



AGREEMENT FOR LEGAL SERVICES

DOWNEY BRAND LLP

BETWEEN

THE CITY OF SAN DIEGO

AND

IN CONNECTION WITH

**TIME SCHEDULE ORDER (TSO) FOR THE BACTERIA TMDL
ISSUED BY THE SAN DIEGO REGION WATER QUALITY
CONTROL BOARD AND THE SAN DIEGO RIVER
INVESTIGATIVE ORDER (IO)**

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**AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND
DOWNEY BRAND LLP FOR LEGAL SERVICES**

The City of San Diego, a municipal corporation (City), and **Downey Brand, LLP** (Law Firm) enter into this Agreement for Law Firm to provide legal services to the City.

RECITALS

The City wants to retain the services of a law firm to provide legal representation in connection with the **Time Schedule Order (TSO), MS4 Permit, Bacteria TMDL, and the San Diego River Investigative Order (IO)** (the Services).

Law Firm has the expertise, experience, and personnel necessary to provide the Services. The City and Law Firm (Parties) want to enter into an Agreement whereby the City will retain Law Firm to provide, and Law Firm will provide, the Services. On April 6, 2021, the Purchasing Agent approved the Request and Certification for Sole Source Procurement.

In consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties set forth their mutual covenants and understandings as follows:

ARTICLE I

SCOPE AND ADMINISTRATION OF AGREEMENT

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

1.1 Scope of Services. Law Firm will perform the Services as set forth in the written Scope of Services (Exhibit A) at the City's direction, and in strict conformance with this Agreement.

1.2 Industry Standards. Law Firm agrees to perform the Services in accordance with the standards customarily adhered to by an experienced and competent law firm using the degree of care and skill ordinarily exercised by reputable attorneys practicing in the State of California. Where approval by the City, the Mayor or the Mayor's designee, or other City representative is required, this approval does not relieve Law Firm of its responsibility to comply with all applicable laws and industry standards.

1.3 Law Firm and Subcontractor Principals for Law Firm Services. This Agreement is for unique professional Services. Retention of Law Firm's professional Services is based on the particular professional expertise of the following member(s) of Law Firm's organization: Nicole Granquist (Project Team). Neither Law Firm nor the Project Team may delegate the performance of the Services on the Project to other members of Law Firm's organization or to subcontractors, as defined in Article VI of this Agreement (Subcontractors), without the City's prior written consent. Law Firm must not remove any Project Team member from the Project without the City's prior written approval. The City may treat Law Firm's removal of any Project Team member without prior City approval as a material breach of this Agreement. If any member of the Project Team becomes unavailable for any reason, Law Firm

must consult the City as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to Article IV. Further, the City reserves the right, after consulting with Law Firm, to require Law Firm to remove any employee or agent from the Project.

1.4 Additional Law Firms or Contractors. The City reserves the right to employ, at its own expense, any additional Law Firms or contractors it deems necessary to perform work or to provide the Services.

1.5 Agreement Administrator. The Office of the San Diego City Attorney (City Attorney) is the Agreement Administrator for this Agreement. Law Firm will provide the Services under the direction of a designated representative of the City Attorney (the Monitoring Attorney), who can be contacted at:

**Deputy City Attorney Mark Mercer
619-533-6295
mmercercer@sandiego.gov**

Law Firm must communicate with the Monitoring Attorney on all matters related to this Agreement and Law Firm's performance of the Services. The Monitoring Attorney has authority to represent the City as to all communications, acts, and approvals related to this Agreement, unless this Agreement specifies otherwise. If the Monitoring Attorney changes, the City shall provide written notification of this change.

1.5.1 The Agreement Administrator will evaluate Law Firm's performance as often as the Agreement Administrator deems necessary throughout the term of this Agreement. This evaluation will be based on criteria including the quality of services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. If the Agreement Administrator gives Law Firm an unsatisfactory rating, then the Agreement Administrator will give Law Firm a copy of the evaluation and an opportunity to respond. The City may consider performance evaluations of Law Firm, including Law Firm's response, in evaluating future proposals and bids for future contracts.

1.6 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in the Services by altering, adding to, or deducting from the Services to be performed provided that any material revision of such scope is subject to Law Firm's prior written consent. All changes will be in writing. If any of these changes increase or decrease Law Firm's cost to perform the Services, or the time required to perform the Services, Law Firm must notify the City immediately. The City has discretion to make equitable adjustments to Law Firm's compensation or time for performance, subject to the restrictions set forth in Article III of this Agreement.

1.7 Restrictions and Regulations Requiring Agreement Modification. Law Firm must immediately notify the City in writing of any regulations or restrictions that may or will require Law Firm to modify the quality or performance of the Services to be provided. The City reserves the right to accept any such modification, including any resulting reasonable price adjustments, or to cancel this Agreement at no expense to the City.

1.8 Written Authorization. Law Firm must obtain the City's written authorization to proceed before performing any Services. Further, throughout the Term of this Agreement, Law Firm must immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A) or Compensation and Compensation, Fee Schedule, and Billing Guidelines

(Exhibit B). Law Firm must obtain the City's written consent before making any changes to Exhibit A or Exhibit B. The City's written consent does not relieve Law Firm from its duty to render all Services in accordance with applicable laws and accepted industry standards.

1.9 Confidentiality. Law Firm acknowledges that it has no authority to waive the attorney-client privilege on behalf of the City and agrees to conduct its activities relating to this matter in such a manner as to maintain the confidentiality of communications between Law Firm and the City, including the City Attorney and any City official or employee. Law Firm further agrees that it will not waive the attorney-client privilege with respect to documents or communications obtained or conducted in connection with this matter without the express written consent of the City. Furthermore, all services performed by Law Firm, and any Subcontractors if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Law Firm, and any Subcontractors, are for the sole use of the City, its agents, and employees. Neither the documents nor their contents shall be released by Law Firm or any Subcontractor to any third party without the prior written consent of the City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Law Firm, at the time it was disclosed to Law Firm by the City; (2) subsequently becomes publicly known through no act or omission of Law Firm; or (3) otherwise becomes known to Law Firm other than through disclosure by the City.

1.10 Direction and Control. Law Firm will report to and work under the direction and control of the City Attorney as provided in this Agreement consistent with Section 11.7. The City Attorney, as the chief legal officer of the City, shall retain final authority over all aspects of the Services, including, but not limited to, settlement of claims that affect it, if applicable.

1.10.1 Retained Authority. (1) Decisions regarding settlement of the case are reserved exclusively to the discretion of the City's own attorneys; (2) Any plaintiff or defendant that is the subject of such litigation may contact the lead City attorneys directly, without having to confer with attorney from Law Firm; (3) City attorneys will retain complete control over the course and conduct of the case; (4) City attorneys retain a veto power over any decisions made by outside counsel; and (5) A City attorney with supervisory authority must be personally involved in overseeing the litigation.

1.10.2 The City and Law Firm agree that the government attorneys retain final authority over all aspects of the litigation. Specifically: (1) the government attorneys will retain complete control and supervision over the course and conduct of the case; (2) that government attorneys will retain a veto power over any decisions made by Law Firm; and (3) at least one government attorney with supervisory authority will be specifically assigned and personally involved in overseeing an litigation and supervising the work of Law Firm.

1.10.3 Law Firm shall present the following matters to the City with adequate time for the client to review and decide such matters: (1) ultimate disposition of the case, including but not limited to settlement, (2) witnesses and evidence to be presented at trial, (3) waiver of jury trial, (4) final approval of all dispositive motions and any oppositions to such motions, (5) selection of consultants and experts, (6) approval of any expert reports, (7) overall discovery approach, and (8) all other questions of litigation and trial strategy. Law Firm, with the permission of the City, may present other pleadings and filings to government attorneys at other public entity plaintiffs in this litigation for review and approval.

1.10.4 Decisions regarding settlement of the case are reserved exclusively to the discretion of the City and its government attorneys. Further, any defendant in the action may contact the lead government attorney directly without having to confer with Law Firm.

1.10.5 These provisions are not meant to be exhaustive, and the parties agree that at all times the final authority for discretionary decisions will remain vested in government attorneys and that Law Firm serve in a subordinate role.

1.11 Prior Approvals. Law Firm will obtain prior approval from the City Attorney concerning all substantive matters related to the Litigation including filing and service of any complaint, dispositive motions, and selection of consultants and experts. Law Firm will not settle the City's claims without the approval of the City, who will have the absolute right to accept or reject any settlement. The City agrees to consult in good faith with Law Firm.

1.12 Agreement Documents. This Agreement and its Exhibits constitute the Agreement Documents. The Agreement Documents completely describe the Services to be provided. All Exhibits referenced in this Agreement are incorporated into this Agreement. The Exhibits are as follows:

Exhibit A: Scope of Services

Exhibit B: Compensation, Fee Schedule, and Billing Guidelines

Exhibit C: Equal Opportunity Contracting Program (EOCP) Contractor Requirements

Attachment AA: Contractors Certification of Pending Actions

Attachment BB: Work Force Report

Attachment CC: Subcontractor List

Exhibit D: Consultant Award Tracking Form

Exhibit E: Contractor Standards Pledge of Compliance

1.13 Submittals Required with this Agreement. Law Firm is required to submit the following forms and information before this Agreement is executed:

Business Tax Certificate

Taxpayer Identification Number (W-9)

Insurance Certificates with all endorsements

Contractors Standards Pledge of Compliance

Contractors Certification of Pending Actions

Work Force Report

Subcontractor List

City-Approved Equal Employment Opportunity Plan (EOCP) (if applicable)

Consultant Award Tracking Form

Conflict of Interest Certification Form

If Law Firm fails to submit any of these required forms, the City may exercise any lawful remedies available to it, including, without limitation, delay, suspension, or termination of this Agreement.

ARTICLE II

TERMS OF AGREEMENT

2.1 Term of Agreement. This Agreement is effective on the date it is signed by the last party to sign this Agreement, and approved by the City Attorney in accordance with San Diego Charter section 40. Unless otherwise terminated, this Agreement will remain in effect until the Scope of Services is completed, but not for more than five (5) years unless approved by City ordinance (Term).

2.2 Extension of Agreement. The City may, in its sole discretion, unilaterally extend this Agreement, on a month-by-month or other basis following expiration of this Agreement, if authorized under the San Diego Charter and San Diego Municipal Code (SDMC). This Agreement cannot exceed five (5) years unless it is approved by the City Council by ordinance, in accordance with the San Diego Charter.

2.3 Time of the Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified.

2.4 Delivery. Delivery must be made on the delivery date, if any, specified in this Agreement. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay, or interruption of delivery of the Services.

2.5 Notification of Delay. Law Firm must immediately notify the City in writing if Law Firm experiences or anticipates a delay in performing the Services within any time frames set forth in the Scope of Services (Exhibit A). The written notice must explain the cause of the delay and provide a reasonable estimate of the length of the delay. The City may suspend or terminate this Agreement if the City, in its sole discretion, determines the delay is material.

2.6 Delay. If a delay in performance is caused by any unforeseen event or events beyond the control of the City or Law Firm, the City may allow Law Firm a reasonable extension of time to complete performance, but Law Firm will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather, or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment, or labor; or other specific reasons agreed to between the City and Law Firm. This provision does not apply to a delay caused by Law Firm's acts or omissions. Law Firm is not entitled to an extension of time to perform if a delay is caused by Law Firm's inability to obtain materials, equipment, or labor unless the City has received, in a timely manner, documentary proof satisfactory to the City of Law Firm's inability to obtain materials, equipment, or labor, in which case the City's approval must be in writing.

ARTICLE III
COMPENSATION

3.1 Amount of Compensation. The City will pay Law Firm for performing the Services under this Agreement, including reasonably related expenses as described in Exhibit B, in an amount not to exceed \$125,000, at the rates set forth in Exhibit B, unless the City authorizes an additional amount by amendment during the Term of this Agreement.

LAW FIRM must immediately inform the City when the cumulative value of work done under this Agreement exceeds eighty percent (80%) of the total compensation authorized in this paragraph, or when it reasonably appears to Law Firm that the cumulative value of work done under this Agreement may exceed the total compensation authorized in this paragraph within forty-five (45) days. The City is not required to pay more than the maximum amount authorized. In addition, Law Firm acknowledges, despite any representation to the contrary, that its total compensation under this Agreement may not exceed \$125,000 unless the City Council pre-approves the expenditure, pursuant to SDMC section 22.3207.

3.1.1 Phased Funding. The City will allocate the following funds for the payment of the Law Firm’s work under this Agreement:

Fiscal Year 2021	\$20,000
Fiscal Year 2022 (7/1/21-6/30/22)	\$60,000
Fiscal Year 2023 (7/1/22-6/30/23)	\$45,000

3.1.2 The Parties expressly agree and understand that each Funding Phase is subject to funds being appropriated and authorized by the City Council each fiscal year. The Law Firm shall not be required to perform any work until the City Council appropriates and authorizes funds to be expended each fiscal year. The City’s obligations and the Law Firm’s obligations under this multi-phase contract which shall be funded by multi-phase funding authorizations are as follows:

a. Only Phase 1 funding is available at time of contract award and no other phases are authorized. The City shall so notify the Law Firm in writing when the next Phase has been funded.

b. The City is not obligated to the Law Firm for any amount over that specified in the Funding Schedule that has been authorized by the City Council for that Fiscal Year.

c. The Law Firm is not obligated to incur costs for the performance of work required for any subsequent Funding Phase after the first phase, until written notification is received from the City of the availability of funds for the next Phase.

d. If the Agreement is terminated under Section 2.6 “City’s Right to Terminate for Convenience”, the settlement proposal shall be determined pursuant to procedures established in that section. The Law Firm shall be entitled to compensation for only those Services provided under Funding Phases that have been authorized by the City.

3.2 Additional Services. The City may require that Law Firm perform additional Services beyond those described in the Scope of Services (Additional Services). Before Law

Firm performs Additional Services, the City and Law Firm must agree in writing to the Additional Services and upon a fee for such services, including reasonably related expenses, in accordance with the Compensation, Fee Schedule, and Billing Guidelines (Exhibit B). The City will pay Law Firm for the performance of Additional Services in accordance with this Article and Exhibit B.

3.3 Manner of Payment. The City will pay Law Firm in accordance with the Compensation, Fee Schedule, and Billing Guidelines (Exhibit B). For the duration of this Agreement, Law Firm will not be entitled to fees, including fees for expenses, above the amounts listed in Exhibit B. Law Firm will submit one invoice per calendar month in a form acceptable to the City in accordance with Exhibit B. Law Firm will include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including: the progress percentage of the Scope of Services or deliverables completed before the invoice date. The City will pay undisputed portions of invoices within thirty (30) calendar days of receipt. Invoices must be mailed to the following address:

**DEPUTY CITY ATTORNEY MARK M. MERCER
OFFICE OF THE CITY ATTORNEY
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CA 92101**

3.4 Additional Costs. Additional Costs are those costs that the City reasonably determines are related to Law Firm's errors or omissions, and may include Law Firm, City, or Subcontractor overhead, materials, or related costs. The City will not pay Law Firm for Services required due to Law Firm's errors or omissions, and Law Firm will be responsible, and must reimburse the City, for any Additional Costs. The City may deduct Additional Costs from amounts it owes to Law Firm.

3.5 Reporting Requirements. Law Firm must submit Monthly Employment Utilization Reports and Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month, using the City's web-based agreement compliance portal. Incomplete or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, Law Firm must view the City's online tutorials on how to utilize the City's web-based agreement compliance portal. Law Firm must not disclose attorney-client privileged information or communications on the agreement compliance portal.

3.6 Annual Appropriation of Funds. Law Firm acknowledges that the Term of this Agreement may extend over multiple City fiscal years, and that work and compensation under this Agreement is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Agreement may be terminated at any time if sufficient funding is not appropriated and authorized. The City is not obligated to pay Law Firm for any amounts not appropriated and authorized by the City Council.

ARTICLE IV

SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. The City may, at its sole discretion, suspend some or all of Law Firm's performance of the Services, for a reasonable period of time not to exceed six (6) months. The City Attorney's Office must give Law Firm ten (10) days advanced written notice prior to a suspension. If the City chooses to suspend this Agreement, the

City will pay Law Firm for the reasonable value of the Services Law Firm has satisfactorily performed up to the date of suspension. The City may later rescind the suspension by written notice to Law Firm. The City may then require Law Firm to resume the Services in compliance with this Agreement.

4.2 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of this Agreement by giving thirty (30) days' written notice to Law Firm. The notice must be delivered by certified mail with return receipt for delivery to the City. The termination will be effective upon Law Firm's receipt of the notice. After termination of all or any portion of this Agreement, Law Firm must (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Law Firm's affected performance under this Agreement. After the filing of documents and completion of performance, Law Firm must deliver to the City all work product and such other documents, information, and materials created or received by Law Firm in performing the Services under this Agreement, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Law Firm discharges the City of all of the City's payment obligations and liabilities under this Agreement with regard to the affected performance.

4.3 City's Right to Terminate for Default. Law Firm's failure to satisfactorily perform any obligation under this Agreement, including a failure to adhere to any deadlines set forth in Exhibit A constitutes a Default. If Law Firm fails to satisfactorily cure a Default within ten (10) calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately terminate this Agreement, and terminate every right of Law Firm, and any person claiming any rights by or through Law Firm under this Agreement. The City's rights and remedies under this Section are cumulative and do not limit, any of the City's rights under other provisions of this Agreement. The City does not waive any right or remedy that it may have against Law Firm. Any termination under this section shall not affect the City's responsibility to pay for legal services already rendered under this Agreement and reasonable charges incurred during the representation prior to termination.

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

4.5 Law Firm's Right to Payment Following Agreement Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of the City, the City will make an equitable adjustment in compensation to Law Firm pursuant to this Agreement. However, no amount will be paid for anticipated profit on unperformed services, and no amount will be paid for an as-needed agreement beyond the termination date.

4.5.2 Termination for Default. If, after the City gives notice to Law Firm of termination for failure to fulfill Agreement obligations, the City determines that Law Firm has failed to properly perform the Services, then termination will be deemed to have been effected for the convenience of the City. In such event, adjustment in compensation to Law Firm will be made as provided in Section 4.5.1. The City's rights and remedies are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE V

INDEMNIFICATION AND INSURANCE

5.1 Indemnification Agreement. Law Firm agrees to defend (with legal counsel reasonably acceptable to the City) and indemnify the City, its agents, officers, and employees against all liability for injury to any person or property caused or claimed to be caused by the negligent acts or omissions of Law Firm, or any of its employees or agents, in performing the Services under this Agreement. This duty to defend and indemnify includes liability arising from or related to the active or passive negligent acts or omissions of the City, its agents, officers, or employees, that is in combination with the active or passive negligent acts or omissions of the Law Firm, its employees, agents or officers, or any third party. Law Firm's duty to defend and indemnify does not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

5.2 Responsibility for Damages. Law Firm is responsible for injuries to persons or damage to property that occurs as a result of Law Firm's negligence or that of its' employees, agents, or representatives in connection with the performance of this Agreement. Law Firm must immediately report any such known injury or damage to people or property to the Agreement Administrator.

5.3 Insurance. Law Firm must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results from that work by Law Firm, its agents, representatives, employees, or Subcontractors.

5.3.1 Maintenance of Coverage. Before beginning the Services, Law Firm must: (a) provide insurance certificates to the City reflecting all insurance coverage required under this Agreement and, upon the City's reasonable request, provide full copies of the required policies; (b) obtain City approval of each insurance company providing required coverage; and (c) confirm that all policies contain the specific provisions set forth in this Agreement. Law Firm's liabilities under this Agreement are not limited to the required insurance coverage. To the extent allowed under California law, all insurance policies required under this Agreement must state that the City is entitled to thirty (30) days prior written notice of cancellation or non-renewal, or ten (10) days for cancellation due to non-payment of premium. Law Firm's maintenance of the required insurance coverage is a material element of this Agreement. Law Firm's failure to maintain or renew coverage, or to provide evidence of renewal during the Term of this Agreement, is a material breach of this Agreement. In addition, Law Firm agrees not to modify any required policy or endorsement in a manner that increases the City's exposure to loss while this Agreement is in effect. Law Firm must provide, at a minimum, the following:

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

5.3.3 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Law Firm has no owned autos, Code Eight

(hired) and Code (non-owned), with limit no less than one million dollars (\$1,000,000) per accident for bodily injury and property damage.

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

5.3.5 Professional Liability (Errors and Omissions). Insurance appropriate to Law Firm's profession, with limit no less than one million dollars (\$1,000,000) per occurrence or claim, two million dollars (\$2,000,000) aggregate.

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

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

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

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

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

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

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

5.4 Deductibles/Self Insured Retentions. All deductibles on any policy shall be the sole responsibility of Law Firm and shall be disclosed to the City at the time the evidence of insurance is provided. Self-insured retentions must be declared to and approved by the City. The City may require Law Firm to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

5.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

5.6 Verification of Coverage. Law Firm shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Law Firm's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

5.8 Additional Insurance. Law Firm may obtain additional insurance not required by this Agreement.

5.9 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.

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

ARTICLE VI

CITY-MANDATED CLAUSES

6.1 Law Firm Certification of Compliance. Law Firm must comply with the Contractor Standards provisions set forth in the SDMC. Law Firm is also required to complete the Contractor Standards Pledge of Compliance, in accordance with SDMC section 22.3004(d). By signing this Agreement, Law Firm certifies that Law Firm is aware of, and will comply with, these City-mandated clauses throughout the duration of this Agreement. Law Firm also acknowledges that failure to comply with any of these requirements is a material breach of this Agreement and may result in termination of this Agreement, debarment, or other sanctions. Law Firm must submit statistical information to the City as requested in the City's Contractor

Standards Pledge of Compliance. The statistical information must include the amount of subcontracting provided by firms during the period covered by this Agreement. With the Contractor Standards Pledge of Compliance, Law Firm must provide an invoice from each Subcontractor listed in the report.

6.2 Drug-Free Workplace Certification. Law Firm must comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Agreement by this reference.

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

6.4 Non-Discrimination Requirements.

6.4.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Law Firm must comply with City's EOCP Requirements. Law Firm must not discriminate against any employee or applicant for employment on any basis prohibited by law. Law Firm must provide equal opportunity in all employment practices. Law Firm must ensure that their Subcontractors comply with this program. Nothing in this section will be interpreted to hold a prime contractor liable for any discriminatory practice of its Subcontractors.

6.4.2 Non-Discrimination Ordinance. Law Firm must not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors, or suppliers. Law Firm must provide equal opportunity for Subcontractors to participate in subcontracting opportunities. Law Firm understands and agrees that violation of this section will be considered a material breach of this Agreement and may result in Agreement termination, debarment, or other sanctions. Law Firm must ensure that this language is included in agreements between Law Firm and any Subcontractors, vendors, and suppliers.

6.4.3 Compliance Investigations. Upon the City's request, Law Firm 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 Law Firm has used in the past five (5) years on any of its agreements Law Firm were undertaken within San Diego County, including the total dollar amount paid by Law Firm for each subcontract or supply agreement. Law Firm further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance. Law Firm understands and agrees that violation of this section will be considered a material breach of this Agreement and may result in Agreement termination, debarment, and other sanctions.

6.5 Equal Benefits Ordinance Certification. Unless an exception applies, Law Firm must comply with the Equal Benefits Ordinance (EBO) codified in the SDMC. Failure to maintain equal benefits is a material breach of this Agreement.

6.6 Contractor Standards. Law Firm must comply with Contractor Standards provisions codified in the SDMC. Law Firm understands and agrees that violation of Contractor Standards will be considered a material breach of this Agreement and may result in Agreement termination, debarment, and other sanctions.

6.7 Service Worker Retention Ordinance. If applicable, Law Firm must comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

6.8 Product Endorsement. Law Firm must comply with Council Policy 000-41 and City Administrative Regulation 95.65 concerning product endorsement which requires that any advertisement referring to the City as a user of a good or service will require the prior written approval of the City.

6.9 Business Tax Certificate. Unless the City Treasurer determines in writing that Law Firm and Subcontractors are exempt from the payment of business tax, Law Firm and Subcontractors doing business with the City of San Diego are required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before an agreement is executed.

6.10 Right to Audit.

6.10.1 Access. The City has the right, at its sole discretion, to audit Law Firm or any Subcontractor's compliance with this Agreement (City's Right). The City's Right includes the right of reasonable access to Law Firm or Subcontractor's premises, the right to inspect, photocopy documents, and to retain copies of any records related to the Services. The City will keep these records in the strictest confidence allowed by law.

6.10.2 Audit. The City's Right includes the right to examine any documents that the City determines are necessary to discover and verify that Law Firm or Subcontractor is complying with all requirements under this Agreement.

6.10.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine documents and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs that Law Firm claims have been or will be incurred.

6.10.2.1.1 Accounting Records. Law Firm and all Subcontractors must maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Law Firm and Subcontractors must allow the City to review and audit all Services-related accounting records, and any other financial data. At the City's request, Law Firm and Subcontractors must provide the City exact duplicates of the originals of all requested records.

6.10.3 City's Right Binding on Subcontractors. Law Firm must include the City's Right as described in section 6.10, in any and all of its subcontracts, and must ensure that these sections are binding upon all Subcontractors.

6.10.4 Compliance Required before Mediation or Litigation. Law Firm or Subcontractor's full compliance with section 6.10, within sixty (60) days of receiving a written

request from the City to audit for compliance, is a pre-condition to proceeding with mediation or litigation, as provided in this Agreement.

6.11 Subcontractors. The City must approve in advance Law Firm's hiring or retaining of any third parties (Subcontractors) to perform the Services (Subcontractor Services). Law Firm must list on the Contractor Standards Pledge of Compliance all Subcontractors known to Law Firm at the time it signs this Agreement. If Law Firm later determines it needs additional Subcontractor Services, it must notify the City in writing at least fifteen (15) days before entering into an agreement for Subcontractor Services. Law Firm's notice must include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. Law Firm may ask the City to reduce the fifteen (15) day notice period. The City will consider such requests in good faith.

6.11.1 Subcontractor Agreement. All agreements entered into between Law Firm and any Subcontractors must contain the information described in this Article, and must also provide as follows:

6.11.1.1 Law Firm must require each Subcontractor to obtain all insurance policies described in this Agreement in the amounts required by the City, which will not be greater than the amounts required of Law Firm. These insurance policies must be kept in full force and effect during all work on this Agreement.

6.11.1.2 Law Firm must pay the Subcontractor, for Law Firm and City-approved invoice amounts, out of amounts the City pays to Law Firm, no more than fourteen (14) business days from the date Law Firm receives the City's payment. Nothing in this paragraph is intended to impair the right of Law Firm and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

6.11.1.3 Law Firm must notify the City in writing if it withholds payment to any 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, Law Firm must pay the Subcontractor the amount withheld within fourteen (14) working days of Law Firm's receipt of the City's next payment.

6.11.1.4 Law Firm must not make the City a party to any judicial or administrative proceeding between Law Firm and any Subcontractor. Law Firm agrees to defend and indemnify the City as described in this Agreement in any dispute between Law Firm and any Subcontractor, if the City is made a party to any judicial or administrative proceeding.

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

6.12 Records Retention and Examination. Law Firm must retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Agreement for five (5) years after receipt of final payment by the City under this Agreement. Law Firm must make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of the City, including the City Attorney or designee and the Purchasing Agent or designee. Law Firm must make available all requested data and records at reasonable locations within the City at any

time during normal business hours, and as often as the City deems necessary. If records are not made available within the City, Law Firm must pay the City's travel costs to the location where the records are maintained and must pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of this Agreement. Law Firm must include this provision in all subcontracts made in connection with this Agreement.

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

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

6.14 Duty to Cooperate with Auditor. The City Auditor may, in his or her sole discretion, at no cost to the City, and for purposes of performing his or her responsibilities under San Diego Charter section 39.2, review Law Firm's records to confirm Agreement compliance. Law Firm must make reasonable efforts to cooperate with the City Auditor's requests.

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

6.15.1 Criminal Background Certification. Law Firm certifies that all employees working on this Agreement have had a criminal background check and that said employees are clear of any sexual and drug-related convictions. Law Firm further certifies that all employees hired by Law Firm or a Subcontractor must be free from any felony convictions.

6.15.2 Photo Identification Badge. Law Firm must provide a company photo identification badge to any individual assigned by Law Firm or Subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. The City reserves the right to require Law Firm to pay fingerprinting fees for personnel assigned to work in sensitive areas.

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

6.16.1 Supervision. Law Firm must provide adequate and competent supervision at all times during this Agreement Term. Law Firm must be readily available to meet with the City. Law Firm must provide the telephone numbers where its representatives can be reached.

6.16.2 City Premises. Law Firm’s employees and agents must comply with all City rules and regulations while on City premises.

6.16.3 Removal of Employees. The City may request Law Firm immediately remove from assignment to the City any employee found unfit to perform duties at the City. Law Firm must comply with all such requests.

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

6.18 Equal Pay Ordinance. Unless an exception applies, Law Firm shall comply with the Equal Pay Ordinance (EPO) codified in San Diego Municipal Code sections 22.4801 through 22.4809. Law Firm shall certify in writing that it will comply with the requirements of the EPO.

6.18.1 Law Firm and Subcontract Requirement. The Equal Pay Ordinance applies to any Subcontractor who performs work on behalf of Law Firm to the same extent as it would apply to Law Firm. If Law Firm is subject to the Equal Pay Ordinance then Law Firm shall require all of its Subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

6.18.2 Notice Requirement. Law Firm must post a notice informing its employees of their right under the Equal Pay Ordinance in their workplace.

6.19 Law Firm and Subcontractor Registration Requirements. If Law Firm is awarded a contract award pursuant to a competitive procurement process, Law Firm and Subcontractors must register with the City’s web-based vendor registration and bid management system. All Subcontractors and suppliers must be complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the contract award and to make the award to the next responsive and responsible proposer of bidder.

6.20 Consultant Award Tracking Form. Law Firm shall submit information to the City as requested in the City’s Consultant Award Tracking Form (Exhibit D). The information shall include the dollar amount awarded during the period covered by the Consultant Award Tracking Form.

ARTICLE VII

INTELLECTUAL PROPERTY RIGHTS

7.1 Work for Hire. All original material, including but not limited to any artwork, audio recordings, blueprints, designs, diagrams, documentation, memoranda, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine, that is prepared exclusively for the City under this Agreement (Deliverable Materials) is “work-for hire” under the United States Copyright Act of 1976 and is the City’s sole property. Law Firm, including its employees, and Subcontractor(s), will not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the Deliverable Materials.

7.2. Rights in Data. All rights in the Deliverable Materials (including publications, registration of copyrights, and trademarks), are the City’s sole property. Law Firm, including its employees, agents, talent, and independent Subcontractor(s), may not use the Deliverable Materials for any purpose without the City’s prior written consent. If, in connection with the Services performed under this Agreement, Law Firm or its employees, agents, or Subcontractors, create Deliverable Materials, all rights of Law Firm or its Subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of the City. Law Firm, including its employees, agents, and Subcontractors, may not use any Deliverable Materials for purposes unrelated to Law Firm’s work on behalf of the City without prior written consent of the City. Further, Law Firm, including its employees, and Subcontractors, will not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the Deliverable Materials.

7.3 Intellectual Property Rights Assignment. For no additional compensation, Law Firm assigns to the City all of Law Firm’s rights, title, and interest in and to the content of the Deliverable Materials created by Law Firm or its employees, agents, or Subcontractors, including copyrights, in connection with the Services performed under this Agreement. Law Firm must promptly execute and deliver, and require its employees, agents, and Subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments, which may be necessary or desirable to fully secure, perfect, or otherwise protect to or for the City, its successors and assigns, all rights, title and interest in and to the content of the Deliverable Materials. Law Firm also must cooperate and assist in the prosecution of any action or opposition proceeding involving the City’s intellectual property rights and any adjudication of those rights.

7.4 Moral Rights. Law Firm, its employees, agents, talent, and independent Subcontractor(s) irrevocably and forever waive any Moral Rights in the Deliverable Materials that they may now have or that may accrue to their benefit under U.S. or foreign copyright laws, and any and all other residual rights and benefits that arise under any other applicable law now in force or later enacted. “Moral Rights” means all rights of paternity or integrity of the Deliverable Materials and the right to object to any modification, translation or use of the Deliverable Materials, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, even if the right is not referred to as a moral right.

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

7.6 Subcontracting. If Law Firm uses a Subcontractor(s) to produce any portion of the work that comprises the whole or part of the Deliverable Materials, the agreement between Law Firm and the Subcontractor (Subcontractor Agreement) must state that the Deliverable Materials are a “work-for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials belong and shall

vest solely to the City. The Subcontractor Agreement must also require the Subcontractor to transfer exclusively to the City, free of charge, all titles, rights, and interests to the Deliverable Materials, including all intellectual property rights. The City may review any Subcontractor Agreement for compliance with this provision.

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

7.8 Intellectual Property Warranty and Indemnification. Law Firm represents and warrants that any deliverables provided under this Agreement, including all Deliverable Materials, are either: (1) original, not encumbered, and do not infringe upon the intellectual property rights of any third party, or (2) in the public domain. If the Deliverable Materials become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, the City may, in its sole discretion, require Law Firm to produce, at Law Firm's own expense, new non-infringing work product as a means of remedying the claim, in addition to any other remedy available to the City under law or equity. Law Firm further agrees to indemnify and defend the City, its officers, employees, and agents against all claims alleging that any of the Deliverable Materials infringe the 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 Law Firm receives payment under this Agreement, the City may withhold some or all of such payment, upon written notice to Law Firm.

7.9 Enforcement Costs. Law Firm agrees to pay all costs the City incurs enforcing the indemnity and defense provisions in Article VII of this Agreement, including attorney fees.

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

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

ARTICLE VIII

CONFLICT OF INTERESTS AND VIOLATIONS OF LAW

8.1 Conflict of Interest Laws. Law Firm is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public agreements and procurement practices including, but not limited to, California Government Code sections 1090,

et. seq. and 81000, et. seq., and the Ethics Ordinance, codified in the SDMC. The City may determine that Law Firm must complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, Law Firm must submit the necessary documents to the City.

8.1.1 If, in performing the Services, any agent or employee of Law Firm 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 of 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, Law Firm's agent or employee must submit statements of economic interests disclosing his or her relevant financial interests.

8.1.1.1 Statements of economic interests must be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Law Firm agent or employee who is subject to this requirement must file a Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that he or she is subject to a conflict of interest code. Law Firm's agent or employee must also file a Form 700 (Annual Statement) on or before each April 1, disclosing any relevant financial interests held during the previous calendar year.

8.1.1.2 If the City requires Law Firm's agent or employee to file a statement of economic interests, that agent or attorney will be considered a "City Official" subject to the City's Ethics Ordinance, and will be prohibited from lobbying the City for one (1) year after this Agreement is terminated.

8.1.2 Law Firm must establish (and inform its agents and employees of) appropriate safeguards to prevent its employees and agents 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.

8.1.3 Law Firm's personnel employed for the Services must not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. Law Firm must not recommend or specify to the City any product, supplier, or contractor with whom Law Firm has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

8.1.4 A violation of any conflict of interest law or any provision in this Article by Law Firm or any of its agents or employees is grounds for immediate termination of this Agreement, and Law Firm will be liable to the City for attorneys' fees and all damages sustained as a result of the violation.

8.1.5 Before beginning to represent the City, Law Firm must, consistent with the standards normally followed by law firms performing comparable work, identify any actual or potential conflicts between the City's interests and its own interests or those of its current or former clients. In addition, Law Firm must continue to monitor its own interests and those of its clients to identify any conflicts that may arise during the course of the representation. Law Firm must immediately inform the City of any actual or potential conflicts. This paragraph does not relieve Law Firm of its duties to the City under the Rules of Professional Conduct of the State Bar of California or other applicable laws, regulations, rules, or policies.

8.2 Law Firm's Responsibility for Employees and Agents. Law Firm is required to establish and make known to its employees and agents appropriate safeguards to prohibit

employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

8.3 Law Firm's Financial or Organizational Interests. In connection with any task, Law Firm must not recommend or specify any product, supplier, or contractor with whom Law Firm has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

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

8.5 Hiring City Employees. At its sole discretion, the City may unilaterally and immediately terminate this Agreement if Law Firm employs an individual who: (1) was a City officer or employee within twelve (12) months before their employment by Law Firm, or (2) in that capacity participated in, negotiated with, or otherwise has an influence on the City's selection of Law Firm.

ARTICLE IX

MANDATORY ASSISTANCE

9.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under an Agreement, Law Firm, and its agents, officers, and employees agree to assist in resolving the dispute or litigation upon the City's request (Mandatory Assistance). Law Firm's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute resolution, litigation, or both.

9.2 Compensation for Mandatory Assistance. The City will compensate Law Firm for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Law Firm, its agents, officers, and employees, Law Firm must reimburse the City for all fees paid to Law Firm, its agents, officers, and employees for Mandatory Assistance.

9.3 Attorneys' Fees Related to Mandatory Assistance. In providing the City with dispute or litigation assistance, Law Firm or its agents, officers, and employees may incur expenses, costs, or both. Law Firm agrees that any attorneys' fees it may incur as a result of assistance provided under this Article are not reimbursable.

ARTICLE X

MEDIATION

10.1 Mandatory Non-Binding Mediation. Before initiating litigation related to this Agreement, the Parties will attempt to settle their dispute in an amicable manner, using mandatory mediation under the Commercial Arbitration Rules and Mediation Procedures of the

American Arbitration Association (AAA) or any other agreed-upon neutral organization. This Section does not apply to the City's right to suspend or terminate this Agreement.

10.2 Mandatory Mediation Costs. Witness expenses will be paid by the party who produces the witness. Unless the Parties agree otherwise, the Parties will share all other mediation expenses equally, including the mediator's fees and expenses, and the cost of any proofs or expert advice produced at the mediator's direct request.

10.3 Selection of Mediator. A single mediator that is acceptable to both Parties will be used to mediate the dispute. The mediator must be knowledgeable in the relevant subject matter and may be selected from lists furnished by the AAA or any other agreed-upon neutral organization. The party who initiates the mediation will serve a "Request for Mediation" on the opposing party. If the mediator will be selected from a list provided by AAA, the initiating party will concurrently file with the AAA a "Request for Mediation" along with the appropriate fees, a list of three requested mediators marked in preference order, and a preference for available dates.

10.3.1 If AAA is selected to coordinate the mediation (Administrator), the opposing party will file, within ten (10) working days of receiving the Request for Mediation: (1) a list of preferred mediators, in order of preference, after striking any mediators to which the opposing party objects, and (2) a list of available dates. If the opposing party strikes all of initiating party preferred mediators, the opposing party will submit a list of three preferred mediators, in order of preference, to the initiating party and Administrator. The initiating party will file a list of preferred mediators, in preference order, after striking any mediator to which the initiating party objects. This process will continue until both sides have agreed upon a mediator.

10.3.2 The Administrator will appoint the highest, mutually-preferred mediator from the individual Parties' lists who is available to serve within the designated time frame.

10.3.3 If the Parties agree not to use AAA, then the Parties will mutually agree upon a mediator, date, and place for the mediation.

10.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner. Discovery will not be allowed, but the Parties may agree to exchange any information they deem necessary. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128), will not be admissible in any subsequent proceeding, and will not be used for any other purpose unless otherwise agreed by the parties in writing.

10.4.1 An authorized representative must attend the mediation for each party. Each representative must have the authority to recommend entering into a settlement. Either party may have attorneys or experts present. Upon reasonable demand, either party may request and receive a list of witnesses and notification of whether attorneys will be present.

10.4.2 Any agreements resulting from mediation must be documented in writing. All mediation results and documentation, by themselves, will be "non-binding" and inadmissible for any purpose in any legal proceeding, unless the Parties agree otherwise in writing. Mediators will not be subject to any subpoena or liability and their actions will not be subject to discovery.

ARTICLE XI

MISCELLANEOUS

11.1 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all of the Parties' understandings concerning the matters covered in this Agreement. No modification of this Agreement and no verbal understanding of the Parties, their officers, agents, or employees is valid unless both Parties agree to the modification or understanding in writing. All prior negotiations and agreements between the Parties are merged into this Agreement.

11.2 Conflicts between Terms. If there is an apparent conflict between the main body of this Agreement and the Exhibits, the main body of this Agreement controls. If a conflict exists between this Agreement and an applicable federal, state, or local law, the law controls. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and applicable federal, state, or local laws are not conflicts; the most stringent requirement controls. Each party must notify the other immediately if it identifies any apparent conflict concerning this Agreement.

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

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

11.5 Notices. Where this Agreement requires written notice, service is sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid. Proper notice is effective on the date of personal delivery or five (5) days after it is mailed, unless otherwise provided in this Agreement. Unless otherwise agreed in writing, notice to the City must be addressed to:

**Deputy City Attorney Mark Mercer
Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, CA 92101**

and notice to Law Firm must be addressed to:

**Nicole Granquist, Esq.
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95818**

11.6 Non-Assignment. Law Firm may 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 under this Agreement, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

11.7 Independent Contractors. Law Firm and any Subcontractors are independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give

the City any right to direct Law Firm concerning the details of performing the Services, or to exercise any control over performance of this Agreement, means only that Law Firm must follow the direction of the City concerning the end results of the performance.

11.8 Subcontractors. Law Firm is directly responsible for all persons assigned to perform any work related to this Agreement including any Subcontractors.

11.9 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or Law Firm are deemed to be both covenants and conditions.

11.10 Compliance with Controlling Law. Law Firm must comply with all applicable local, state, and federal laws, regulations, and policies, including all laws, regulations, and policies applicable to the legal profession. In addition, Law Firm must comply immediately with all directives by the City or its authorized representatives under authority of any laws or regulations. Law Firm's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for termination. In addition to all other remedies or damages allowed by law, Law Firm is liable to the City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Law Firm may be subject to suspension, debarment, or both.

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

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

11.13 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 this 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.

11.14 No Waiver. No failure of either the City or Law Firm 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.

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

11.16 Drafting Ambiguities. The Parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether to seek advice of legal counsel with respect to this Agreement 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 this Agreement.

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

11.18 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 performance and termination, expiration or completion of this Agreement.

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

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

11.21 Actions of City in its Governmental Capacity. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity, and as a chartered city of the State of California.

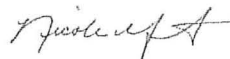
11.22 Media Inquiries. Law Firm must inform the Monitoring Attorney immediately of any media inquiries regarding any matter involving this Agreement.

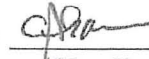
This Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to Charter section 265, authorizing such execution, and by Law Firm (pursuant to relevant corporate documents as applicable).

The individual signing this Agreement on behalf of Law Firm certifies that he or she has read all of this Agreement and has the legal authority to bind Downey Brand LLP.

LAW FIRM

CITY OF SAN DIEGO
A MUNICIPAL CORPORATION

BY: 
Downey Brand LLP

BY: 
Claudia C. Abarca, Director of
Purchasing and Contracting

DATE
SIGNED April 9, 2021

DATE
SIGNED August 13, 2021

I APPROVE the form of this Agreement.

MARA W. ELLIOTT, City Attorney:

By: 
~~Mark Mercer~~ Corrine Neuffer
Deputy City Attorney

DATE
SIGNED August 16, 2021

EXHIBITS

AGREEMENT FOR LEGAL SERVICES

- Exhibit A: Scope of Services
- Exhibit B: Compensation, Fee Schedule, and Billing Guidelines
- Exhibit C: Equal Opportunity Contracting Forms
- Exhibit D: Consultant Award Tracking Form
- Exhibit E: Contractor Standards Pledge of Compliance

EXHIBIT A

SCOPE OF SERVICES

Downey Brand LLP will provide legal advice and filing any needed appeals, including litigation, regarding the Time Schedule Order (TSO) to the City of San Diego for violation of the final dry weather allocations in the Twenty Beaches and Creeks Bacteria Total Maximum Daily Load (TMDL). Additionally, the City requests guidance on related issues that the TSO will impact:

1. Assisting with developing the TSO's administrative record
 - a) Review background/technical information provided by the City
 - b) Review correspondence and meeting notes from interactions with the Regional Water Quality Control Board (RWQCB)
 - c) Engage in strategy discussions with City staff, counsel, consultants, and potentially other jurisdictions regarding Bacteria TMDL compliance and TSO recommendations
 - d) Provide input on the City's comments TSO information to aid discussions
 - e) Estimated Hours: 25 hours
2. TSO Commenting Time Period
 - a) Attend any meetings with Regional Board staff, City Staff and management and the City Attorney's Office
 - b) Participate in any telephone calls with Regional Board staff, City Staff and management and the City Attorney's Office
 - c) Provide any needed written response (includes letters, emails and memorandums) to the Regional Board regarding the City's comments to the draft TSO
 - d) Estimated Hours: 75+ hours
3. TSO Adoption and any needed Appeals
 - a) Prepare testimony and attend TSO adoption if hearing pursued (most likely, the TSO will be administratively issued without hearing)
 - b) Drafting and filing any needed appeal to State Water Resources Control Board and submitting any additional documents related thereto
 - c) Making any needed appearances before the San Diego Regional Board
 - d) File any needed writ of mandate and representing the City as lead counsel in an any needed appeal of the TSO and/or the State Water Resources Control Board's decision on the terms of the TSO. This will include review of the administrative record, but not briefing or a Court hearing.
 - e) Estimated Hours: 100+ hours
4. Bacteria TMDL and MS4 Permit Related Support
 - a) Provide advice on the San Diego River Investigative Order issued by the San Diego Regional Board and the impact on the Bacteria TMDL, MS4 Permit terms, and/or any TSO issued by the Regional Water Board

- Provide a written memorandum on this issue
- b) Provide advice on reopening the Bacteria TMDL and amending San Diego Regional Water Quality Control Board Basin Plan to address bacteria water quality standards
 - Provide a written memorandum on the issue
 - Participate in meetings with City staff and Regional Water Board staff
 - Review draft Basin Plan amendment and revised TMDL regulatory documents
 - Provide written comments and strategy advice on regulatory document
- c) Provide as needed advice regarding issuance of renewed MS4 Permit
 - Provide any needed memorandum on the issue
 - Participate in meetings with City staff and Regional Water Board staff
 - Review draft MS4 Permit
 - Provide written comments and strategy advice on permit terms
- d) Provide as needed advice regarding ongoing compliance with Bacteria TMDL and the existing MS4 permit.
 - Provide any needed memorandum on the issue
 - Participate in meetings with City staff and Regional Water Board staff
 - Review draft MS4 Permit
 - Provide written comments and strategy advice on permit terms
- e) Provide as needed advice on termination or modification of TSO post-Basin Plan amendment and/or TMDL amendment.
- f) Provide defense for any Bacteria TMDL non-compliance enforcement action or private enforcement action.
Estimated Hours: 100+ hours

EXHIBIT B

COMPENSATION AND FEE SCHEDULE & BILLING GUIDELINES

A. Maximum Contract Amount:

- (1) The City has authorized a maximum payment of \$125,000 for legal services and out-of-pocket expenses for the Term of this Agreement for the Services.
- (2) The City will not pay Law Firm more than the authorized maximum amount unless the City informs Law Firm in writing that it has authorized additional amounts.

B. Rate:

The City agrees to pay Law Firm for authorized Services performed at the direction of the City under this Agreement as follows:

- \$395 per hour for lead attorney
- \$340 per hour for senior associate attorneys
- \$280 per hour for junior associate attorneys
- \$200 per hour for paralegals

- \$100 per hour for document clerk

C. BILLING: ALL BILLING IS SUBJECT TO THE FOLLOWING GUIDELINES:

SAN DIEGO CITY ATTORNEY'S OFFICE

BILLING GUIDELINES FOR OUTSIDE COUNSEL [BG]

Introduction

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

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

Billing Format

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

Each billing invoice (Invoice) must include the total amount of services rendered during the billing period, the fee for these services and the amount of reimbursable expenses. The Invoice must be accompanied by a separate Invoice Support Statement that: (1) describes each item of work performed, (2) identifies the person who performed the work, and (3) itemizes all reimbursable expenses. For each travel or meal expense, the Invoice Support Statement must identify the persons involved and the date and location where the expense was incurred. Receipts for all meals and travel expenses must be attached. The Invoice Support Statement must be marked “Confidential -- Attorney-Client and/or Work Product Privilege.”

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

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

Invoice Support Statement:

Complete

- The Invoice Support Statement should identify each City person represented, and follow with all billing entries and expenses incurred related to that particular person.
- Each billing entry must identify the:
 - person or persons involved (e.g., telephone calls must include the names of all participants);
 - date the work was performed;
 - specific task performed, and
 - the work product (e.g., “telephone call re: trial brief,” “interview in preparation for deposition”).
- All time must be billed in 10-hour increments.
- The Invoice Support Statement must include each biller’s professional capacity (partner, associate, paralegal, etc.).
- The Invoice Support Statement must include a breakdown of all expenses by category, along with a receipt a receipt for each expense.

Discrete

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

Appropriate

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

Staffing

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

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

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

Written Memoranda

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

Internal Conferencing

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

Travel

The City reimburses mileage at the current IRS rate. Air travel is reimbursed at coach or lower rate. Overnight accommodations may not exceed the federal per diem for San Diego without prior approval. Meals while traveling must be reasonably priced. Alcoholic beverages will not be reimbursed.

Hourly Rates

Law Firm may not increase hourly rates without the City's prior written approval. The City will approve only reasonable rates for payment.

Out-of-Pocket Expenses

Unless expressly excluded by these BGs, the City will reimburse out-of-pocket expenses Law Firm charges as a standard practice to its clients according to these procedures. In any billing for expenses, Law Firm must provide a statement breaking down the amounts by category of expense.

The following items will not be reimbursed without the City's prior written consent:

- Clerical, secretarial or word processing charges, whether expressed as a dollar amount or time charge.
- Charges for storing open or closed files, rent, electricity, air conditioning, local telephone, postage, receipt or transmission of local facsimile documents, equipment rental (including computers), meals served at meetings, or any other items traditionally associated with overhead.
- Litigation support or any other service in excess of the amount Law Firm actually expends for the service. The City will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.
- Photocopy charges in excess of \$.10 per page.
- Auto mileage rates in excess of the current IRS rates.
- Overtime compensation. If a matter requires overtime, the City will consider reimbursement on a case-by-case basis. The City will not reimburse overtime incurred for Law Firm's convenience where the deadline was known in advance.
- Charges for equipment, books, periodicals, research materials, online research, Westlaw/Lexis or like items.
- Charges for express or overnight mail, messenger services, or the like, except in emergency situations and with the City's prior consent. The City expects these expenses to be incurred in emergency situations only. The City will consider reimbursing these services on a case-by-case basis.
- Airfare in excess of economy or coach class fares.
- Combined expenses for lodging, meals, and ground transportation that exceeds \$250 per day.

- Investigative services, outside photocopying, videotaping of depositions, or computer litigation support services.

Records

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

Invoices

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

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

EXHIBIT C

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
CONTRACTOR FORMS**

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 AA. CONTRACTORS CERTIFICATION OF PENDING ACTIONS.....C-7

 BB. WORK FORCE REPORT..... C-8-9

 CC. SUBCONTRACTOR LISTC-10

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

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

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

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

1. Consultant shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting 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. Compliance Investigations. 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 San Diego County, 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 for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.

III. Equal Employment Opportunity Outreach Program. Consultants shall comply with requirements of San Diego Municipal Code sections 22.2701 through 22.2707, Equal

Employment Opportunity Outreach Program. 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 on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Consultants shall ensure that their subcontractors comply with this program. Nothing in this section shall be interpreted to hold a Consultant liable for any discriminatory practice of its subcontractors.
- B. Work Force Report. If based on a review of the *Work Force Report* (Attachment BB) submitted an EOCP staff Work Force Analysis determines there are under representation 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 Enterprise 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 in Council Policy 100-10.

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

- 1. For all consultant contracts, the City shall apply a maximum of an additional 12 points for SLBE or ELBE participation, to the proposer's subtotal maximum evaluation points. Additional points will be awarded as follows to achieve the proposer's final maximum evaluation points:
 - a. If the proposer achieves 20% SLBE and/or ELBE subcontractor participation apply 5 points to the proposer's score; or
 - b. If the proposer achieves 25% SLBE and/or ELBE subcontractor participation apply 10 points to the proposer's score; or
 - c. If the prime consultants is a SLBE or ELBE, apply 12 points to the proposer's score.

B. Subcontractor Participation List. The Subcontractor Participation List (Attachment CC) shall indicate the Name and Address, Scope of Services, Percent of Total Proposed Contract Amount (or Actual Dollar Amount if available), Certification Status and Where Certified for each proposed Subcontractor/Subconsultant.

V. Maintaining Participation Levels.

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

VI. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE): A business whose gross annual receipts do not exceed the amount set by the City Manager, and that meets all other criteria set forth in regulations implementing the City's Small and Local Business Preference Program. The City Manager

shall review the threshold amount for SBEs on an annual basis, and adjust as necessary to reflect changes in the marketplace. A business certified as a DVBE by the State of California, and that has provided proof of such certification to the City Manager, shall be deemed to be an SBE.

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

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

VII. Certification.

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

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

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

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

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

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

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

VIII. List of Attachments.

- AA. Contractors Certification of Pending Actions
- BB. Work Force Report
- CC. Subcontractors List

AA. CONTRACTORS CERTIFICATION OF PENDING ACTIONS

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

CHECK ONE BOX ONLY.

- The undersigned certifies that within the past 10 years the Contractor has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Contractor discriminated against its employees, subcontractors, vendors or suppliers.

- The undersigned certifies that within the past 10 years the Contractor has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Contractor discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

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

Contractor Name: Downey Brand LLP

Certified By Cindy Snook Title Director of HR
Name

Cindy Snook Date March 22, 2021
Signature

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

BB. WORK FORCE REPORT

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

**NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION**

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

Name of Company: Downey Brand LLP

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): 621 Capitol Mall, 18th Floor

City: Sacramento County: Sacramento State: CA Zip: 95814

Telephone Number: 916-444-1000 Fax Number: 916-444-2100

Name of Company CEO: Scott Shapiro, Managing Partner

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

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: _____ Fax Number: _____ Email: _____

Type of Business: Law Firm Type of License: State

The Company has appointed: Cindy Snook, Director of Human Resources

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: 621 Capitol Mall, 18th Floor, Sacramento, CA 95814

Telephone Number: 916-520-5347 Fax Number: 916-520-5150 Email: csnook@downeybrand.com

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

Check the box above that applies to this WFR.

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

I, the undersigned representative of Downey Brand LLP
(Firm Name)

Sacramento, California hereby certify that information provided
(County) (State)

herein is true and correct. This document was executed on this 22 day of March, 2021

Cindy Snook

(Authorized Signature)

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: Downey Brand LLP

DATE: 3/22/2021

OFFICE(S) or BRANCH(ES): Sacramento

COUNTY: Sacramento

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

- (1) Black or African-American
- (2) Hispanic or Latino
- (3) Asian
- (4) American Indian or Alaska Native
- (5) Native Hawaiian or Pacific Islander
- (6) White
- (7) Other race/ethnicity; not falling into other groups

Definitions of the race and ethnicity categories can be found on Page 4

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/ Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial										1	3	3		
Professional			2	4	3	2				1	52	29		2
A&E, Science, Computer														
Technical														
Sales														
Administrative Support		4	3			7				2	2	42		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column	0	4	5	4	3	9	0	0	0	4	57	74	0	2
--------------------	---	---	---	---	---	---	---	---	---	---	----	----	---	---

Grand Total All Employees 162

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

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

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 or African-American
- (2) Hispanic or Latino
- (3) Asian
- (4) American Indian or Alaska Native
- (5) Native Hawaiian or Pacific Islander
- (6) White
- (7) Other race/ethnicity; not falling into other groups

Definitions of the race and ethnicity categories can be found on Page 4

TRADE OCCUPATIONAL CATEGORY	(1) Black or African American		(2) Hispanic or Latino		(3) Asian		(4) American Indian/Nat. Alaskan		(5) Pacific Islander		(6) White		(7) Other Race/ Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Brick, Block or Stone Masons													
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

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

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Work Force Report

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 (American Indian or Alaska Native, Asian, Black or African-American, Native Hawaiian or Pacific Islander, White, and Other) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report¹. 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 county². If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one¹, two² & three³. These numbers coincide with the types of work force report required in the example. See below:

¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases

² Branch Work Force *

³ Managing Office Work Force

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

RACE/ETHNICITY CATEGORIES

American Indian or Alaska Native – A person having origins in any of the peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Asian – A person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American – A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Pacific Islander – A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White – A person having origins in any of the peoples of Europe, the Middle East, or North Africa.

Hispanic or Latino – A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.

Exhibit A: Work Force Report Job Categories – Administration

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

Exhibit B: Work Force Report Job Categories - Trade

Brick, Block or Stone Masons
Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, Floor and Tile Installers and Finishers
Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers
Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst
Drywall and Ceiling Tile Installers Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers
First-line Supervisors/Managers of
Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade
Brickmasons, Blockmasons, and Tile and Marble
Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights
Heating, Air Conditioning and Refrigeration
Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair
Occupations

Misc. Const. Equipment Operators
Paving, Surfacing and Tamping Equipment
Operators
Pile-Driver Operators
Operating Engineers and Other Construction
Equipment Operators

Painters, Const. Maintenance
Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers
Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers
Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter,
Operators and Tenders

Workers, Extractive Crafts, Miners

ATTACHMENT CC SUBCONTRACTORS LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Consultants must also list participation by any MBE, WBE, DBE, DVBE, and OBE firms. However, no additional points will be awarded for participation by these firms.

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OR DOLLAR AMOUNT OF CONTRACT	SLBE/ELBE /MBE/ WBE/DBE/ DVBE/OBE	**WHERE CERTIFIED

List of Abbreviations:

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

* Listed for information purposes only.

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

EXHIBIT D
CONSULTANT AWARD TRACKING FORM



THE CITY OF SAN DIEGO

CONSULTANT AWARD TRACKING FORM

Consultant Award Tracking Form: The purpose of this form is to track the cumulative amount of money awarded to both architectural and engineering (A&E) firms and non-A&E firms; and to ensure that the cumulative amount of money awarded to consultant does not exceed \$250,000 for non-CIP funded contracts and \$1,000,000 for CIP funded contracts in a fiscal year including this contract. If this cumulative award limit is exceeded, inclusive of this contract award, Council approval is required.

A copy of this form must be attached to forms Mayoral Action PA-2625, Mayoral Action 1544, Council Action 1472 and Purchase Orders for processing.

THIS SECTION TO BE COMPLETED BY CITY STAFF

Date: 4/8/21 Department Name: City Attorney's Office

City Project Manager: Mark Mercer

Name of Firm: Downey Brand LLP

Project Name: Legal Services for Time Schedule Order for Bacteria TMDL

Contract or Amendment Amount: \$ 125,000

Appropriate approval authority:

- Mayoral Action PA-2625
Mayoral Action 1544
Council Action 1472
Purchase Order

THIS SECTION TO BE COMPLETED AND REVIEWED BY CONSULTANT

The City reserves the right to disqualify any Consultant if this tracking form is not completely and accurately executed prior to the contract award.

If it is determined subsequent to the contract award that this tracking form was not accurately executed, the underlying contract will be illegal and deemed void if awarded without Council approval and it is beyond the limits set in Municipal Code Section 22.3207. In such an instance, the City shall not be responsible for any losses or damages which may result from the void contract and reserves the right in its sole discretion to award the contract to another consultant.

Dollar amount awarded to the consultant by the City of San Diego this fiscal year (July 1 through June 30) including this contract or amendment: \$ 0

I hereby certify that I am an authorized representative of:

DOWNEY BRAND LLP

(Name of Firm)

and that I have read and understand this form this 8th day of April 2021

By Nicole E. Granquist

Nicole E. Granquist, Partner

(SIGNATURE of Authorized Representative)

(PRINTED name of Authorized Representative)

EXHIBIT E
City of San Diego
CONTRACTOR STANDARDS
Pledge of Compliance

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

By signing and submitting this form, the contractor is certifying, to the best of their knowledge, that the contractor and any of its Principals have not within a five (5) year period – preceding this offer, been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract.

“Principal” means an officer, director, owner, partner or a person having primary management or supervisory responsibilities within the firm. The Contractor shall provide immediate written notice to the Procurement Contracting Officer handling the solicitation, at any time prior to award should they learn that this Representations and Certifications was inaccurate or incomplete.

This form contains 10 pages, additional information may be submitted as part of *Attachment A*.

A. BID/PROPOSAL/SOLICITATION TITLE:

Legal Services - Stormwater

B. BIDDER/PROPOSER INFORMATION:

Downey Brand LLP			
Legal Name		DBA	
621 Capitol Mall, 18th Floor	Sacramento	CA	95814
Street Address	City	State	Zip
Nicole Granquist, Partner	(916) 520-5369	(916) 520-5769	
Contact Person, Title	Phone	Fax	

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

* The precise nature of the interest includes:

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

EXHIBIT E

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

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

Nicole Granquist	Partner
Name	Title/Position
Rocklin, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
3% owner of the law firm	
Interest in the transaction	

Meghan Quinn	Senior Associate
Name	Title/Position
South Lake Tahoe	
City and State of Residence	Employer (if different than Bidder/Proposer)
N/A	
Interest in the transaction	

Patrick Veasy	Senior Associate
Name	Title/Position
Sacramento, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
N/A	
Interest in the transaction	

Alexandra Lizano	Associate
Name	Title/Position
Sacramento, CA	
City and State of Residence	Employer (if different than Bidder/Proposer)
N/A	
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

EXHIBIT E

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

C. OWNERSHIP AND NAME CHANGES:

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

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

2. Is your firm a non-profit?
 Yes No

If **Yes**, attach proof of status to this submission.

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

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

D. BUSINESS ORGANIZATION/STRUCTURE:

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

Corporation Date incorporated: _____ State of incorporation: _____

List corporation's current officers: President: _____
Vice Pres: _____
Secretary: _____
Treasurer: _____

Type of corporation: C Subchapter S

Is the corporation authorized to do business in California: Yes No

If **Yes**, after what date: _____

EXHIBIT E

Is your firm a publicly traded corporation? Yes No

If Yes, how and where is the stock traded? _____

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

Do the President, Vice President, Secretary and/or Treasurer of your corporation have a third party interest or other financial interests in a business/enterprise that performs similar work, services or provides similar goods? Yes No

If Yes, please use Attachment A to disclose.

Please list the following: Authorized Issued Outstanding

- a. Number of voting shares: _____
- b. Number of nonvoting shares: _____
- c. Number of shareholders: _____
- d. Value per share of common stock:

Par	\$	_____
Book	\$	_____
Market	\$	_____

Limited Liability Company Date formed: _____ State of formation: _____

List the name, title and address of members who own ten percent (10%) or more of the company:

Partnership Date formed: 01/01/1926 State of formation: California

List names of all firm partners:

See Attachment A

Sole Proprietorship Date started: _____

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

Joint Venture Date formed: _____

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

EXHIBIT E

Note: To be responsive, each member of a Joint Venture or Partnership must complete a separate *Contractor Standards form*.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

Yes No

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

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

Yes No

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

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No

If Yes, use Attachment A to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

6. Are there any claims, liens or judgements that are outstanding against your firm?

Yes No

If Yes, please use Attachment A to provide detailed information on the action.

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

Name of Bank: Five Star Bank

Point of Contact: Jason Saslow, SVP/Business Development Officer/Private Client Manager

Address: 3100 Zinfandel Drive, Suite 650, Rancho Cordova, CA 95670

Phone Number: (916) 640-1506

8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City

EXHIBIT E

a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

9. In order to do business in the City of San Diego, a current Business Tax Certificate is required. Business Tax Certificates are issued by the City Treasurer's Office. If you do not have one at the time of submission, one must be obtained prior to award.

Business Tax Certificate No.: In Progress Year Issued: _____

F. PERFORMANCE HISTORY:

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

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

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

If Yes, use Attachment A to explain specific circumstances.

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

Yes No

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

7. Performance References:

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

Please note that any references required as part of your bid/proposal submittal are in addition to those references required as part of this form.

Company Name: LA Sanitation City of Los Angeles

EXHIBIT E

Contact Name and Phone Number: Traci Minamide (213) 485-2210

Contact Email: traci.minamide@lacity.org

Address: 1149 S. Broadway, 9th Floor, Los Angeles, CA 90015

Contract Date: March 1, 2000

Contract Amount: \$ 200,000.00

Requirements of Contract: Negotiating permits & other regulatory documents for storm water and wastewater, and litigation as it arises

Company Name: County Sanitation Districts of LA County

Contact Name and Phone Number: Martha Tremblay (562) 908-4288 x2502

Contact Email: mtremblay@lacsds.org

Address: 1955 Workman Mill Road, Whittier, CA 90601

Contract Date: March 1, 2000

Contract Amount: \$ 200,000.00

Requirements of Contract: Negotiating permits & other regulatory documents for storm water and wastewater, and litigation as it arises

Company Name: Los Angeles Department of Water & Power

Contact Name and Phone Number: Julie Riley (213) 367-4513

Contact Email: julie.riley@ladwp.com

Address: 221 N. Figueroa Street, 10th Floor, Los Angeles, CA 90012

Contract Date: April 1, 2019

Contract Amount: \$ 100,000.00

Requirements of Contract: Defense of Clean Water Act citizen suit and guidance on industrial storm water compliance

G. COMPLIANCE:

- 1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?
 Yes No

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

- 2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?
 Yes No

EXHIBIT E

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

H. BUSINESS INTEGRITY:

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

Yes No

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

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

Yes No

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

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

Yes No

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

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?

Yes No

If **Yes**, please disclose the names of those relatives in Attachment A.

I. BUSINESS REPRESENTATION:

1. Are you a local business with a physical address within the County of San Diego?

Yes No

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?

Yes No

Certification # _____

3. Are you certified as any of the following:

- a. Disabled Veteran Business Enterprise Certification # _____
b. Woman or Minority Owned Business Enterprise Certification # _____
c. Disadvantaged Business Enterprise Certification # _____

J. WAGE COMPLIANCE:

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

By signing this Pledge of Compliance, your firm is certifying to the City that you will comply with the requirements of the Equal Pay Ordinance set forth in SDMC sections 22.4801 through 22.4809.

EXHIBIT E

K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:

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

Company Name: Not Applicable

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$ _____ (per year) \$ _____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

Company Name: _____

Address: _____

Contact Name: _____ Phone: _____ Email: _____

Contractor License No.: _____ DIR Registration No.: _____

Sub-Contract Dollar Amount: \$ _____ (per year) \$ _____ (total contract term)

Scope of work subcontractor will perform: _____

Identify whether company is a subcontractor or supplier: _____

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

L. STATEMENT OF AVAILABLE EQUIPMENT:

A full inventoried list of all necessary equipment to complete the work specified may be a requirement of the bid/proposal submission.

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San

EXHIBIT E

Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective matter for the duration of the contract period.

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

- Initial submission of *Contractor Standards Pledge of Compliance*
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement
- Update of prior *Contractor Standards Pledge of Compliance* dated _____.

EXHIBIT E

Complete all questions and sign below.

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

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

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

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

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

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

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

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.

Nicole Granquist



3/22/2021

Name and Title

Signature

Date

EXHIBIT E
City of San Diego
CONTRACTOR STANDARDS
Attachment "A"

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

Section C.3

Five Downey Brand partners (prior to joining the firm) were partners at other firms in the last five years:

Cox Wootton Lerner Griffin Hansen & Poulos LLP
900 Front Street, #350, San Francisco, CA 94111
Marc. A. Centor

Mitchell Chadwick LLP
3001 Lava Ridge Court, #120, Roseville, CA 95661
Clifton J. McFarland

Diepenbrock Elkin Dauer McCandless LLP
555 University Ave, Suite 200, Sacramento, CA 95825
Danielle R. Stephens

Orrick Herrington & Sutcliffe
400 Capitol Mall, # 3000, Sacramento, CA 95814
Sherry Hartel Haus

Barg Coffin Lewis & Trapp LLP
350 California Street, #22, San Francisco, CA 94104
Kathryn L. Oehlschlager

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

Nicole Granquist



3/22/2021

Print Name, Title


Signature

Date

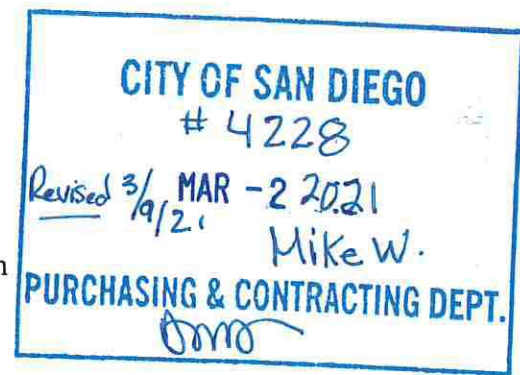
City of San Diego
CONTRACTOR STANDARDS
Attachment "A"

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

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

_____ Print Name, Title	 _____ Signature	_____ Date
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Purchasing and Contracting Department
Sole Source Request and Certification Form



To: Director of Purchasing and Contracting

Cc: Select One

From: Mark Mercer

Date: February 10, 2021

In alignment with the guidance provided in the San Diego Municipal Code section 22.3016, the Purchasing Agent (Director of Purchasing and Contracting) must certify that the award of a sole source contract is necessary by memorializing in writing why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

For consideration, this form must be completed and all required accompanying information must be submitted together, including any related contracts. Failure to do so will result in a delay of approval of the request.

Describe commodity or service(s) to be purchased. Include vendor contact information.

Downey Brand LLP will provide legal advice and filing any needed appeals, including litigation, regarding the Time Schedule Order (TSO) to the City of San Diego for violation of the final dry weather allocations in the Twenty Beaches and Creeks Bacteria Total Maximum Daily Load (TMDL). Additionally, the City requests guidance on related issues that the TSO will impact. The contract will not exceed \$125,000 for over 5 years.

The TSO will require immediate work because the Regional Board will be releasing the draft TSO on February 10, 2021 and the City needs her expertise in negotiating the language in the final issued TSO. If the City advertised the contract, there would not be sufficient time to obtain the necessary assistance and it would be unavailing. Moreover, advertising this contract would not produce a more qualified person to represent the City. Since these items are interrelated and require the expertise and experience of Ms. Granquist. Significant costs and time delays that would occur if different outside counsel were hired under the competitive process on each individual matter. As such, the competitive process would be unavailing, would not produce an advantage, is undesirable and impractical.

Nicole Granquist
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
916.444.1000 Main
916.520.5369 Direct
916.520.5769 Fax
ngranquist@downeybrand.com

Justification

1. This product or service is available from only one supplier and meets at least one of the following criteria (please check all that are applicable):

- One-of-a-kind/Compatibility*
- a. Required by Warranty: the product matches existing equipment, infrastructure and is required by warranty. **(A letter from the provider which supports this claim must be provided.)**
 - b. Goods and Services:
 - i. the good has no competitive product or alternative on the market.
 - ii. the service requires a special skill, ability, or expertise linked to the current project that cannot be provided by another supplier.

(Documentation in support of either of the above claims must be provided by the requesting department.)

City Standards The product or service complies with established, existing City standards.

Replacement The product or service is the only compatible replacement component that supports a larger system. Or, the services are the only ones that can replace the existing service requirements.

2. Do any of the following situations exist?

Limited Competition Department made an attempt to find a second or multiple sources to no avail.

Emergency There is an urgent need for the item or service and time does not permit the City to solicit for competitive bids, as in the cases of emergencies as defined under SDMC section 22.3208,. (Delays in solicitation do not satisfy this criteria)

Cost/Market Analysis

Purchasing and Contracting will perform due diligence on each request. If Purchasing and Contracting can find a suitable, cost effective alternative, this request will be denied and that alternative will be pursued after your department has been contacted to discuss the revised determination.

This form does not take the place of an agreement and all sole source requests for a period of one year or longer will require the **submission of an agreement**. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting for a Purchase Order to be issued.

PCO Due Diligence (PCO to initial all that apply)

- ___ Proof of warranty or maintenance requirement for standardized and replacement items confirmed.
- ___ Vendor/Supplier confirmed submission of justification letter.
- ___ Market test confirmed that there is no advantage to the City in competing this contracting opportunity to multiple vendors.
- ___ Emergency verified with the department.
- ___ Pricing agreement has been reviewed.

MEW Purchasing and Contracting has reviewed this request and affirms that this request for a sole source justification is appropriate.

This sole source is approved for:

- One (1) year from the signature date below.
- For the entire length of the contract, but not more than five (5) years.

The length of the contract must be consistent with the sole source approval. A sole source request must be submitted and approved by the Purchasing and Contracting Director prior to the award of each new contract and prior to each extension of an existing contract that was not contemplated in the initial contract term.

___ After reviewing the provided information and due diligence, I cannot recommend the approval of this request.

Purchasing and Contracting Director Review

I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would be therefore undesirable, impracticable or impossible. My approval is contingent on the information provided in this form.

- In accordance with SDMC §22.3016, this request is approved.
- Based on the information provided and due diligence recommendation of staff, this request is denied.



Claudia C. Abarca, Interim Director, Purchasing and Contracting

April 6, 2021

Date