

**DUPLICATE ORIGINAL**

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
O'DAY CONSULTANTS**

**FOR**

**AS-NEEDED CONSULTANT SERVICES**

**FOR**

**LAND SURVEYING SERVICES**

**CONTRACT NUMBER: H156449**

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# AGREEMENT FOR AS-NEEDED CONSULTANT SERVICES

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## **CONSULTANT AS-NEEDED AGREEMENT EXHIBITS**

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

**AS-NEEDED AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND O'DAY CONSULTANTS  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and O'Day Consultants [Consultant] for the Consultant to provide Professional Services to the City for land surveying.

**RECITALS**

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

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

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

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

**ARTICLE I  
CONSULTANT SERVICES**

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

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

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

**1.1.2 Non-Exclusivity.** The Consultant agrees that this Agreement is non-exclusive and that the City may enter into agreements with other Consultants to perform substantially the same or similar Professional Services during the term of this Agreement.

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

**1.3 City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in any Task by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

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

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

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

## **ARTICLE II DURATION OF AGREEMENT**

**2.1 Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, this Agreement shall be effective for issuing and completing Task Orders for no more than **60** months following the date of its execution by the City, unless said duration is modified in writing by an amendment to this Agreement. If required, the duration of this Agreement can be extended up to a maximum of sixty (60) months. Any extension beyond sixty (60) months will require City Council approval via Ordinance.

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

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

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

to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to the City of the Consultant's inability to obtain materials, equipment, or labor.

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

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

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

deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

### **ARTICLE III COMPENSATION**

**3.1 Amount of Compensation.** The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including all reasonably related expenses, in an amount not to exceed \$2,000,000. The City agrees to issue at least one or more Task Orders with a minimum aggregate value of \$1,000.00 to the Consultant.

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

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

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

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

**4.1 Industry Standards.** The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent land surveying firm using the degree of care and

skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

## **4.2 Right to Audit.**

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

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

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

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

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

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

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

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

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

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

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

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

**4.3.1.4 RESERVED**

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

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

**4.3.3 Acceptability of Insurers.**

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

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

**4.3.4 Required Endorsements**

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

**4.3.4.1 Commercial General Liability Insurance Endorsements**

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

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

**4.3.4.2 Automobile Liability Insurance Endorsements**

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

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

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

#### **4.3.4.4 Aircraft Liability Insurance Endorsements**

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

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

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

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

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

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

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

**4.4.1.1** The Consultant shall require the Subcontractor to obtain insurance policies, as described in Section 4.3.1, and those policies shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Furthermore, Subcontractor policy limits, and required endorsements shall be determined by the Consultant proportionate to the services performed by the Subcontractor.

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

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

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

in any dispute between the Consultant and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

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

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

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

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

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

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

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

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

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

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

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

**4.6.1 Compliance with the City's Equal Opportunity Contracting Program.**

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

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

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

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

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

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

4.7.2.1 The dangers of drug abuse in the work place.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.12 Attorney Fees related to Mandatory Assistance.** In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

**4.13 ADA Certification.** The Consultant hereby certifies [Exhibit K] that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts

requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

**4.14 Prevailing Wage Rates.** Prevailing wage rates apply to this Agreement.

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

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

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

**4.14.1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

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

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

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

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

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

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

**4.14.7. Labor Code Section 1861 Certification.** Consultant in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Consultant certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

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

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

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

## **ARTICLE V RESERVED**

## **ARTICLE VI INDEMNIFICATION**

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

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

## **ARTICLE VII MEDIATION**

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

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

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

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

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

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

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

**7.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

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

## **ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS**

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

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

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

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

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

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

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

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

## **ARTICLE IX MISCELLANEOUS**

**9.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Public Works Department, c/o Rick McCormick, MS 18, 9485 Aero Drive, San Diego, CA 92123-1801, and notice to the Consultant shall be addressed to: O'Day Consultants, 2710 Loker Ave. West, Ste. 100 Carlsbad, CA 92010.

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

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

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

**9.5 Consultant and Subcontractor Principals for Consultant Services.** It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the following members of the Consultant's organization: Pat O'Day, Joanne Tyler, Brian Faraci, Nicole Fine, George O'Day [Project Team]. Accordingly, performance of Professional Services under this Agreement may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project Team without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves

the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from performance of the Scope of Services.

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

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

**9.8 Jurisdiction.** The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Consultant also must give the City access to documents and records sufficient for the City to verify the Consultant is providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance

are posted on the City's website at [www.sandiego.gov/purchasing/](http://www.sandiego.gov/purchasing/) or can be requested from the Equal Benefits Program at (619) 533-3948.

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

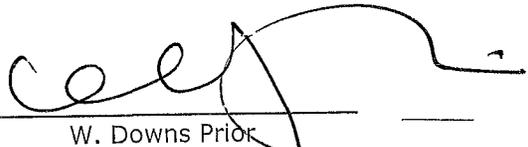
**9.28 Precluded Participation.** In order to avoid any conflicts of interest, the Consultant, and all subconsultants, shall be precluded from participating in any future contract for services, that is subsequently required/created as a result of the contract services provided under this Agreement.

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

**IN WITNESS WHEREOF**, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to R - 310299, authorizing such execution, and by the Consultant pursuant to O'Day Corporate Resolution.

Dated this 18<sup>th</sup> day of April, 2016.

THE CITY OF SAN DIEGO  
Mayor or Designee

By:   
W. Downs Prior  
Principal Contract Specialist  
Public Works Contracts

I HEREBY CERTIFY I can legally bind O'Day Consultants and that I have read all of this Agreement, this 3<sup>rd</sup> day of December, 2015

By:   
Patrick N. O'Day  
President

I HEREBY APPROVE the form of the foregoing Agreement this 21<sup>st</sup> day of April, 2016.

JAN I. GOLDSMITH, City Attorney

By:   
Deputy City Attorney

**CONSULTANT AS-NEEDED AGREEMENT**  
**EXHIBITS**

# SCOPE OF SERVICES

It is anticipated that the as-needed contracts will provide land surveying services for the following types of surveys:

## PRELIMINARY SURVEYING SERVICES

### **Topographic Surveys**

- Utility Group Jobs Survey shall include all found monuments (record & non record) for the purpose of calculating right of way and property lines.
- Survey shall show the location and elevation of all public and private utility features to include but not limited to water, fire hydrants, sewer manholes with invert elevations (sewer book page & manhole number and laterals included for in-sewer design), gas valves, electric pull boxes and vaults, storm water, drainage manholes & inlets with invert elevations, telecommunications risers, pull boxes and vaults, traffic striping & controls, curb lines or edge of paving, driveways and building lines.
- Undergrounding projects include as-built basemap for all utilities ROW, lot lines and easements.
- Field data is processed for use in a CADD environment, files to include a raw field file, a fieldbook, a project geometry file and digital terrain model.
- Features collected in the field survey are compared to the 2005 Citywide LiDAR data set for vertical and horizontal accuracy.
- Surveys include contours, surface elevations or spot elevations at a scale in accordance with the scope established by the project manager and National Map Standards
- Deliverables include a V-8 MICROSTATION .dgn file per the existing Citywide CADD & Drafting Standards with the mapping, ROW and easements (calculated from found monumentation), a complete digital terrain model, a coordinate list text file, an alignment file, and hardcopy files as requested.
- Electronic files are archived on the city document archive system and placed in a georeferenced GIS system, for use by the Project Manager and on future projects.

### **As-Built Surveys**

- Survey shall record and field mark out the location and elevation of sewer manhole with invert elevations.
- Survey shall record manhole number and Gatebook reference in accordance with the requesting Waste Water Collection manager of the Public Utilities Department.

### **Hydrographic Surveys:**

- Survey shall use previously established control.
- Deliverables include a V-8 MICROSTATION .dgn file per the Citywide CADD & Drafting Standards (2011) of the cross sections and profiles and hardcopy plots.
- The project is processed for microfilming with Developmental Services Department.
- Electronic files are archived on the city document archive system for use by the Project manager

### **Undergrounding (SDG&E) Surveys:**

- Survey shall include all found monuments (record & non record) for the purpose of calculating right of way, lot lines and property lines and easements.
- Survey shall show the location and elevation of all public and private utility features to include but not limited to water, fire hydrants, sewer manholes with invert elevations (sewer book page & manhole number and laterals included for in-sewer design), gas valves, electric pull boxes and vaults, storm water, drainage manholes & inlets with invert elevations, telecommunications risers, pull boxes and vaults, traffic striping & controls, curb lines or edge of paving, driveways and building lines.
- Undergrounding projects include as-built basemap for all utilities ROW, lot lines and easements.
- Field data is processed for use in a CADD environment, files to include a raw field file, a fieldbook, a project geometry file and digital terrain model.
- Features collected in the field are compared to the 2005 Citywide LiDAR data set for vertical and horizontal accuracy.
- Surveys include contours, surface elevations or spot elevations at a scale in accordance with the scope established by the project manager.
- Deliverables include a V-8 MICROSTATION .dgn file per the existing Citywide CADD & Drafting Standards with the topo, ROW and easements calculated from found monumentation, a complete digital terrain model, a coordinate list text file, an alignment file, and hardcopy files as requested.
- Electronic files are archived on the city document archive system and placed in a georeferenced GIS system, for use by the Project Manager and on future projects

#### RIGHT OF WAY SURVEYING SERVICES

##### **Boundary Determination**

1. Determine public/private road right of way
  2. Determine subdivision boundaries
  3. Determine lot/deed line locations
  4. Determine easement locations
  5. Determine lease hold locations
- Perform a complete research to determine the necessary maps, drawings, plats, deeds etc. needed to calculate the boundary using existing City and/or County references
  - Create Microstation (CAD) drawing showing boundary determination along with coordinate list of calculated right of way.
  - Coordinate with other sections of City Surveys CAD group for final deliverable
  - Archive CAD drawing and respective files on City Projectwise
  - File record of survey with County Surveyor if required

##### **Easement Acquisition/ Abandonment**

- Perform a complete research to determine the necessary maps, drawings, plats, deeds etc. needed to calculate the boundary using existing City and/or County references
- Create legal description and Microstation (CAD) drawing for requested sewer, water or drainage, etc. easement acquisition/abandonment
- Coordinate project through City Real Estate Assets
- Archive CAD drawing and respective files on City Projectwise
- Archive paper hardcopy in Surveys calculation file
- Send final mylar to City Development Services for archiving/reproduction

**Street Dedication/Vacation**

- Perform a complete research to determine the necessary maps, drawings, plats, deeds etc. needed to calculate the boundary using existing City and/or County references
- Create legal description and Microstation (CAD) drawing for requested street dedication or vacation
- Coordinate project through City Real Estate Assets
- Archive CAD drawing and respective files on City Projectwise
- Archive paper hardcopy in Surveys calculation file
- Send final mylar to City Development Services for archiving/reproduction

**Land Acquisition/Exchange**

- Perform a complete research to determine the necessary maps, drawings, plats, deeds etc. needed to calculate the boundary using existing City and/or County references
- Create legal description and Microstation (CAD) drawing for requested real property acquisition or exchange
- Coordinate project through City Real Estate Assets
- Archive CAD drawing and respective files on City Projectwise
- Archive paper hardcopy in Surveys calculation file
- Send final mylar to City Development Services for archiving/reproduction

**Lease Areas**

- Perform a complete research to determine the necessary maps, drawings, plats, deeds etc. needed to calculate the boundary using existing City and/or County references
- Create legal description and Microstation (CAD) drawing for requested lease area
- Coordinate project through City Real Estate Assets
- Archive CAD drawing and respective files on City Projectwise
- Archive paper hardcopy in Surveys calculation file
- Send final mylar to City Development Services for archiving/reproduction

**CONSTRUCTION SURVEYING SERVICES**

Constructability review and survey construction cost estimate

Attend Preconstruction meeting: Construction Staking Request Form, Monument Preservation request form

R.E. coordination, Contractor coordination

Request civil design Microstation CAD file from Resident Engineer, Project Manager, Civil Engineer, Traffic Engineer Architect, Landscape Architect

Digital civil design Microstation CAD file is archived in Projectwise

Perform data extraction and calculations from the civil design Microstation CAD file

Check signed and stamped hard copy Plan data

Perform quality control and quality assurance of construction plans by comparing the Microstation CAD file of the project design against the signed/sealed paper design plans. If discrepancies exist, the RE is notified immediately to resolve plan issues prior to beginning construction surveying tasks

Review construction plans and determine which improvements will be destroyed by construction activities and the perform survey records research for monument perpetuation tasks

The contractor scribes the construction staking request form and sends it to the RE for review. The RE then forwards the construction staking request form to the supervising construction land surveyor

Construction survey crew performs layout staking services as requested and verifies the proposed location of design improvements agrees with existing site conditions. If plan and site conditions do not agree the RE is notified immediately. If redesign is necessary, plans are modified and sent to the RE and the supervising construction land surveyor for construction staking layout

Prior to demolition activities, perform measurements to all existing survey monuments in the demolition area, from reference points lying outside the demolition area

Prepare digital cut sheets documenting the surveying construction layout task(s). The RE receives via email and forwards a copy to the contractor for use in the field to construct the proposed improvements

Provide land surveying services and information in all phases of the construction project

Verify proposed improvements are within the right-of-way or easements granted to the City of San Diego

**Limits of work, Limits of Demolition**

Use Microstation CAD file from Resident Engineer, check orientation and digitize limits of work to be used for field staking.

**Rough grade, Slope staking, Contour staking**

Use Microstation CAD file from Resident Engineer, check orientation and digitize property lines and centerline of streets. All grading, slope and contour stakes will be referenced to property or centerline of roadway.

**Site deformation monitoring**

Performed when site conditions warrant and this is determined by the project manager or the RE

Reference marks are placed on improvements for monitoring their position before during and post construction activities

**Blue tops**

Blue tops will be provided for sub-grade or finish grade whenever the City is contracted to provide verification of grade and material paid for. Along with Blue Tops comes a grade check certification letter to verify the contractor has provided the services in accordance with the green book and grading plan.

**Storm drain**

Use Microstation CAD file from Resident Engineer, check orientation and digitize locations of storm drain. Storm Drain is generally non-concentric to centerline and is not calculated from centerline of street. Storm Drain boxes are staked radial to centerline and require and certification after the surveyor has staked it. It is important for field check before the final pour of concrete.

**Sewer lines**

Use Micro station CAD file from Resident Engineer, check orientation and digitize locations of sewer main or centerline of road. Sewer is generally concentric to centerline and staked accordingly.

Field verification of flow line join must be done prior to construction to avoid conflicts in the future.

Sewer generally runs down the center of the street, monument preservation in accordance with the green book will require research and fieldwork to preserve centerline survey monumentation.

Monuments will be reset in exact location after the job has been inspected and released.

**Water lines**

Use Micro station CAD file from Resident Engineer, check orientation and digitize locations of water main. Water main is generally non-concentric to centerline and is not calculated from centerline of street. Land survey monuments are present generally within 5 feet of the water service.

Monument preservation in accordance with the green book will require research and fieldwork to preserve curb and sidewalk survey monumentation.

Monuments will be reset in exact location after the job has been inspected and released.

**Dry utilities**

Gas and electric and street lights will need to be calculated using Micro station CAD file from Resident Engineer, check orientation and digitize all locations of electric hand holes and transformers. All street lights will need to be digitized or locations will be derived from radial stakeout from centerline alignments.

**Top of curb at face of curb**

Curb will be staked from centerline road profiles acquired through Micro station digitizing.

All curb returns and cul-de-sac returns will be digitized and have their own alignments.

Field verification for proper drainage will need to be field verified before any project and be constructed.

**Retaining and Sound Walls**

Use Micro station CAD file from Resident Engineer, check orientation and digitize locations of walls to be staked in the field. Research of property lines is key to avoid walls being staked on private land.

All wall stakes are referenced to face of wall (exposed face), and retaining walls should be accompanied by brow ditches to allow for proper drainage behind the wall and to avoid wall failure.

**Buildings**

Use Micro station CAD file from Resident Engineer, check orientation and digitize locations of the buildings to be staked in the field. Buildings are staked using grid lines and it is essential that boundary retracement and research is thorough to avoid conflict between building setback limits and adjoining property owners.

**Bridge abutments and bents**

Use Micro station CAD file from Resident Engineer, check orientation and digitize locations of the abutments and bents to be staked in the field. Bridge stakes are generally staked to the center of the columns. Bridge deck and form check is performed throughout the life of the project and generally needs an on call Land Surveyor. It is essential that boundary retracement and research is thorough to avoid conflict between property owners.

**Monument Perpetuation / Preservation**

Monument preservation in accordance with the green book will require research and fieldwork to preserve survey monumentation. Monuments can be anywhere; research for monuments should be done before and groundbreaking to avoid neighbor conflicts or negative feedback in the news.

**As-built existing project conditions before and after construction**

Surveyors protect the property interest of the City of San Diego and define the difference between private and public. While protecting our interest, it is essential that the Surveyor report what existing field conditions exist before construction. At this time, problems can be uncovered before design starts as opposed to design build. After construction, it is important to as built conditions for future records and to avoid encroachment on private property.

**Cut sheets**

The legal document and reference of the work performed in the field. This document is given to the client to clarify and verify the work that is in the field. A copy is also filed in the field folders for legal documentation to comply with the public records act. The cut sheet is also used to clarify faded paint in the field or lost survey stakes in the field. It is also the legal documentation of where our survey reference points are located geographically on the face of the earth. Cut sheets are the form of evidence to prove or disprove what a client has or has not done.

**Volume calculations**

Performed when a discrepancy exists between the stated calculated plan earthen material volume, the RE approved truck count volume and the contractors stated export or import volume of material exists

Construction survey crew performs topographic surveying: preconstruction, at various stages of construction and post construction for calculation of export and import of earthen material Land survey staff perform volume calculation in the digital CAD environment by comparing topographic data for discrete phases of work. The RE is provided a detailed report

**RTK (Real Time Kinematic)**

Also known as Survey Grade GPS (Global Positioning System)

Is the backbone to the survey framework, it allows all jobs in the City of San Diego to remain on the same datum. Having the same datum allows all jobs to be combined with others.

Overlapping jobs will allow the use of common data sets to minimize the cost of future project costs. The more you build the more data you collect, the cheaper the future jobs in densified areas. It is essential that this framework

is protected now, and in the future. The VRS (virtual reference Station) is maintained by Survey staff to

allow the bridging of jobs and to help aide the survey community on the whole.

**Aerial Mapping Surveys:**

## EXHIBIT A

- Aerial Mapping Survey shall show the location and elevation of all public and private utilities, and planimetric features to include but not limited to water, fire hydrants, sewer manholes with invert elevations, gas valves, electric pull boxes and vaults, storm water, drainage manholes & inlets with invert elevations, telecommunications risers, pull boxes and vaults, traffic striping & controls, curb lines or edge of paving, driveways and building lines, a digital terrain model with breaklines and spot elevations, a digital rectified ortho photo, contact prints, digital scans and film negatives.
- Features are compared to the 2005 Citywide LiDAR data set for vertical and horizontal accuracy.
- The survey will include photography, contours, surface elevations or spot elevations at a scale in accordance with the scope established by the project manager and the National Standard for Spatial Data Accuracy.
- Deliverables include a V-8 MICROSTATION .dgn file per the Citywide CADD & Drafting Standards (2011) with the topo, ROW and easements calculated from found monumentation, a complete digital terrain model, a coordinate list text file, an alignment file, a digital ortho photo, and hardcopy files as requested.
- The project is processed for microfilming with Developmental Services Department.
- Electronic files are archived on the city document archive system and placed in a georeferenced GIS system, for use by the Project Manager and on future projects

### GENERAL REQUIREMENTS:

- Aerial survey, mapping and digitizing of various areas of San Diego in Microstation V8 format.
- Photogrammetrist will adhere to San Diego County's Standard specifications for Aerial Surveying and Topographic Mapping unless otherwise specified.
- All 20' scale mapping with 1' contours, will be flown at a photo scale of not more than 1" = 200'.
- All 40' scale mapping with 1' contours, will be flown at a photo scale of not more than 1" = 300'.

The Aerial Consultant shall furnish the City:

1. Photography
  - a. Flight plan, including model layout, direction of flight, and location of premarks, (subject to City approval).
  - b. One (1) set of 9" x 9" contact prints. Contact prints shall be printed on color paper with gloss finish.
  - c. Negatives and digital scans of all negatives, electronic project set-up files, the camera report and AT.
  - d. All color contact prints and photo enlargements shall be sent to the City after flying and processing.

## EXHIBIT A

- e. The following information shall appear on all negatives used for mapping or photographs: Date, Photo scale, project name, negative number (flight line, exposure number).
  - f. One (1) digital ortho photo file(s) in a .tif image format with Geo Tiff header information (project coordinate system value/projection/coordinate system units). Scanning for these images shall be taken from the original negatives, and be scanned at 12 microns. All files shall be geo referenced.
  - g. A world file header shall also be delivered along with a tif image. The world file (.tfw) shall be named the same as each .tif image with the .tfw extension, i.e... [image 01.tif & image 01.tfw]
2. Mapping
- a. All mapping shall comply with City of San Diego Aerial Photogrammetric specifications.
  - b. The following data shall be included in the electronic mapping file: Name of consultant doing the project, Company Logo (if available), Name of project, Work order number, Date & Scale.
  - c. If analytical solution for mapping is used, the following parameters shall be met. Analytical measurements shall be made on analytical stereo-plotters or comparators having necessary precision to achieve nationally accepted x, y, and z accuracies. This work shall be performed in accordance with Section 72 of the San Diego County standard specifications, except that the last line of 72.30 shall be changed to read: "In no case shall the targeted points of basic control be farther apart than three (3) stereoscopic models."
  - d. May include terrestrial laser scanning or airborne LiDAR.
3. Digitizing
- a. A digitized graphic data model called 'Mapping' of the topographic mapping for this project shall be in a V8 3-D ".DGN" format for Bentley Systems software, furnished on a recordable compact disc. The version of Microsoft Windows must be NT or higher. Compact Discs will be furnished with the check prints.
  - b. A Break-line/Spot elevation model called 'DTM' which contains all pertinent planimetric and topographic features necessary to create an accurate digital terrain model (DTM) of the aerial mapping area, also in the same Bentley V8 3D.DGN file format shall be provided.

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

## EXHIBIT A

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

Breakline defined:

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

Additionally, for further definition and accuracy of the DTM, spot or "regular" surface points should be added to the DTM (surface model) to further define and "fill-in" the surface. The more severe the discontinuities in the surface, the greater the need for increased density in point collection. The spots, used to define the gradient change, needs to be dense enough to prevent unwanted flattening in the surface according to the contour interval. As a general rule of thumb, these points should be collected at a density of 1/2" at the plotted scale.

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

Spots defined:

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

The contours shown in 3.a above shall be generated solely from this DTM data.

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

- c. The appropriate City of San Diego cell library (V8 City Existing.cel), font resource file (V8 City Font.rsc), color table (V8 City color.tbl), line style (V8 City Line Style.rsc), level scheme, and seed file parameters are to be used for placement of all elements in the design files, with strict adherence to "Working Units" and seed file "Global Origin". Base map level schemes are attached. A diskette containing the most current version of the above seed files, cell libraries and font resource files will be provided to the aerial contractor, if needed, upon request.

## EXHIBIT A

- d. All graphic elements within the Project Design File shall adhere to appropriate Microstation element definitions to allow for error free translation of design files from 3d to 2d. If the Design file is observed to have incorrect element definitions which produce errors related to either the above 3d to 2d file translations, or produce errors when used with other Bentley Applications software, the aerial contractor shall be responsible for the correction of any errors or deficiencies in the design file related to incorrect graphic element definitions, etc.
- e. Intergraph Design file working units shall be the Survey Foot: I.E., Feet, 10th's of a foot, and 1000th's of a foot. Use a (sf) symbol for foot annotations, and (su) for tenths annotations in working units tutorial.  $1200/3937 \text{ sf} = 1.0 \text{ m}$  and  $1200/393700 \text{ se} = 1.0 \text{ cm}$ .  
(Note: Above parameters are provided in V8 nad83 3d.dgn).

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

#### 4. Field Verification

To ensure accuracy and completeness of aerial mapping, Aerial vendor shall provide 'field verification' of check-prints prior to submission to the City. This will require on-site verification by vendor that marked-out utilities, or other pertinent surface features, which might have been missed or not originally compiled, shall be shown on the check prints. These additional features, (if any) shall be located and plotted within two (2) feet of actual location. This additional information (if any) shall be incorporated into the design file. Arrangements shall be made through Diana Bergen for meeting with her or other designated engineer on site.

### ADDITIONAL REQUIREMENTS

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

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

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

**SPECIAL NOTE:**

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

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

**LEVELS:**

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

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

**Consultant:**

**Agreement:**

**Task Order No.:**

**Date:**

Pursuant to the Terms and Conditions of the Agreement referenced above and incorporated into this Task Order, Consultant hereby agrees to perform the Professional Services described below. The Consultant shall furnish all necessary facilities, materials, and professional, technical, and supporting personnel required by this Task Order.

**Part A**

**Scope of Services**

1.1 Professional Services rendered under this Task Order shall be performed in accordance with the Agreement. The Scope of Services shall be as set forth in Exhibit A of the Agreement and as more fully set forth below. If necessary, the Scope of Services may be more fully described on one or more separate sheets and attached to this Task Order.

**Part B**

**Task Order Compensation**

City shall pay Consultant for the Professional Services required by this Task Order in accordance with Article III of the Agreement.

The not to exceed cost of the Scope of Services for this Task Order is \$ \_\_\_\_\_ .

**Part C Personnel Commitment**

The Scope of Services shall be performed by Consultant's personnel in the number and classifications required by City.

**Part D Time Sequence**

All Professional Services to be performed under this Task Order shall be completed by \_\_\_\_\_, and as set forth in the Task Order Scope of Services.

**City of San Diego**

**Consultant**

Recommended For  
Approval:

I hereby acknowledge receipt and acceptance of this  
Task Order for:

Approved By:

By:

Name:  
(Type)

Title:

Date:

## COMPENSATION AND FEE SCHEDULE

City of San Diego As-Needed Land Surveying Services				
Classification Summary Table				
City Classification (Consultant Classification)	Total Hourly Prevailing Rate (CA DIR 2015)	Total Hourly Office Staff Rate (City 'E' Step Rate, FY 2015)	Maximum Allowable Prevailing Wage Rate	Maximum Allowable Office Billing Rate and/or Non- Prevailing Wage Rate
Principal Land Surveyor	70.86	NA	149.27	134.75
Associate Land Surveyor (Party Chief/Licensed)	70.86	NA	149.27	NA
Associate Land Surveyor (Office/Licensed)	NA	41.00	NA	112.75
Assistant Land Surveyor (Party Chief/LSIT)	70.86	NA	149.27	NA
Assistant Land Surveyor (Office/LSIT)	NA	41.00	NA	112.75
Principal Survey Aide (Instrumentman)	68.36	NA	142.40	NA
Principal Survey Aide (Office)	NA	32.00	NA	88.00
Senior Survey Aide (Rodman)	67.78	NA	140.80	NA
Senior Survey Aide (Office Staff)	NA	NA	NA	NA

### BILLING RATE CALCULATION FOR LISTED HOURLY RATES

Max Allowable Office Billing Rate = (Hourly x 2.75)

Max Allowable Prevailing Wage Rate = (Hourly x 2.75) + (Prevailing Wage Benefits)

Daily / Saturday Approved Rate = (Max Allowable Billing) + (0.5 Hourly)

Sunday / Holiday Approved Rate = (Max Allowable Billing) + (Hourly)

Billing statements submitted to City by Consultant for consultant services and expenses shall comply with the requirements set forth in Exhibit C hereto, "Compensation and Fee Schedule". Billing rates for services are fully loaded rates and incorporate all allowable overhead, profit and normal office costs (e.g., office rental,

**EXHIBIT C**

utilities, insurance, office equipment, normal supplies and materials, in-house reproduction services, clerical, office supervision and local travel costs). Subconsultant work paid by City is subject to the maximum allowable billing rates and billing guideline requirements applicable to Consultant.

**Aerial Mapping Surveys:**

	RATE	UNIT
<b>ADMINISTRATION</b>		
Project Coordination / Management / Administration	\$ 110.00	HOUR
Technical Supervision	\$ 110.00	HOUR
Field Check of Topographic Map	\$ 110.00	HOUR
<b>FLYING</b>		
Aircraft Mobilization	\$ 575.00	PER JOB
Controlled Airspace Fee	\$ 225.00	PER JOB
Altitude Change per 1000 Feet	\$ 45.00	PER JOB
Flight Line	\$ 50.00	PER JOB
Natural Color Exposure - Film	\$ 38.00	PER JOB
Processing Color Negatives		INCLUDED IN MOBILIZATION
<b>PHOTOGRAPHIC WORK</b>		
Film Color Balance Fee	\$ 45.00	PER JOB
Contact Print	\$ 7.00	EACH
Negative Scanning Setup Fee	\$ 35.00	PER JOB
Scan	\$ 23.00	EACH
Digital Orthophotography	\$ 110.00	PER MODEL (EVERY 2 PHOTOS)
<b>MAPPING</b>		
Topographic Mapping-Set-up	\$ 110.00	PER JOB
Topographic Mapping 100' Wide	\$ 0.88	PER LINEAL FOOT
Topographic Mapping 200' Wide	\$ 1.95	PER LINEAL FOOT
Topographic Mapping 300' Wide	\$ 3.30	PER LINEAL FOOT
Topographic Mapping per acre	\$ 178.00	PER ACRE

## EXHIBIT C

### NOTE:

- Mileage reimbursement rate will be at current City of San Diego mileage rate (mileage log required).
- Travel expenses for the lowest cost effective Air Fare, Train, and/or Car Rental, will be reimbursed at actual costs (receipts required).
- Lodging and Per Diem will be reimbursed at actual costs (receipts required) up to the maximum allowance for the San Diego area as published/posted on the U.S. General Services Administration website (<http://www.gsa.gov/portal/category/100120>).
- All subconsultant costs are reimbursed as a “direct expense” at actual costs (invoice/receipts required).
- A request for an annual rate adjustment must be submitted to the City of San Diego in writing for approval. Written justification for the rate adjustment must be submitted to the City of San Diego a minimum of 60 days before the Agreement anniversary date. Said proposed adjustment shall not exceed three percent (3%), and the City of San Diego must approve any rate adjustments in writing before they become effective.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

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I. **City’s Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. *Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.*

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

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

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

Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in opportunities.

Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

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

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

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

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

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

1. For proposals ranking as qualified or acceptable, or any higher ranking, the City shall apply a maximum of 12 additional points for SLBE or ELBE participation. Points will be awarded as follows:
  - a. 20% participation – 5 points
  - b. 25% participation – 10 points
  - c. SLBE or ELBE as prime contractor – 12 points

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

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

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

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

1. Outreach Efforts. Description of Consultant's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms including SLBE/ELBE/DBE/MBE/WBE/DVBE/OBE.
2. Past Participation Levels. The Consultant shall list all Subcontractor and Supplier past participation levels on each project (preferably in the City or County of San Diego) in response to Section 6.2.3 of the RFP by using the Past Participation List (Attachment DD). Include the name of project, type of project, value of project, Subcontractor and Supplier firm name, Subcontract amount and identification of the firm's ownership as a certified Minority Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), Other Business Enterprise (OBE), Small Disadvantaged Business (SDB), Woman Owned Small Business (WOSB), Service Disabled Veteran Owned Business (SDVOSB), Historically Underutilized Business Zones (Hub Zone), Emerging Local Business Enterprise (ELBE) or Small Local Business Enterprise (SLBE). To receive credit for past participation levels by certified firms, Consultant shall provide copies of all listed consultant's certifications with the Proposal.
3. Equal Opportunity Employment. Listing of Consultant's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Consultant's *Workforce Report* as compared to the County's Labor Force Availability.
4. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

- B. In accordance with the City's Equal Opportunity Commitment, the City will consider the four factors described above as part of the evaluation process. A maximum of 13 additional points will be awarded based on consideration of these four factors. Points awarded based on Consultants demonstrated commitment to equal opportunity will be in addition to any points awarded for SLBE or ELBE participation as described in Section IV.

VI. **Definitions.**

**Commercially Useful Function:** an 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, an 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 which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party (ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

**Disabled Veteran Business Enterprise (DVBE):** a certified business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party (ies). 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 which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, Latinos, or a combination and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

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

**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.

**VIII. List of Attachments.**

**AA. Disclosure of Discrimination Complaints**

**BB. Work Force Report**

**CC. Subcontractors List**

**DD. Consultant Past Participation List**

## DISCLOSURE OF DISCRIMINATION COMPLAINTS

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

CHECK ONE BOX ONLY.

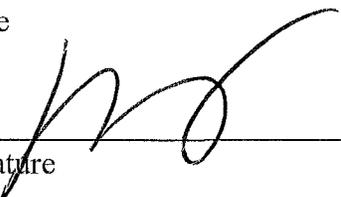
- The undersigned certifies that within the past 10 years the Design Professional has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Design Professional discriminated against its employees, subcontractors, vendors or suppliers.
  
- The undersigned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

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

Design Professional Name O'Day Consultants, Inc.

Certified by Patrick N. O'Day Title President

Name



Signature

Date December 1, 2015

**USE ADDITIONAL FORMS AS NECESSARY**



EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

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

WORK FORCE REPORT
ADMINISTRATIVE

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law.

NO OTHER FORMS WILL BE ACCEPTED

CONTRACTOR IDENTIFICATION

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

Name of Company: O'Day Consultants, Inc.

AKA/DBA:

Address (Corporate Headquarters, where applicable): 2710 Loker Avenue West, Suite 100

City Carlsbad County San Diego State CA Zip: 92010

Telephone Number: (760) 931-7700 FAX Number: (760) 931-8680

Name of Company CEO: Patrick N. O'Day

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: ( )

Type of Business: Corporation Type of License: Professional Land Surveyor

The Company has appointed: Lupe Ortega

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: 2710 Loker Avenue West, Suite 100, Carlsbad, CA 92010

Telephone Number: (760) 931-7700 ext. 107 FAX Number: (760) 931-8680 Email: lupeo@odayconsultants.com

- [ X ] 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 O'Day Consultants, Inc. (Firm Name)

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

herein is true and correct. This document was executed on this 1st day of December, 2015

(Authorized Signature) [Handwritten Signature]

Patrick N. O'Day
(Print Authorized Signature)

**WORK FORCE REPORT** – NAME OF FIRM: O'Day Consultants DATE: 12/1/15

OFFICE(S) or BRANCH(ES): Carlsbad, CA COUNTY: San Diego

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

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

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities		
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	
Management & Financial				1								1	2		
Professional															
A&E, Science, Computer				1		1						10	2		
Technical				1	1							3	1		
Sales															
Administrative Support													1		
Services															
Crafts															
Operative Workers															
Transportation															
Laborers*															

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

Totals Each Column	0	0	0	3	1	1	0	0	0	0	14	6	0	0
--------------------	---	---	---	---	---	---	---	---	---	---	----	---	---	---

Grand Total All Employees 25

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

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

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															



# CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm’s work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 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 Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> 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.<sup>1</sup>

## MANAGING OFFICE WORK FORCE

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

## TYPES OF WORK FORCE REPORTS

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

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

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

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

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

### **Management & Financial**

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

### **Professional**

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

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

**Architecture & Engineering, Science, Computer**

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

**Technical**

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

**Sales**

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

**Administrative Support**

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

**Services**

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

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

**Crafts**

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

**Operative Workers**

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

**Transportation**

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

**Laborers**

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

## SUBCONTRACTOR PARTICIPATION LIST

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

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

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	SLBE/ELBE (MBE/ WBE/DBE/ DVBE/OBE*)	WHERE CERTIFIED**
AeroTech Mapping 29970 Technology Drive Suite 220-C Murrieta, CA 92563	Aerial Mapping Surveys	10-15%	MBE	CA Public Utilities Commission
J.T. Kuer & Company 10251 Vista Sorrento Parkway Suite 150 San Diego, CA 92121	Construction Cost Estimates	1-5%	OBE	N/A
Merkel & Associates 5434 Ruffin Road San Diego, CA 92123	Hydrographic Surveys	1%	WBE	CA Public Utilities Commission
Power Plus 508 West Mission Avenue Suite 101 Escondido, CA 92025	Underground (SDG&E) Surveys	5-10%	OBE	N/A

List of Abbreviations:

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

\* Listed for informational purposes only.

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

**CONSULTANT PAST PARTICIPATION LIST**

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: California State Parks On-Call Land Surveying Professional Services – Southern Services Center; Work Order #1: Carpinteria ADA Phase 2 Survey  
 TYPE OF PROJECT: As-Needed Land Surveying Services; topographic/aerial mapping surveys DOLLAR VALUE OF CONTRACT: \$22,197

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB®	WHERE CERTIFIED®
Name: <u>AeroTech Mapping</u> Address: <u>29970 Technology Drive Ste 220-C</u> City: <u>Murrieta</u> State: <u>CA</u> Zip: <u>92563</u> Phone: <u>(760) 606-5020</u>	Vendor	Aerial photography/mapping	\$3,360	MBE	CPUC
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____					
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____					

① As appropriate, Consultant shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and 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    | Certified Emerging Local Business Enterprise   | ELBE    |
| Certified Small Local Business Enterprise     | SLBE   | Small Disadvantaged Business                   | SDB     |
| Woman-Owned Small Business                    | WoSB   | HUBZone Business                               | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB |  |         |

② As appropriate, Consultants shall indicate if Subcontractor or Supplier is certified by:

- |  |        |  |          |
|--|--------|--|----------|
| City of San Diego                                    | CITY   | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission               | CPUC   | City of Los Angeles                              | LA       |
| State of California's Department of General Services | CADoGS | U.S. Small Business Administration               | SBA      |
| State of California                                  | CA     |  |          |

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

**CONSULTANT PAST PARTICIPATION LIST**

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: (Former) San Diego Redevelopment Agency (Now City of San Diego) As-Needed Civil Engineering Consulting Services  
 TYPE OF PROJECT: Civil Engineering, Surveying, Mapping DOLLAR VALUE OF CONTRACT: \$96,588.51

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, W <sub>o</sub> SB, HUBZone, OR SDVOSB <sup>®</sup>	WHERE CERTIFIED <sup>®</sup>
Name: <u>Urban Systems Associates</u> Address: <u>8451 Miralani Drive, Suite A</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92126</u> Phone: <u>(858) 560-4911</u>	Designer	Traffic Engineering	\$5,000	ELBE	CITY
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____					
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____					

① As appropriate, Consultant shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and 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               | Certified Emerging Local Business Enterprise   | ELBE    |
| Certified Small Local Business Enterprise     | SLBE              | Small Disadvantaged Business                   | SDB     |
| Woman-Owned Small Business                    | W <sub>o</sub> SB | HUBZone Business                               | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB            |  |         |

② As appropriate, Consultants shall indicate if Subcontractor or Supplier is certified by:

- |  |        |  |          |
|--|--------|--|----------|
| City of San Diego                                    | CITY   | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission               | CPUC   | City of Los Angeles                              | LA       |
| State of California's Department of General Services | CADoGS | U.S. Small Business Administration               | SBA      |
| State of California                                  | CA     |  |          |

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

**CONSULTANT PAST PARTICIPATION LIST (Page 1 of 2)**

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: Civic San Diego Civil Engineering/Surveying Services

TYPE OF PROJECT: Civil Engineering, Surveying, Mapping

DOLLAR VALUE OF CONTRACT: \$484,241.20 billed to date

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB®	WHERE CERTIFIED®
Name: AeroTech Mapping Address: 29970 Technology Drive Ste 220-C City: Murrieta State: CA Zip: 92563 Phone: (760) 606-5020	Vendor	Aerial photography/mapping	\$10,252.25	MBE	CPUC
Name: J.T. Kruer & Company Address: 10251 Vista Sorrento Pkwy #150 City: San Diego State: CA Zip: 92121 Phone: (858) 550-0044	Vendor	Construction cost estimates	\$9,711.39	OBE	N/A
Name: Power Plus Address: 508 West Mission Avenue, Suite 101 City: Escondido State: CA Zip: 92025 Phone: (760) 535-5005	Designer	Underground utility coordination	\$5,750.00	OBE	N/A

① As appropriate, Consultant shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and 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    | Certified Emerging Local Business Enterprise   | ELBE    |
| Certified Small Local Business Enterprise     | SLBE   | Small Disadvantaged Business                   | SDB     |
| Woman-Owned Small Business                    | WoSB   | HUBZone Business                               | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB |  |         |

② As appropriate, Consultants shall indicate if Subcontractor or Supplier is certified by:

- |  |        |  |          |
|--|--------|--|----------|
| City of San Diego                                    | CITY   | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission               | CPUC   | City of Los Angeles                              | LA       |
| State of California's Department of General Services | CADoGS | U.S. Small Business Administration               | SBA      |
| State of California                                  | CA     |  |          |

The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.

## CONSULTANT PAST PARTICIPATION LIST (Page 2 of 2)

The Consultant shall complete this form for each project listed in response to RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: Civic San Diego Civil Engineering/Surveying Services

TYPE OF PROJECT: Civil Engineering, Surveying, Mapping

DOLLAR VALUE OF CONTRACT: \$484,241.20 billed to date

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVO SB®	WHERE CERTIFIED®
Name: <u>San-Lo Aerial Surveys</u> Address: <u>4879 Viewridge Ave</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92123</u> Phone: <u>(858) 565-1024</u>	Vendor	Aerial photography/mapping	\$2,029.63	OBE	N/A
Name: <u>Visual Concepts</u> Address: <u>7297 Ronson Road, Suite C</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92111</u> Phone: <u>(858) 278-4503</u>	Designer	Lighting Design/Street Lighting Plans	\$29,325.00	ELBE MBE	CITY CALTRANS
Name: <u>Urban Systems Associates</u> Address: <u>8451 Miralani Dr</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92126</u> Phone: <u>(858) 560-4911</u>	Designer	Traffic Engineering	\$5,864.50	ELBE	CITY

① As appropriate, Consultant shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and 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	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVO SB		

② As appropriate, Consultants shall indicate if Subcontractor or Supplier is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	City of Los Angeles	LA
State of California's Department of General Services	CADoGS	U.S. Small Business Administration	SBA
State of California	CA		

**The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.**

## CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

**PROJECT TITLE:** As-Needed Consultants Services for  
Land Surveying Services (H156449)

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

O'Day Consultants, Inc.  
Name under which business is conducted

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

Signed	 _____
Printed Name	<u>Patrick N. O'Day</u>
Title	<u>President</u>
Date	<u>December 1, 2015</u>

DISCLOSURE DETERMINATION FOR CONSULTANT

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

- 1. Department / Board / Commission / Agency Name: PUBLIC WORKS DEPT./CITY OF SAN DIEGO
2. Name of Specific Consultant & Company: O'Day Consultants
3. Address, City, State, ZIP: 2710 Loker Ave. West, Ste. 100 Carlsbad, CA 92010
4. Project Title (as shown on 1472, "Request for Council Action"): As-Needed Land Surveying Services H156449
5. Consultant Duties for Project: land surveying and mapping

6. Disclosure Determination [select applicable disclosure requirement]:

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

- or -

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

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

- or -

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

Blank lines for listing specific economic interests.

By: [Signature] Deputy Director
[Name/Title]\*

11/19/2015
[Date]

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

**DEFINITION OF “CONSULTANT”**

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

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

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

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

**CITY OF SAN DIEGO**  
**Consultant Performance Evaluation**

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

**Section I**

1. PROJECT DATA		2. CONSULTANT DATA																
1a. Project (title, location):  1b. Brief Description:  1c. Budgeted Cost: \$ _____ WBS/IO: _____	2a. Name and address of Consultant:  2b. Consultant's Project Manager: _____ Phone: (____) _____																	
3. CITY DEPARTMENT RESPONSIBLE																		
3a. Department (include Division): _____	3b. Project Manager (address & phone): _____  Phone: (____) _____																	
4. & 5. CONTRACT DATA (DESIGN PHASE <input type="checkbox"/> OR CONSTRUCTION SUPPORT <input type="checkbox"/> )																		
4. Design Phase																		
Agreement Date: _____ Resolution #: R- _____		Initial Contract Amount 4a. \$ _____ 4b. Prev. Amendment(s): \$ _____																
4c. Current Amendment: \$ _____ / Number: _____		4d. Total Agreement (4a. + 4b. + 4c.): \$ _____																
4d. Type of Work (design, study, as-needed services, etc.): _____	4e. Key Design Phase Completion Dates:		Final Construction Est. Completion: _____ Actual Completion: _____															
	<table border="0" style="width:100%;"> <tr> <td>% of Design Phase Completion</td> <td style="text-align: center;">%</td> <td style="text-align: center;">%</td> <td style="text-align: center;">100%</td> </tr> <tr> <td>Agreed Delivery Date: _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Actual Delivery Date: _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Acceptance of Plans/Specs.: _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>	% of Design Phase Completion	%	%	100%	Agreed Delivery Date: _____	_____	_____	_____	Actual Delivery Date: _____	_____	_____	_____	Acceptance of Plans/Specs.: _____	_____	_____	_____	
% of Design Phase Completion	%	%	100%															
Agreed Delivery Date: _____	_____	_____	_____															
Actual Delivery Date: _____	_____	_____	_____															
Acceptance of Plans/Specs.: _____	_____	_____	_____															
5. Construction Support																		
5a. Contractor _____ (name and address)		Phone (____) _____																
5b. Superintendent _____																		
5c. Notice to Proceed _____ (date)  5d. Working days _____ (number)  5e. Actual Working days _____ (number)	5f. Change Orders: Errors/Omissions _____ % of const. cost \$ _____ Unforeseen Conditions _____ % of const. cost \$ _____ Changed Scope _____ % of const. cost \$ _____ Changed Quantities _____ % of const. cost \$ _____ Total Construction Cost \$ _____																	
6. OVERALL RATING FOR DESIGN PHASE <input type="checkbox"/> OR FOR CONSTRUCTION SUPPORT <input type="checkbox"/>																		
	Excellent	Satisfactory	Poor															
6a. Quality of Plans/Specifications/As-Builts Compliance with Contract & Budget Responsiveness to City Staff	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>															
6b. Overall Rating _____																		
7. AUTHORIZING SIGNATURES																		
7a. Project Manager _____		Date _____																
7b. Section Head _____		Date _____																

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

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

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

(\*Supporting documentation attached: Yes  No )

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

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a bidder or proposer has the capacity of 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 information solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to the execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Respondents must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render the bid or proposal no-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

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

As-Needed Consultant Services for Land Surveying Services (H156449)

**B. BIDDER/PROPOSER INFORMATION:**

O'Day Consultants, Inc.

Legal Name	DBA		
2710 Loker Ave W #100	Carlsbad	CA	92010
Street Address	City	State	Zip
Patrick N. O'Day, President	(760) 931-7700 x 104	(760) 931-8680	
Contact Person, Title	Phone	Fax	

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?

Yes     No

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

2. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?

Yes     No

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

**D. BUSINESS ORGANIZATION/STRUCTURE:**

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

**Corporation**      Date incorporated: 9/23/1981      State of incorporation: CA

List corporation's current officers:      President: Patrick N. O'Day  
    Vice Pres: \_\_\_\_\_  
    Secretary: Patrick N. O'Day  
    Treasurer: \_\_\_\_\_

Is your firm a publicly traded corporation?  Yes  No

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

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

**Limited Liability Company** Date formed: \_\_\_ / \_\_\_ / \_\_\_ State of formation: \_\_\_\_\_  
List names of members who own ten percent (10%) or more of the company:

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

**Partnership** Date formed: \_\_\_ / \_\_\_ / \_\_\_ State of formation: \_\_\_\_\_  
List names of all firm partners:

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

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

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

**Joint Venture** Date formed: \_\_\_ / \_\_\_ / \_\_\_  
List each firm in the joint venture and its percentage of ownership:

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

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

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

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

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

2. In the past five (5) years, has your firm been denied bonding?  
 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 file a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors? **No**

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

Name of Bank: Banner Bank

Point of Contact: Ms. Francisca Pardo

Address: 5901 Priestly Drive, Suite 160, Carlsbad, CA 92008

Phone Number: (760) 448-8300

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

#### F. PERFORMANCE HISTORY:

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

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

7. Performance References:

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

Company Name: California State Parks

Contact Name and Phone Number: Mr. Jeff Brown (619) 221-7043

Contact Email: jeff.brown@parks.ca.gov

Address: 2797 Truxtun Road, San Diego, CA 92106

Contract Date: November 2013 - present

Contract Amount: Not to exceed \$200,000

Requirements of Contract: Land Surveying Professional Services

Company Name: City of San Diego (formerly City of San Diego Redevelopment Agency)

Contact Name and Phone Number: Mr. James "Jim" Davies (619) 236-6540

Contact Email: jdavies@sandiego.gov

Address: 202 C Street, San Diego, CA 92101

Contract Date: 2010-2012

Contract Amount: Not to exceed \$250,000

Requirements of Contract: Surveying and civil engineering services

Company Name: Civic San DiegoContact Name and Phone Number: Ms. Gretchen Sorenson (619) 533-7113Contact Email: sorenson@civicsd.comAddress: 401 B Street, Fourth Floor, San Diego, CA 92101Contract Date: 2014 – presentContract Amount: \$484,241.20 billed to dateRequirements of Contract: Surveying and civil engineering services**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 entity involved, specific infraction(s) or violation(s), dates of instances, and outcome with current status.

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

Yes     No

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

**H. BUSINESS INTEGRITY:**

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

Yes     No

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

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

Yes     No

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

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

Yes     No

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

**I. WAGE COMPLIANCE:**

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

**J. STATEMENT OF SUBCONTRACTORS:**

Please provide the names and information for all subcontractors used in the performance of the proposed contract, and what portion of the work will be assigned to each subcontractor. Subcontractors may not be substituted without written consent of the City. Use Attachment "A" if additional pages are necessary. If not subcontractors will be used, please write "Not Applicable."

Company Name: AeroTech Mapping

Contact Name and Phone Number: Mr. Mike Dauer (619) 606-5020

Contact Email: MikeDauer@atmlv.com

Address: 29970 Technology Drive Ste 220-C, Murrieta, CA 92563

Contract Date: 2016-2019 (estimated)

Sub-Contract Dollar Amount: 10-15%

Requirements of Contract: Aerial photography and mapping

What portion of the work will be assigned to this subcontractor: 10-15%

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

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

Company Name: J.T. Kruer & Company

Contact Name and Phone Number: Mr. Jonathan Kruer (858) 550-0044

Contact Email: itkruer@aol.com

Address: 10251 Via Sorrento Parkway, Suite 150, San Diego, CA 92121

Contract Date: 2016-2019 (estimated)

Sub-Contract Dollar Amount: 1-5 %

Requirements of Contract: construction cost estimates

What portion of the work will be assigned to this subcontractor: 1-5 %

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

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

**K. STATEMENT OF AVAILABLE EQUIPMENT**

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

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

Equipment Description: Survey trucks

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: 4

Year, Make & Model: 2006 to 2013 Chevrolet pick-up with utility box

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

Equipment Description: Survey instruments

Owned  Rented  Other  (explain below)

If Owned, Quantity Available: See below

Year, Make & Model: 4 Trimble GPS, 2 Trimble Total Stations, 1 Spectra Total Station 2013-2015

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

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

Owned  Rented  Other  (explain below)

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

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

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

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

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated: 12/02/2015

**Complete all questions and sign below.**

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

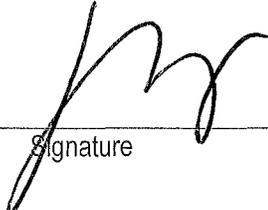
I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

- (a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notification 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.**

Patrick N. O'Day, President

\_\_\_\_\_  
Name and Title

  
\_\_\_\_\_  
Signature

December 2, 2015

\_\_\_\_\_  
Date

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

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

Company Name: Merkel & Associates

Contact Name and Phone Number: Mr. Keith Merkel (858) 560-5465

Contact Email: kmerkel@merkelinc.com

Address: 5434 Ruffin Road, San Diego, California 92123

Contract Date: 2016-2019 (estimated)

Sub-Contract Dollar Amount: 1%

Requirements of Contract: Hydrographic surveys

What portion of the work will be assigned to this subcontractor: 1%

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or **[OBE]**? (Circle one) YES  NO

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

Company Name: Power Plus

Contact Name and Phone Number: Mr. Britain Yonker (760) 535-5005

Contact Email: byonker@powerplus.com

Address: 508 W Mission Avenue, Suite 101, Escondido, CA 92025

Contract Date: 2016-2019 (estimated)

Sub-Contract Dollar Amount: 5-10 %

Requirements of Contract: Underground (SDG&E) surveys

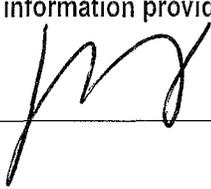
What portion of the work will be assigned to this subcontractor: 5-10 %

Is the Subcontractor a certified SLBE, ELBE, MBE, DBE, DVBE, or **[OBE]**? (Circle one) YES  NO

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

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

Patrick N. O'Day, President  
 Print Name, Title

  
 Signature

December 2, 2015  
 Date

**EQUAL BENEFITS ORDINANCE  
CERTIFICATION OF COMPLIANCE**

# EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



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

### COMPANY INFORMATION

Company Name: O'Day Consultants, Inc.	Contact Name: Patrick N. "Pat" O'Day
Company Address: 2710 Loker Avenue West, Suite 100	Contact Phone: (760) 931-7700 ext 104
Carlsbad, CA 92010	Contact Email: pato@odayconsultants.com

### CONTRACT INFORMATION

Contract Title: As-Needed Consultants Services for Land Surveying Services	Start Date: 2016
Contract Number (if no number, state location): H156449	End Date: 2019

### SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

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

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

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

### CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

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

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

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

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

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

Patrick N. O'Day, President

December 2, 2015

Name/Title of Signatory

Signature

Date

### FOR OFFICIAL CITY USE ONLY

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

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

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

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

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

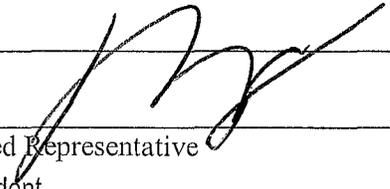
General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California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

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

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

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

O'Day Consultants, Inc.  
 \_\_\_\_\_  
 Name of Firm

  
 \_\_\_\_\_  
 Signature of Authorized Representative

Patrick N. O'Day, President  
 \_\_\_\_\_  
 Printed/Typed Name

December 2, 2015  
 \_\_\_\_\_  
 Date

## CONSULTANT CERTIFICATION

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

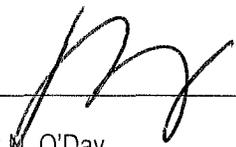
**PROJECT TITLE:** As-Needed Consultant Services for Land Survey Services (156449)

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

O'Day Consultants

(Name under which business is conducted)

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

Signed  \_\_\_\_\_

Printed Name Patrick W. O'Day

Title President