

DUPLICATE ORIGINAL

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO**

**AND  
TOWILL, INC**

**FOR**

**AS-NEEDED AERIAL SURVEYING, PHOTOGRAPHY, MAPPING  
AND DIGITIZING SERVICES FOR THE CITY'S UNDERGROUND  
UTILITIES PROGRAM**

CONTRACT NUMBER: H125726

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**AGREEMENT FOR AS-NEEDED CONSULTANT SERVICES**

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## CONSULTANT AS-NEEDED AGREEMENT 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) Work Force Report
  - (BB) Subcontractors List
  - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Determination Form
- Exhibit G - Consultant Evaluation Form
- Exhibit H - Vendor Registration Form
- Exhibit I - Contractor Standards Pledge of Compliance
- Exhibit J- Equal Benefits Ordinance Certification of Compliance
- Exhibit K- Regarding Information Requested under the California Public Records Act

**AS-NEEDED AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND TOWILL, INC  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Towill, Inc [Consultant] for the Consultant to provide Professional Services to the City for aerial consulting.

**RECITALS**

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

The City is concerned that one Consultant may not be able to meet all the City's needs for the Professional Services in a timely and efficient manner and, therefore, the City may enter into an agreement with more than one Consultant to provide the Professional Services on an as-needed, hourly basis in exchange for a guaranteed minimum amount of work with each Consultant.

The Consultant 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 Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services 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  
CONSULTANT 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 Consultant as an individual task [Task]. The Consultant 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, Consultant 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 Consultant agrees that this Agreement is non-exclusive and that the City may enter into agreements with other Consultants to perform substantially the same or similar Professional Services during the term of this Agreement.

**1.2 Task Administrator.** The Public Works Department is the task administrator for this Agreement. The Consultant shall provide the Professional Services under the direction of a designated representative of the Public Works Department. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. Further, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or 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 Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation 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 Consultant shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Consultant shall immediately advise the City in writing of any anticipated 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 Consultant from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

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

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

## **ARTICLE II DURATION OF AGREEMENT**

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, this Agreement shall be effective for issuing “new” Task Orders for no more than thirty-six (36) months following the date of its execution by the City, unless said duration is modified in writing by an amendment to this Agreement. Furthermore, the total duration of this Agreement shall not exceed five years from the effective date unless approved by City Ordinance.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of any Task shall be set forth in the Task Order and shall not exceed the contract duration.

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



furnishes the City, in a timely manner, documentary proof satisfactory to the City of the Consultant's inability to obtain materials, equipment, or labor.

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

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

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

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including all reasonably related expenses, in an amount not to exceed \$ 250,000. The City agrees to issue at least one or more Task Orders with a minimum aggregate value of \$1,000.00 to the Consultant. The amount of compensation may be reduced by liquidated damages, as set forth in Exhibit C.

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

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

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

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

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

**4.2 Right to Audit.**

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

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

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

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

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

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

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

or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

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

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

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

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

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

**4.3.1.4 RESERVED**

**4.3.1.5 Aircraft Liability.** Consultant shall procure and maintain or cause its subconsultant to procure and maintain Aircraft Liability insurance to cover aviation operations related to this Agreement in an amount not less than \$1 million combined single limit for bodily injury and property damage.

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

**4.3.3 Acceptability of Insurers.**

**4.3.3.1** Except for the State Compensation Insurance Fund, all insurance required by this Contract 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 Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

#### **4.3.4 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 Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

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

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

**ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an 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 Consultant.

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

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

#### 4.3.4.4 Aircraft Liability Insurance Endorsements

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

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

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

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

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

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

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

**4.4.1.1** The Consultant shall require the Subcontractor to obtain insurance policies, as described in Section 4.3.1, and those policies shall be kept in full force and effect

during any and all work on this Project and for the duration of this Agreement. Furthermore, Subcontractor policy limits, and required endorsements shall be determined by the Consultant proportionate to the services performed by the Subcontractor.

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

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

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

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

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

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

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

**4.6.1 Compliance with the City's Equal Opportunity Contracting Program.** The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements.

Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

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

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

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

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

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

- 4.7.2.1** The dangers of drug abuse in the work place.
- 4.7.2.2** The policy of maintaining a drug-free work place.
- 4.7.2.3** Available drug counseling, rehabilitation, and employee assistance programs.
- 4.7.2.4** The penalties that may be imposed upon employees for drug abuse violations.



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

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

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

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

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

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

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

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

**4.9.3** The Consultant's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The

Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

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

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

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

**4.12 Attorney Fees related to Mandatory Assistance.** In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable.

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

## ARTICLE V RESERVED

## ARTICLE VI INDEMNIFICATION

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

employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the City, its agents, officers or employees.

**6.2 Survival Clause.** The Consultant's obligations under Section 6.1 shall survive the termination or expiration of the Agreement and continue so long as a viable claim exists.

## **ARTICLE VII MEDIATION**

**7.1 Mandatory Mediation.** If a dispute arises out of or relates to this Agreement that cannot be resolved through normal contract negotiations, the Consultant and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon by the parties before having recourse in a court of law.

**7.1.1 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by AAA or any other agreed upon mediator.

**7.1.2 Mediation Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All joint expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

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

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

## **ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS**

**8.1 Work For Hire.** All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine,

originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is “work for hire” under the United States Copyright law and shall become the sole property of the City. The 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 Consultant, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Consultant’s work on behalf of the City without prior written consent of the City.

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

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

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

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

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

## ARTICLE IX MISCELLANEOUS

**9.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Public Works Department, c/o Diana Bergen, MS 18, 9485 Aero Dr., San Diego, CA 92123, and notice to the Consultant shall be addressed to: Towill, Inc, 2300 Clayton Road, Suite 1200 Concord, CA 94520.

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

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

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

only that the Consultant shall follow the direction of the City concerning the end results of the performance.

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

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

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

**9.8 Interpretation.** This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

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

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

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

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

**9.13 Severability.** Should any provision of this Agreement be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either or both parties' essential objectives set forth in this Agreement.

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

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

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

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

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

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

control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**9.20 Consultant Evaluation.** City will evaluate Consultant's performance of Services using the Consultant Evaluation Form [Exhibit G].

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

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

**9.23 Vendor Registration.** All consultants, subconsultants, contractors, subcontractors and vendors wishing to conduct business with the City of San Diego, or those intending to compete for City contracts, must submit a completed Vendor Registration Form (Exhibit H) to the City of San Diego's Purchasing & Contracting Department.

Registration will be a prerequisite for the following:

- a) Submission of contract or subcontract proposals for City projects,
- b) Acceptance of all consultant and vendor bills and invoices to the City, and
- c) Award of all contracts issued by the City.

Contractor/Vendor Registration shall remain valid for 2 years from the date the registration form is submitted, and must be renewed at the time.

It shall be the Prime Consultant's responsibility to ensure that all its proposed subcontractors submit the Contractor/Vendor Registration form prior to the award of the agreement. Electronic copy of the Contractor/Vendor Registration form is available for download from the following site: <http://www.sandiego.gov/purchasing/vendor/index.shtml>.

**9.24 Contractor Standards.** This Agreement is subject to the Contractor Standards clause of San Diego Municipal Code Section 22.3004. The Consultant is required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit I.

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

**9.26 Project Site Safety.** Unless otherwise provided by the Scope of Services in this Agreement, the Consultant, Subconsultant and their employees are not responsible for general Project site conditions during the course of construction of the Project. The City acknowledges that the construction contractor has primary responsibility for Project site conditions, including safety of all persons and property. This provision shall not be interpreted to in any way relieve the Consultant, Subconsultants or their employees of their obligation under Section 4.1 of this



Agreement to comply with all applicable laws, codes and good consulting practices with regard to the maintenance of a safe Project site.

**9.27 Equal Benefits Ordinance.** This Agreement is subject to the Equal Benefits Ordinance [EBO]. All consultants are required to complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit J. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, contractors must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the contract [SDMC §22.4304(e)]. Contractors must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

Contractors also must give the City access to documents and records sufficient for the City to verify the contractors are providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at [www.sandiego.gov/purchasing/](http://www.sandiego.gov/purchasing/) or can be requested from the Equal Benefits Program at (619) 533-3948.

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

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

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to San Diego Municipal Code 22.3207, authorizing such execution, and by the Consultant pursuant to Towill, Inc Corporate Authority.

Dated this 28<sup>th</sup> day of September, 2012.

THE CITY OF SAN DIEGO  
Mayor or Designee

By 

W. Downs Prior  
Principal Contract Specialist  
Public Works Contracting


I HEREBY CERTIFY I can legally bind Towill, Inc and that I have read all of this Agreement, this 31 day of August, 2012.

By 

Ken Meme  
President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 9<sup>th</sup> day of October, 2012

JAN I. GOLDSMITH, City Attorney

By 

Deputy City Attorney

**CONSULTANT AS NEEDED AGREEMENT 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) Work Force Report
  - (BB) Subcontractors List
  - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Determination Form
- Exhibit G - Consultant Evaluation Form
- Exhibit H - Vendor Registration Form
- Exhibit I - Contractor Standards Pledge of Compliance
- Exhibit J- Equal Benefits Ordinance Certification of Compliance
- Exhibit K- Regarding Information Requested Under the California Public Records Act

**SCOPE OF SERVICES**

**SPECIFICALLY FOR SDG&E UNDERGROUND UTILITY DISTRICTS**

Engineering & Capital Projects Department

RIGHT OF WAY DESIGN

**IO 21002645**

Aerial surveying, photography, mapping and digitizing for SDG&E underground utility districts in the City of San Diego in Microstation V8 format.

**GENERAL REQUIREMENTS:**

Photogrammetrist will adhere to San Diego County's Standard specifications for Aerial Surveying and Topographic Mapping unless otherwise specified.

For each mapping area, the Aerial Consultant shall furnish to the City:

1. Photography:

- a. Flight plan, including model layout, direction of flight, camera calibration sheet and location of premarks, (subject to City approval). Please show on enclosed layout map and include airborne GPS if applicable.
- b. One (1) set of 9" x 9" contact prints for 40' scale mapping. Contact prints shall be printed on color paper with gloss finish.
- c. Negatives and digital scans of all negatives.
- d. All AT and camera reports in electronic format.
- e. All color contact prints and photo enlargements shall be sent to the City after flying and processing.

- f. The following information shall appear on all negatives used for mapping or photographs: Date, Photo scale, project name, negative number (flight line, exposure number).
- g. One (1) digital ortho photo file in (.tif) image format with Geo Tiff header information (project coordinate system value/projection/coordinate system units). Scanning for these images shall be taken from the original negatives, and be scanned at 12 microns. Files shall be geo referenced to the 40' scale digital photo layout using 200' or 300' negative scale as used for mapping.
- h. A world file header shall also be delivered along with (.tif) image . The world file (.tfw) shall be named the same as each .tif image with the .tfw extension, i.e... [image 01.tif & image 01.tfw]

## 2. Mapping

Mapping shall be at 1" = 40' scale with 1' contours. 40' scale mapping with 1' contours, will be flown at a photo scale of not more than 1" = 300'.

- a. All mapping shall comply with City of San Diego Aerial Photogrammetric specifications.
- b. The following data shall be included in the electronic mapping file: Name of consultant doing the project, Company Logo (if available), Name of project, Work order number, Date & Scale.
- c. If analytical solution for mapping is used, the following parameters shall be met. Analytical measurements shall be made on analytical stereo-plotters or comparators having necessary precision to achieve nationally accepted x, y, and z accuracies. This work shall be performed in accordance with Section 72 of the San Diego County standard specifications, except that the last line of 72.30 shall be changed to read: "In no case shall the targeted points of basic control be farther apart than three (3) stereoscopic models."

3. Mapping shall include:

- All traffic striping (including crosswalks, bike lanes, parking stalls, and other traffic delineated markings)
- Street names
- Pedestrian ramps
- Traffic signals and lights
- Street Lights - (public and private)
- Railroad Stations
- Trolley Lines
- Caltrans - (signs, poles/posts)
- Buildings/houses
- Curb/gutter /berms
- Walls
- Trees/tree wells- shown as palm tree cell not cloud
- Storm drain intakes and wings
- Center lane (island) improvements
- Bus stop/trolley benches/huts
- Structures near parkway/buildings
- Sidewalk- include pavement changes, - front & back, sidewalk must be clearly delineated even if the parkway has been filled with concrete
- Driveways – to be labeled
- Driveways drawn to curb
- Curb drawn to gutter at driveways
- Pressed/decorative concrete areas
- Bridges - over/under crossings
- Water channels/culverts
- All Utilities
- LABEL ALL HARDSCAPE

ALL LABELS WILL FACE THE STREET THEY SERVICE

4. Digitizing

- a. A digitized graphic data model called 'Mapping' of the topographic mapping for this project shall be in a Microstation V8 3-D ".DGN" format for Bentley Systems software, furnished on a recordable compact disc. The version of Microsoft Windows must be NT or higher. Compact Discs will be furnished with the check prints.
- b. A Break-line/Spot elevation model called 'DTM' which contains all pertinent planimetric and topographic features necessary to create an accurate digital

terrain model (DTM) of the aerial mapping area, also in the same Bentley V8 3D.DGN file format shall be provided.

The breaklines are not to cross but are to fall just short of the breakline of intersection within a tolerance prohibiting the triangulation through the breakline. The breakline should be constructed in such a manner that prohibits the triangulation through it. Also a breakline should not 'loop' back upon itself or have 'tails' at the ends of the breakline.

These breaklines shall be tested by the consultant to assure that no breakline crosses or touches another breakline.

**Breakline defined:**

A series of line segments which delineate and define the discontinuities of the terrain (model) surface (Improved and/or unimproved). Examples of breaklines are edges of roadways (paved or unpaved), crown of street, or man made flowlines, drains, changes in slope gradient, edges of graded pads, tops and toes of slopes, tops and bases of retaining walls, steep cliff faces, retaining structures - such as bridge abutments, etc. Generally, breaklines can be loosely defined as the intersection of two planes and are any linear terrain feature that delineates the ground surface (improved and/or unimproved), and therefore have a controlling effect on the definition and accuracy of the digital terrain model. These breaklines serve as a wall through which terrain triangles cannot pass.

Additionally, for further definition and accuracy of the DTM, spot or "regular" surface points should be added to the DTM (surface model) to further define and "fill-in" the surface. The more severe the discontinuities in the surface, the greater the need for increased density in point collection. The spots, used to define the gradient change, needs to be dense enough to prevent unwanted flattening in the surface according to the contour interval. As a general rule of thumb, these points should be collected at a density of ½" at the plotted scale. Thus for a 1" = 40' scale mapping, points should be collected along an approximate 20' grid.

The use of a good engineering font, capital x or +, with a center/center justification shall be used for point symbology.

Spots defined:

A raised or depressed point defining a surface where a break line could not define that surface. Examples are tops of mounds, mountains, hills, raises, peaks, and raised cones or bottom of depressions, ditches, craters, holes and depressed cones.

The contours shown in 4.a above shall be generated solely from this DTM data.

**The contours produced from the DTM data shall meet or exceed ASPRS 90 standards where 68% (1 $\Phi$ ) of the contours tested fall within 1/3 contour interval. Any point tested that is more than 3 $\Phi$  out shall be regarded as blunderous. These standards closely parallel the familiar National Map Accuracy Standards.**

- c. The appropriate City of San Diego cell library (V8 City Existing.cel), font resource file (V8 City Font.rsc), color table (V8 City color.tbl), line style (V8 City Line Style.rsc), level scheme, and seed file parameters are to be used for placement of all elements in the design files, with strict adherence to "Working Units" and seed file "Global Origin". Base map level schemes are attached. A diskette containing the most current version of the above seed files, cell libraries and font resource files will be provided to the aerial contractor, if needed, upon request.
- d. All graphic elements within the Project Design File shall adhere to appropriate MicroStation element definitions to allow for error free translation of design files from 3d to 2d. If the Design file is observed to have incorrect element definitions which produce errors related to either the above 3d to 2d file translations, or produce errors when used with other Bentley Applications software, the aerial contractor shall be responsible for the correction of any errors or deficiencies in the design file related to incorrect graphic element definitions, etc.



- e. Intergraph Design file working units shall be the Survey Foot: I.E., Feet, 10th's of a foot, and 1000th's of a foot. Use a (sf) symbol for foot annotations, and (su) for tenths annotations in working units tutorial.  $1200/3937 \text{ sf} = 1.0 \text{ m}$  and  $1200/393700 \text{ se} = 1.0 \text{ cm}$ .

(Note: Above parameters are provided in Microstation V8 nad83 3d.dgn).

**NOTE:** To prevent project delays related to item d. above, it is recommended that each design file be reviewed using an appropriate file checking software, (i.e. 'Axiom File Fixer', Etc.). This will help to identify and correct any element definition, and/or design file format error(s) prior to receipt of said files by the City of San Diego.

#### 4. Field Verification

To be performed by City of San Diego staff.

#### ADDITIONAL REQUIREMENTS

Survey control for this project will be established using the Global Positioning System (GPS), and all digitizing will be based on the California Coordinate System, Zone 6, and NAD83 Coordinate Base. Bentley Design files shall have a Global Origin of:

$x = -6165251.6353$ ,  $y = -1772251.6353$  and  $z = +214748.3648$ , to allow for the NAD '83 coordinate values. It is the intent of the City to have all underground utilities and surface features, i.e. sewer manholes, gate valves, etc., premarked with paint, and color coded per utility. For this reason, all photography will be done in color, and the appropriate City of San Diego color / symbology tables will be used. All mapping and digitizing will reflect this information.

On all strip mapping, or other mapping as shown or deemed necessary, an additional exposure shall be taken at each end of the requested mapping area.

#### **SPECIAL NOTE:**

As of June 1, 2000, on all projects, where street, alley/easements are defined, mapping areas will cover the street or alley/easement width **PLUS** an additional fifty (50) foot distance back of property, alley or easement Right of Way. This will be the standard unless otherwise stated or shown on an individual project basis.

#### **"The CITY of SAN DIEGO" CADD Level Documentation**

LEVELS:

The design seed file consists of some 500+ levels. These are like transparencies overlaying each other. Elements may be placed or manipulated on any of these levels. Although any combination of levels may be viewed at one time, you can draw design elements only on one level, the "Active Level"

**EXHIBIT B**

**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 of 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:	

**EXHIBIT C**

**COMPENSATION AND FEE SCHEDULE**

GENERAL FUNCTION	TASK DESCRIPTION		NOTES
ADMINISTRATION / MANAGEMENT / QA	Project Coordination / Management / Administration	\$ 145.00 Per Hour	
	Technical Supervision	\$ 145.00 Per Hour	
	Flight Design and QA Review of Aerial Photography	\$ 145.00 Per Hour	
	Field Check of Topographic Map	\$ 90.00 Per Hour	
AERIAL PHOTOGRAPHY ACQUISITION	Aircraft Mobilization (Basic) *	\$ 675.00 Each	Natural Color Film
	Controlled Airspace Fee for Restricted Areas *	\$ 295.00 Each	Add to Basic Aircraft Mobilization
	Specified Flight Time *	\$ 295.00 Each	Add to Basic Aircraft Mobilization
	Weekend / Holiday / Priority Flight *	\$ 940.00 Each	Add to Basic Aircraft Mobilization
	Altitude Change per 1000 Feet *	\$ 53.00 Each	Add to Basic Aircraft Mobilization
	Flight Line *	\$ 60.00 Each	Two or More Overlapping Exposures
	Natural Color Exposure - Film *	\$ 45.00 Each	Stereo - 60% Forward Overlap
	Natural Color Exposure - Film *	\$ 95.00 Each	Single Vertical Spot Photograph
	Natural Color Exposure - Film *	\$ 165.00 Each	Single Oblique Photograph
	Airborne GPS Project Initiation / Mobilization Fee *	\$ 2,500.00 Each	Add to Basic Aircraft Mobilization; Includes Airborne GPS Base Station Operation
	Airborne GPS Flight Line Fee *	\$ 25.00 Each	Add Per Flight Line
	Airborne GPS Exposure Fee *	\$ 6.00 Each	Add Per Exposure
	PHOTOGRAPHIC REPRODUCTION	Airborne GPS Data Processing	\$ 145.00 Per Hour
Film Color Balance Fee *		\$ 35.00 Each	Per Flight
Natural Color Contact Print on Photographic Paper *		\$ 6.00 Each	Per Print
Natural Color Negative Scanning Setup Fee		\$ 225.00 Each	Per Flight
Natural Color Scan		\$ 10.00 Each	Per Exposure; Not Georeferenced
	Natural Color Digital "Contact Print"	\$ 15.00 Each	Add to Cost of Scan; Approximately Georeferenced
ANALYTICAL AEROTRIANGULATION	Setup, Photographic Mensuration, and Computations	\$ 115.00 Per Hour	
PHOTOGRAMMETRIC MAPPING	Topographic Mapping	\$ 125.00 Per Acre	May vary per project depending on complexity
	Natural Color Digital Orthophotography **	\$ 3.50 Per Acre	May vary per project depending on complexity

\* - Includes applicable sales tax

\*\* - Assumes the DTM data necessary to rectify the aerial photography outside of the topographic mapping limits will be provided by the City of San Diego

**Note:** Mapping shall include all of those items requested in items 2, 3, and 4 in Exhibit A.

**NOTE:**

The aerial consultant shall be responsible for performing a review of the Survey Control data prior to compilation of digital mapping. If any errors in Horizontal and/or Vertical Survey control data are identified, it shall be the responsibility of the aerial contractor to notify the City of San Diego Survey Section of the error. The Survey Section will review the survey data, and if said data is found to be in error, the survey section will provide the aerial consultant with correct survey data. The aerial consultant can only be awarded a contract extension equal to any project delay caused by incorrect survey data through a formal amendment issued by the City.

If further information is needed on this project, please contact:

Diana Bergen

Associate Land Surveyor

(858) 627-3221

**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. *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. Proposal Documents to include Disclosure of Discrimination Complaints. 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, 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 AA) 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 proposals ranking as qualified or acceptable, or any higher ranking, the City shall apply a maximum of 12 additional points for SLBE or ELBE participation. Points will be awarded as follows:

- a. 20% participation – 5 points
- b. 25% participation – 10 points
- c. SLBE or ELBE as prime contractor – 12 points

2. All professional services contracts valued over \$50,000 or more have a voluntary SLBE/ELBE goal of 20%. For the purposes of this Council Policy, the subcontractor requirement may be met by a provider of materials or supplies. Details can be found at <http://www.sandiego.gov/eoc/boc/slbe.shtml>.

**B. Subcontractor Participation List.** The Subcontractor Participation List (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Certification Status and Where Certified for each proposed Subcontractor/Subconsultant.

**C. Commitment Letters.** Consultant shall also submit Subcontractor *Commitment Letters* on Subcontractor's letterhead, no more than one page each, from all proposed Subcontractors to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

**D. Contract Activity Reports.** To permit monitoring of the winning Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment CC) reflecting work performed by Subcontractors/Subconsultants/Vendors shall be submitted quarterly for any work covered under an executed contract.

**V. Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.

**A.** Consultants are required to submit the following information with their proposals:

1. Outreach Efforts. Description of Consultant's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms including SLBE/ELBE/DBE/MBE/WBE/DVBE/OBE.
2. Past Participation Levels. Listing of Consultant's Subcontractor participation levels achieved on all private and public projects within the past three (3) years. Include name of project, type of project, value of project, Subcontractor firm's name, percentage of Subcontractor firm's participation, and identification of



Subcontractor firm's ownership as a certified Small or Emerging Local Business Enterprise, Woman Business Enterprise, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.

3. Equal Opportunity Employment. Listing of Consultant's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Consultant's *Workforce Report* as compared to the County's Labor Force Availability.
  4. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.
- B. In accordance with the City's Equal Opportunity Commitment, the City will consider the four factors described above as part of the evaluation process. A maximum of 13 additional points will be awarded based on consideration of these four factors. Points awarded based on Consultants demonstrated commitment to equal opportunity will be in addition to any points awarded for SLBE or ELBE participation as described in Section IV.

## VI. Definitions.

Certified "**Minority Business Enterprise**" (MBE) means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(s). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(s). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified "**Disabled Veteran Business Enterprise**" (DVBE) means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(s).

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

**Emerging Local Business Enterprise (ELBE)** – Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; that meets the definition of a local business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$2.75 million – Construction
- \$1.5 million – Specialty Construction
- \$1.5 million – Goods/Materials/Services
- 1.0 million – Trucking
- \$750,000 – Professional Services and Architect/Engineering

If a business has not existed for 3 years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

**Local Business Enterprise (LBE)** – A firm having a Principal Place of Business and a Significant Employment Presence in San Diego City or 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.

**Small Local Business Enterprise (SLBE)** – Any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; that meets definition of a local business; and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$5.0 million – Construction
- \$3.0 million – Specialty Construction
- \$3.0 million – Goods/Materials/Services
- \$2.0 million – Trucking
- \$1.5 million – Professional Services and Architect/Engineering

California State certified Micro and Disabled Veteran Owned business enterprises shall also satisfy the requirements to be defined as a Small Business Enterprise.

If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

#### **VIII. Certification.**

Below are the EOC – accepted certification agencies along with certifiable groups:

City of San Diego:

ELBE, SLBE

Caltrans:

DBE, SMBE, SWBE

Dept. of General Services:  
CA Public Utilities Commission:  
City of Los Angeles:  
SD Regional Minority Supplier Diversity Council:

DVBE  
MBE, WBE  
DBE, WBE, MBE  
MBE, WBE

**IX. List of Attachments.**

- AA. Work Force Report
- BB. Subcontractors List
- CC. Contract Activity Report



City of San Diego.

ATTACHMENT AA

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

**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)*.

**CONTRACTOR IDENTIFICATION**

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

Name of Company: Towill, Inc.

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

Address (Corporate Headquarters, where applicable): 2300 Clayton Road, Suite 1200

City Concord County Contra Costa State CA Zip 94520-2176

Telephone Number: (925) 682-6976 FAX Number: (925) 682-6390

Name of Company CEO: Dennis Curtin

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

Address: 8799 Balboa Avenue, Suite 140

City San Diego County San Diego State CA Zip 92123

Telephone Number: (858) 384-0088 FAX Number: (858) 571-2030

Type of Business: Corporation Type of License: N/A

The Company has appointed: Alicia Gonzalez

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: 2300 Clayton Road, Suite 1200 Concord, CA 94520-2176

Telephone Number: (925) 682-6976 ext 1019 FAX Number: (925) 682-6390

- 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 Towill, Inc.

(Firm Name)

Contra Costa, California hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 31 day of August, 2012

(Authorized Signature)

Alicia Gonzalez  
(Print Authorized Signature)

**WORK FORCE REPORT** - NAME OF FIRM: Towill, Inc. DATE: 8/24/2012

OFFICE(S) or BRANCH(ES): Concord COUNTY: Contra Costa

**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, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial	0	0	0	2	0	0	0	1	0	0	7	4	0	0
Professional														
A&E, Science, Computer	0	0	0	0	1	0	0	0	0	0	6	4	0	0
Technical	0	0	6	1	3	2	0	0	0	0	23	5	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support	0	0	2	0	0	0	0	0	0	1	2	3	0	0
Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Crafts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operative Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transportation	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laborers*	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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

Totals Each Column	0	0	8	3	4	2	0	1	0	1	38	16	0	0
--------------------	---	---	---	---	---	---	---	---	---	---	----	----	---	---

Grand Total All Employees 73

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

Disabled	0	0	0	0	0	0	0	0	0	0	0	0	0	0
----------	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT - NAME OF FIRM: Towill, Inc.

DATE: 8/24/2012

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, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other	
	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)
Management & Financial	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Professional	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A&E, Science, Computer	0	0	0	0	0	0	0	0	0	0	2	0	0	0
Technical	0	0	0	0	0	0	0	0	0	0	4	2	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Crafts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operative Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transportation	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Laborers*	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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

Totals Each Column	0	0	0	0	0	0	0	0	0	0	6	2	0	0
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Grand Total All Employees	8
---------------------------	---

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

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

Board of Directors														
Volunteers														
Artists														



# CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 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 Work Force Report.<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 Work Force Report from that county.<sup>2</sup> For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of

your firm from each of the three counties.<sup>1,2</sup> On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.<sup>2</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. Contractors may also list participation by MBE, WBE, DBE, DBVE and OBE firms. However, no additional points will be awarded for participation by these firms, except that DVBEs that qualify as local businesses shall counted as SLBEs.

Contractor shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

Subcontractors shall be used in the percentages listed. No changes to this Participation List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	SLBE/ELBE (*/MBE/ WBE/DBE/ DVBE/OBE)	WHERE CERTIFIED
Photo Geodetic Corp 1161 E. Main St.#102 El Cajon, CA 92021	Photogrammetric work	25%	ELBE	City of San Diego
Skyview Aerial Photo, Inc. 37920 Sky Canyon Dr #1001 Murrieta, CA 92563	Aerial Photography	5%	OBE	N/A

\* 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) Attachment.

### List of Abbreviations:

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



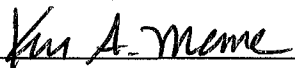
## CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: As-Needed Aerial Surveying for  
SDG&E Undergrounding

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:

Towill, Inc.  
Name under which business is conducted

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

Signed   
Printed Name Ken A. Meme  
Title President  
Date August 31, 2012

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: PUBLIC WORKS DEPT./CITY OF SAN DIEGO
2. Name of Specific Consultant & Company: TOWILL, INC.
3. Address, City, State, ZIP: 2300 Clayton Road, Suite 1200 Concord, CA 94520
4. Project Title (as shown on 1472, "Request for Council Action"): As-Needed Aerial Surveying for SDG&E Undergrounding
5. Consultant Duties for Project: aerial mapping, photography and digitizing

6. Disclosure Determination [select applicable disclosure requirement]:

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

- or -

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

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

- or -

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

Blank lines for listing specific economic interests.

By: [Signature] DEPUTY DIRECTOR
[Name/Title]

7/30/12
[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 Consultant Performance Evaluation

**EXHIBIT G**

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 and CIP No.): As needed Aerial Surveying Services for SDG&E Undergrounding Contract Number H125726 1b. Brief Description:	2a. Name and address of Consultant: Towill, Inc. 2300 Clayton Road, Suite 1200, Concord, CA 94520-2176 2b. Consultant's Project Manager: Brian Young  Phone ( 925 ) 682-6976																														
1c. Budgeted Cost: \$250,000																															
3. CITY DEPARTMENT RESPONSIBLE																															
3a. Department (include division): Public Works-Engineering & Capital Projects	3b. Project Manager (address & phone):																														
4. CONTRACT DATA (DESIGN AND CONSTRUCTION)																															
4. Design																															
4a. Agreement Date: _____ Resolution #: _____ \$ _____																															
4b. Amendments: \$ _____ / # _____ (City) \$ _____ / # _____ (Consultant)																															
4c. Total Agreement (4a. & 4b.): \$ _____																															
4d. Type of Work (design, study, etc.):	4e. Key Contract Completion Dates:  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%; text-align: center;">_____ %</td> <td style="width: 15%; text-align: center;">_____ %</td> <td style="width: 15%; text-align: center;">_____ %</td> <td style="width: 15%; text-align: center;">_____ %</td> <td style="width: 15%; text-align: center;">_____ %</td> <td style="width: 15%; text-align: center;">100 %</td> </tr> <tr> <td>Agreement</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Delivery</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Acceptance</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>				_____ %	_____ %	_____ %	_____ %	_____ %	100 %	Agreement	_____	_____	_____	_____	_____	_____	Delivery	_____	_____	_____	_____	_____	_____	Acceptance	_____	_____	_____	_____	_____	_____
	_____ %	_____ %	_____ %	_____ %	_____ %	100 %																									
Agreement	_____	_____	_____	_____	_____	_____																									
Delivery	_____	_____	_____	_____	_____	_____																									
Acceptance	_____	_____	_____	_____	_____	_____																									
5. Construction																															
5a. Contractor _____		Phone ( ) _____																													
<i>(name and address)</i>																															
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 \$ _____ Changes Quantities _____ % of const. cost \$ _____ Total Construction Cost \$ _____																														
6. OVERALL RATING (Please ensure Section II is completed)																															
	Excellent	Satisfactory	Poor																												
6a. Plans/specification accuracy.....	_____	_____	_____																												
Consistency with budget.....	_____	_____	_____																												
Responsiveness to City Staff.....	_____	_____	_____																												
6b. Overall Rating _____																															
7. AUTHORIZING SIGNATURES																															
7a. Project Manager _____		Date _____																													
7b. Deputy Director _____		Date _____																													

**Section II**

**SPECIFIC RATINGS**

PLANS / SPECIFICATION ACCURACY	EXCELLENT	SATISFACTORY	POOR	N/A	RESPONSIVENESS TO STAFF	EXCELLENT	SATISFACTORY	POOR	N/A
Plan/Specification clear and precise					Timely Responses				
Plans/Specs Coordination					Attitude toward Client and review bodies				
Plans/Specs properly formatted					Follows direction and chain of responsibility				
Code Requirements covered					Work product delivered on time				
Adhered to City Standard Drawings/Specs					Timeliness in notifying City of major problems				
Drawings reflect existing conditions					Resolution of Field problems				
As-Built Drawings					CONSISTENCY WITH BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A
Quality Design					Reasonable Agreement negotiation				
Change Orders due to design deficiencies are minimized					Adherence to fee schedule				
					Adherence to project budget				
					Value Engineering Analysis				

**Section III**

**SUPPLEMENTAL INFORMATION**

Please ensure to attach additional documentation as needed.

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

Item \_\_\_\_\_ : \_\_\_\_\_

(\*Supporting documentation attached yes \_\_\_\_\_ no \_\_\_\_\_)



**City of San Diego  
Purchasing & Contracting Department  
Contractor/Vendor Registration Form**

All prospective bidders, as well as existing contractors and vendors, are required to complete this form.

Vendor ID:   
 [ID Number will be provided by City]

**Firm Info:**

Firm Name:

Doing Business As:

Firm Address:

City:  State:  Zip:

Phone:  Fax:

Taxpayer ID:  Business License:

Website:

**Contact Info:**

Contact Name:

Title:

Email:

Phone:  Cell:

**Alternate Address (if different from above) to Receive Remittance:**

Mailing Address:

City:  State:  Zip:

**Alternate Address (if different from above) to Receive Bid/Contract Opportunities:**

Mailing Address:

City:  State:  Zip:

**Contractor Licenses (if applicable)**

License Number:  License Type:

License Number:  License Type:

License Number:  License Type:



**Contractor/Vendor Registration Form – Page 2**

**Firm Name:** Towill, Inc.

**Product/Services Description:**

Land surveying  
Aerial photogrammetric mapping  
airborne and terrestrial LiDAR mapping  
Geographic Information Systems

**Product/Services Information:**

**NIGP Codes:** \* 541370

\*find list of available NIGP Codes at <http://www.sandiego.gov/purchasing> OR request hard copy from Purchasing & Contracting

**The City requires this information for statistical purposes only.**

<b>Primary Owner of the Firm</b> (51% ownership or more)	<input type="checkbox"/> Male <input type="checkbox"/> Female or	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Non-Profit <input type="checkbox"/> Governmental/Municipality/Regulatory Agency <input type="checkbox"/> Utility
---	---	--

**Ethnicity:**

**Ethnicity:** \* N/A - multiple owners

\* select one from the following **List of Ethnicities:**

AFRICAN AMERICAN
ASIAN AMERICAN
CAUCASIAN AMERICAN
HISPANIC AMERICAN
NATIVE AMERICAN
PACIFIC ISLANDER AMERICAN

## Ownership Classification

Classification: \* LBE

\* select from the following **List of Ownership Classification Codes** (select all that apply):

	WBE	(Woman Owned Business Enterprise)
	OBE	(Other Business Enterprise)
	DBE	(Disadvantaged Business Enterprise)
	DVBE	(Disabled Veteran Business Enterprise)
	SLBE	(Small Local Business Enterprise)
	8(a)	(Small Business Administration 8(a) Enterprise)
	SDB	(Small Disadvantaged Business Enterprise)
X	LBE	(Local Business Enterprise)
	MLBE	(Micro Local Business Enterprise)
	SBE	(Small Business Enterprise)
	MBE	(Minority Business Enterprise)
	DPBT	(Persons With A Disability Or Disabilities Business Enterprise)
	LGBT	(Lesbian, Gay, Bisexual, Transsexual Business Enterprise)

**Certified by an Agency?**  No  Yes (enter Certification Number and Certifying Agency below)

Certification #:

Agency:

Certification #:

Agency:

**Information regarding a vendor's racial or gender ownership status will not be used as a factor in the City's selection process for any contract.**

Please mail this form to: Purchasing & Contracting Department  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

or fax to: 619/ 236-5904

**City of San Diego Purchasing & Contracting Department  
CONTRACTOR STANDARDS  
Pledge of Compliance**

The intent of the Contractor Standards Ordinance of San Diego Municipal Code §22.3004 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of §22.3004(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, respondents must use the *Pledge of Compliance Attachment "A"* and sign each page. The signatory guarantees the truth and accuracy of all responses and statements. Failure to submit this completed *Pledge of Compliance* may make the bid/proposal non-responsive and disqualified from the bidding process. If a change occurs which would modify any response, Contractor must provide the Purchasing Agent an updated response within thirty (30) calendar days.

**A. PROJECT TITLE:**

As-needed Aerial Surveying Services for SDG&E Undergrounding

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**B. BIDDER/CONTRACTOR INFORMATION:**

Towill, Inc.			
Legal Name	2300 Clayton Rd. Suite 1200 Concord		DBA CA 94520-2176
Street Address	City	State	Zip
Ken A. Meme, President	925-682-6976 x1020	925-682-6390	
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

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

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

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

If **Yes**, use *Pledge of Compliance 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. Check one only on this page. Use *Pledge of Compliance Attachment "A"* if more space is required.

**Corporation** Date incorporated: 12/11/1968 State of incorporation: California

List corporation's current officers: President: Ken A. Meme  
Vice Pres: Brian Young  
Secretary: Janis Loucks  
Treasurer: Janis Loucks

Is your firm a publicly traded corporation?  Yes  No

If **Yes**, name those who own five percent (5%) 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 five percent (5%) 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:** Each member of a Joint Venture must complete a separate *Contractor Standards Pledge of Compliance* for a Joint Venture's submission to be considered responsive.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?  
 Yes       No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances, including name of the buyer and principal contact information.

2. In the past five (5) years, has your firm been denied bonding? Not Applicable  
 Yes       No

If **Yes**, use *Pledge of Compliance 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? Not Applicable  
 Yes       No

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

**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 *Pledge of Compliance Attachment "A"* to explain specific circumstances.

2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?  
 Yes       No

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

**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executives or management 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, wage and hours, and licensing laws which affect employees?  
 Yes       No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances surrounding each instance; include name of entity involved, 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 debarred or determined to be non-responsible by a government agency?  
 Yes       No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include name of entity involved, 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 governmental entity?

Yes  No

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

**I. 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 \_\_\_\_/\_\_\_\_/\_\_\_\_.

**Complete all questions and sign below. Each *Pledge of Compliance Attachment "A"* page must be signed.**

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Pledge of Compliance* and that I am responsible for completeness and accuracy of responses and all information provided is true to the best of my knowledge and belief. I further certify my agreement to the following provisions of San Diego Municipal Code §22.3004:

- (a) To 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) To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).
- (c) To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) To provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days if a change occurs which would modify any response.
- (e) To notify the Purchasing Agent within fifteen (15) 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).
- (f) To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

**Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive.**

Ken A. Meme, President

Print Name, Title

  
Signature

8/31/2012

Date

**City of San Diego Purchasing & Contracting Department  
CONTRACTOR STANDARDS**

***Pledge of Compliance Attachment "A"***

Provide additional information in space below. Use additional *Pledge of Compliance Attachment "A"* pages as needed; sign each page. Print in ink or type responses and indicate question being answered. Information provided will be available for public review, except if exempt from disclosure pursuant to applicable law.

**Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Contractor Standards Pledge of Compliance* and that I am responsible for completeness and accuracy of responses on this *Pledge of Compliance Attachment "A"* page and all information provided is true to the best of my knowledge.**

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT J**

**EQUAL BENEFITS ORDINANCE  
CERTIFICATION OF COMPLIANCE**



# EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:  
**CITY OF SAN DIEGO**  
**EQUAL BENEFITS PROGRAM**  
 202 C Street, MS 9A, San Diego, CA 92101  
 Phone (619) 533-3948 Fax (619) 533-3220

## COMPANY INFORMATION

Company Name: Towill, Inc.	Contact Name: Ken A. Meme
Company Address: 2300 Clayton Road Suite 1200 Concord, CA 94520-2176	Contact Phone: 925 682 6976 x 1020 Contact Email: ken.meme@towill.com

## CONTRACT INFORMATION

Contract Title: As-Needed Aerial Surveying for SDG&E Undergrounding	Start Date:
Contract Number (if no number, state location): H125726	End Date:

## SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
  - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
  - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at [www.sandiego.gov/administration](http://www.sandiego.gov/administration).

## CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
- Provides equal benefits to spouses and domestic partners.
  - Provides no benefits to spouses or domestic partners.
  - Has no employees.
  - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Ken A. Meme, President  
Name/Title of Signatory

*Ken A. Meme*  
Signature

8/31/2012  
Date

## FOR OFFICIAL CITY USE ONLY

Receipt Date: EBO Analyst:  Approved  Not Approved – Reason:

EXHIBIT K

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.

Towill, Inc.

Name of Firm

Ken A. Meme

Signature of Authorized Representative

Ken A. Meme

Printed/Typed Name

August 31, 2012

Date