 586-2285

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

#### F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes  No

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

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

Yes  No

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

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

Yes  No

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

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes  No

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

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes  No

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

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes  No

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

7. Performance References:

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

Company Name: City of Newport Beach

Contact Name and Phone Number: Robert Stein, 949.644.3322

Contact Email: rstein@newportbeach.gov

Address: 3300 Newport Beach, Newport Beach, CA 92658-8915

Contract Date: 2013-Ongoing

Contract Amount: \$308,775.28

Requirements of Contract: ESA is working with our project partners on the design, permitting and implementation of selenium reduction measures, stormwater collection and treatment using natural treatment system and restoration of a 1000-foot segment of the creek. ESA provided the CEQA documentation and preparing and submitting the permits under an aggressive timeline for all the project components

Company Name: City of San Diego

Contact Name and Phone Number: Chris Gascon, P.E., 619.533.7417

Contact Email: cgascon@sandiego.gov

Address: 9370 Chesapeake Drive, Suite 100, MS 1900, San Diego, CA 92123

Contract Date: 2016-Ongoing

Contract Amount: \$355,340

Requirements of Contract: Requirements of Contract: The Los Peñasquitos Restoration Program project is a multi-benefit restoration project that involves several components including channel enhancements, creation of tidal channels, tidal wetland grading, sediment management, habitat creation and salt march restoration.

Company Name: Los Angeles County Department of Public WorksContact Name and Phone Number: Grace Stohs, 626.458.5100Contact Email: gstohs@dpw.lacounty.govAddress: 900 South Fremont Avenue, Second Floor, Alhambra, CA 91803Contract Date: 2014-2017Contract Amount: \$5 Million (Total task awarded is \$1.49 Million)

Requirements of Contract: ESA is providing a full array of environmental services under a five-year on-call services contract. Over 20 projects have been authorized under this contract, including preparation of regulatory permits (404, 401, and 1602), biological and cultural resources surveys and reports, focused surveys for federally and/or

**G. COMPLIANCE:** state-listed species, wetland delineations, compliance/mitigation monitoring and reporting, air and water quality sampling, and preparation of CEQA documents.

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

Yes  No

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

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

Yes  No

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

**H. BUSINESS INTEGRITY:**

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

**I. WAGE COMPLIANCE:**

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

**J. STATEMENT OF SUBCONTRACTORS:**

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

Company Name: Allied Geotechnical Engineers, Inc.

Contact Name and Phone Number: Tiong J. Liem - (619) 449-5900

Contact Email: tj\_liem@alliedgeo.org

Address: 9500 Cuyamaca Street, Suite 102, Santee, CA 92071

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 2%

What portion of work will be assigned to this subcontractor: Geotechnical

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

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

Company Name: Blackhawk Environmental, Inc.

Contact Name and Phone Number: Seth Reimers - (619) 972-9732

Contact Email: seth@blackhawkenv.com

Address: 1720 Midvale Dr., San Diego, CA 92105

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 4%

What portion of work will be assigned to this subcontractor: Biological Resources/On-site Monitoring

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

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

J. STATEMENT OF SUBCONTRACTORS: (CONT.)

Company Name: Chen Ryan Associates, Inc.

Contact Name and Phone Number: Monique Chen – (619) 318-4664

Contact Email: mchen@chenryanmobility.com

Address: 3900 Fifth Avenue, Suite 210, San Diego, CA 92103

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 2%

What portion of work will be assigned to this subcontractor: Traffic Engineering

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

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

Company Name: D&D Wildlife Habitat Restoration, Inc.

Contact Name and Phone Number: Douglas McKinney – (619) 667-3707

Contact Email douglasm@habitatsrestoration.com

Address: 9143 Harness St, Spring Valley, CA 91977

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 5%

What portion of work will be assigned to this subcontractor: Habitat Restoration Plans & Implementation

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

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

J. STATEMENT OF SUBCONTRACTORS: (CONT.)

Company Name: McGrath Consulting

Contact Name and Phone Number: Michael McGrath – (619) 443-3811

Contact Email mwm@mcswppp.com

Address: P.O. Box 2488, El Cajon, CA 92021

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 4%

What portion of work will be assigned to this subcontractor: SWPPP

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

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

Company Name: Ninyo & Moore Geotechnical & Environmental Sciences Consultants

Contact Name and Phone Number: Gregory Farrand, PG. CEG, (858) 576-1000 ext. 11220

Contact Email: gfarrand@ninyoandmoore.com

Address: 5710 Ruffin Road, San Diego, CA 92123

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 0-2%

What portion of work will be assigned to this subcontractor: Hazardous Materials

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

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

J. STATEMENT OF SUBCONTRACTORS: (CONT.)

EXHIBIT I

Company Name: PanGIS, Inc.

Contact Name and Phone Number: Alice Brewster, MA, GISP – (760) 683-8335 x700

Contact Email: alice@pangis.com

Address: 2038 Corte Del Nogal Suite 110, Carlsbad, CA 92011

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 6%

What portion of work will be assigned to this subcontractor: Cultural, Archeo & Paleo Resources

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

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

Company Name: Rick Engineering Company

Contact Name and Phone Number: Jayne Janda-Timba – (619) 291-0707

Contact Email: jjanda-timba@rickengineering.com

Address: 5620 Friars Road, San Diego, CA 92110

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 0-3%

What portion of work will be assigned to this subcontractor: Hydrologic, Hydraulic Analysis and Modeling

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

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



J. STATEMENT OF SUBCONTRACTORS: (CONT.)

EXHIBIT I

Company Name: River Focus, Inc.

Contact Name and Phone Number: Darren Bertrand – (619) 694-8543

Contact Email: dbertrand@riverfocus.com

Address: 9314 Madison Ave., La Mesa, CA 91941

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 2%

What portion of work will be assigned to this subcontractor: Hydrologic, Hydraulic Analysis and Modeling

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

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

Company Name: Weston Solutions

Contact Name and Phone Number: Andrea Crumpacker, 760-795-6987

Contact Email: Andrea.crumpacker@westonsolutions.com

Address: 5817 Dryden Place, Suite 101, Carlsbad, CA 92008

Contract Date: To be determined

Sub-Contract Dollar Amount: N/A

Requirements of Contract: 0-2%

What portion of work will be assigned to this subcontractor: Aquatic biology and water quality sampling

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

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

**K. STATEMENT OF AVAILABLE EQUIPMENT:**

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

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

Equipment Description:   N/A  

Owned       Rented       Other  (explain below)

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

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

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

Equipment Description:   N/A  

Owned       Rented       Other  (explain below)

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

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

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

Equipment Description:   N/A  

Owned       Rented       Other  (explain below)

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

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

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

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

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated   01 / 26 / 2017  .

**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 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. 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 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.**

Bobbette Biddulph            11/22/2017  
Name and Title      Senior Vice President      Signature      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.

**D. BUSINESS ORGANIZATION/STRUCTURE:**

Leslie Moulton	President & CEO	San Francisco
Albert Cuisinot	Sr. VP & CFO	San Francisco
Brian Ramos	Sr. VP & COO	San Francisco
Molly Adolfsen	Sr. VP; Northwest Water Practice Leader	Seattle
Paul Agrimis	VP; Landscape Architecture Program Leader	Portland
Steve Alverson	Sr. VP; Airports Practice Leader	Sacramento
Betty Andrews	VP; Senior Program Manager, Environmental Hydrology	Petaluma
Mike Arnold	Sr. VP; Airports Deputy Practice Leader	Tampa
Terri Avila	VP; California Community Development Practice Leader	Los Angeles
Tom Barnes	VP; So Cal Water & Energy Leader	Los Angeles
Bob Battalio	VP; Chief Engineer	San Francisco
Bobbette Biddulph	Sr. VP; Southern California Regional Director	San Diego
Annette Bonilla	VP; Director of Human Resources	San Francisco
Ann Boronovo	VP; Northern California Environmental Hydrology Leader	San Francisco
Brian Boxer	Sr. VP; Northern California Regional Director	Sacramento
Greg Broughton	Sr. VP, ESA PCR Strategic Client Development Director	Santa Monica
Margaret Clancy	VP; Northwest Regional Director	Seattle
Erich Fischer	Sr. VP; Northern California Biological & Cultural Resources Leader	Sacramento
Deanna Hansen	VP; So Cal Community Development Group Leader	Los Angeles
Cathy McEfee	VP; Northern California Water Group Director	Sacramento
Dana McGowan	VP; Cultural Resources Practice Leader	Sacramento
Steve Nelson	VP, ESA PCR So Cal Biological & Cultural Resources Leader	Irvine
Jim O'Toole	VP; California Water Practice Leader	Petaluma
Gary Oates	Sr. VP; Strategic Client Development	San Francisco
Doug Robison	VP; Biological Services Southeast	Tampa
Eric Ruby	Sr. VP; Strategic Client Business Development Director	San Diego
Julie Sullivan	VP; Southeast Regional Director	Orlando
Teresa Vanderburg	VP; Northwest Biological Resources/LM Practice Leader	Seattle
Ken Vigil	VP; Northwest Environmental Hydrology Leader	Portland

Updated January 2017

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

Bobbette Biddulph, Senior Vice President  
 Print Name, Title

  
 Signature

11/22/2017  
 Date

**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.

Environmental Science Associates

Name of Firm

  
Signature of Authorized Representative

Bobbette Biddulph

Printed/Typed Name

11/22/2017  
Date

## CONSULTANT CERTIFICATION

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

**PROJECT TITLE:** As-Needed Environmental Services Contracts for the Transportation & Storm Water Department  
(H176898)

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;

Environmental Science Associates

(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 Bobbette Biddulph

Title Senior Vice President

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1 Environmental Specialist

2 Senior Archaeologist

3 Associate Archaeologist

4 Archaeologist

5 GIS Tech

6 GIS Specialist

7 Traffic Engineer

RESOLUTION NUMBER R- 311487

DATE OF FINAL PASSAGE JAN 18 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING AN AS-NEEDED AGREEMENT  
WITH ENVIRONMENTAL SCIENCE ASSOCIATES FOR  
ENVIRONMENTAL CONSULTING SERVICES, AND  
RELATED FUNDING ACTIONS.

WHEREAS, the City of San Diego's (City) Transportation and Storm Water Department requires the as-needed consulting services of an environmental consulting firm in order to support implementation and monitoring of various Storm Water Division flood management programs and to supplement the City's efforts to comply with applicable federal, state, and local regulatory requirements, including the requirements of the 2013 Municipal Separate Storm Sewer System Permit (MS4 Permit) (the Consulting Services); and

WHEREAS, in February 2017, in conformance with San Diego Municipal Code section 22.3207, Council Policy 300-7, and Administrative Regulation 25.60, the City advertised a Request for Proposals for the Consulting Services, and received seven responsive proposals; and

WHEREAS, Environmental Science Associates (ESA) was selected as one the two most highly qualified firms to provide the Consulting Services, subject to City Council approval; and

WHEREAS, the Environment Committee heard this item on December 7, 2017, and recommended that the City Council approve the contract award (Agreement) to ESA;

NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized to execute, for and on behalf of the City, an agreement with ESA for

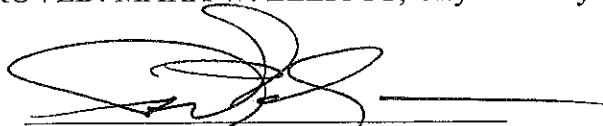
as-needed environmental consulting services, for a period of five years, in an amount not to exceed \$7,500,000, under the terms and conditions set forth in the Agreement on file with the City Clerk as Document No. RR- 311487 .

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend a total amount not to exceed \$7,500,000 from the Storm Water Division's Operating Budget (211612) for FY 2018-2023, solely and exclusively to provide funds for this Agreement, contingent on City Council approval of the annual Appropriations Ordinance for the applicable fiscal year, and upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$1,000 from FY 2018 General Fund (100000) Storm Water Division Operating Budget (211612) for the purpose of executing this Agreement and meeting the minimum contract requirements.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
\_\_\_\_\_  
Davin A. Widgerow  
Deputy City Attorney

DAW:amc  
December 19, 2017  
Or.Dept: Transportation and Storm Water  
CC No. 3000010559  
Doc. No.: 1647439



I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 09 2018.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 1/18/18  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JAN 09 2018, 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 JAN 18 2018.


(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 , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311487

Passed by the Council of The City of San Diego January 9, 2018, by the following vote:

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

**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: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. **R-311487**, approved on **January 9, 2018**. The date of final  
passage is **January 18, 2018**.

**ELIZABETH S. MALAND**

City Clerk of the City of San Diego, California

(Seal)

By: , Deputy