

**DUPLICATE ORIGINAL**

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
NV5, INC.  
FOR  
CONSTRUCTION MANAGEMENT SERVICES FOR  
MIRAMAR CLEARWELL IMPROVEMENTS**

**CONTRACT NUMBER: H156522**

DOCUMENT NO. 310351  
FILED APR 12 2016  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

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## **CONSULTANT AGREEMENT EXHIBITS**

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

**AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND NV5, Inc.  
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and NV5, Inc. [Consultant] for the Consultant to provide Professional Services to the City for construction management services.

**RECITALS**

The City wants to retain the services of a construction management services firm to provide construction management services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services. 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.

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 Consultant shall perform the Professional Services as set forth in the written Scope of Services (Exhibit A) at the direction of the City

**1.2 Contract Administrator.** The Public Works Department is the contract 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. However, 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 his designee, unless the Agreement specifies otherwise.

**1.3 City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in the Scope of Services 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 or time for performance 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, 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 change in the Scope of Services (Exhibit A), Compensation and Fee Schedule (Exhibit B), or Time Schedule (Exhibit C), 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.** If applicable, the Consultant shall comply with the following: Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement 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, it shall be effective until completion of the Scope of Services or May 1, 2021 whichever is the earliest but not to exceed five years unless approved by City ordinance.

**2.2 Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

**2.3 Notification of Delay.** The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Time Schedule (Exhibit C). 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 City's requirements for the Professional Services, 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 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 satisfactorily 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 satisfactorily 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 documents or records related to the Consultant's Professional Services. 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 satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. 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 total compensation payable by the City to the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, shall not exceed \$7,444,182. The compensation for the Scope of Services shall not exceed \$7,089,697 and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed \$354,485. Moreover, the total compensation to be paid to the Consultant by the City for all work performed under each phase of this Agreement shall not exceed the amount for each phase as specified in the Phased Funding Schedule in Section 3.1.1 unless said amount is modified in writing by an amendment to this Agreement.

**3.1.1 Phased Funding Schedule.** The work to be performed under this Agreement shall be performed during the separate and specific phases identified in the following Phased Funding Schedule.

<b>PHASED FUNDING SCHEDULE</b>		
<u>Funding Phases</u>	<u>Dates</u>	<u>Total Not to Exceed Amount</u>
1	From date of execution of Agreement through completion of Agreement	\$603,627
2	From (09/01/2016) through completion of the Agreement	\$1,992,504
3	From (09/01/2017) through completion of the Agreement	\$2,055,343
4	From (09/01/2018) through completion of the Agreement	\$1,598,813

5	From (09/01/2019) through completion of the Agreement	\$1,193,895
Total		\$7,444,182

**3.1.2** The Parties expressly agree and understand that each Funding Phase is subject to funds being appropriated and authorized by the City Council each fiscal year. The City’s obligations and the Consultant’s obligations under this multi-phase contract which shall be funded by multi-phase funding authorizations are as follows:

- a. Only Phase 1 funding is available at time of contract award and no other phases are authorized. The City shall so notify the Consultant in writing when the next Phase has been funded.
- b. The City is not obligated to the Consultant for any amount over that specified in the Funding Schedule that has been authorized by the City Council.
- c. The Consultant is not obligated to incur costs for the performance of work required for any subsequent Funding Phase after the first phase, until written notification is received from the City of the availability of funds for the next Phase. The Consultant’s obligation shall increase only to the extent authorized by the City.
- d. If the Agreement is terminated under Section 2.6 “City’s Right to Terminate for Convenience”, the settlement proposal shall be determined pursuant to procedures established in that section. The Consultant shall be entitled to compensation for only those Services provided under Funding Phases that have been authorized by the City.
- e. The Phase Funding schedule may be amended as required by the City.

**3.1.3** The not-to-exceed amounts stated in the Funding Schedule in Paragraph 3.1.1 above include the following two specific elements:

- 3.1.3.1 Work described in this AGREEMENT and its Exhibits; and
- 3.1.3.2 Additional Services that may be authorized under Paragraph 3.2 of this AGREEMENT.

Funding Phases	Fixed Amount	Not to Exceed Amount for Additional Services	Total Not to Exceed Amount
1	\$553,627	\$50,000	\$603,627
2	\$1,892,504	\$100,000	\$1,992,504
3	\$1,905,343	\$150,000	\$2,055,343
4	\$1,544,328	\$54,485	\$1,598,813
5	\$1,193,895	\$0	\$1,193,895

<b>Total</b>	\$7,089,697	\$354,485	\$7,444,182
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**3.2 Additional Services.** The City may require that the Consultant perform additional Professional Services [Additional Services] beyond those basic services described in the Scope of Services [Exhibit A]. Prior to the Consultant 's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule [Exhibit B]. The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

**3.3 Manner of Payment.** The City shall pay the Consultant in accordance with the above Phased Funding Schedule and the Compensation and Fee Schedule [Exhibit B]. 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 Phased Funding Schedule and 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.

**3.4 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.

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

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

**4.1 Industry Standards.** The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent construction management firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the 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 required in Section 4.3.3 of this Agreement; and (c) confirmed that all policies contain the specific provisions required in Section 4.3.4 of this Agreement. 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 Professional Liability.** For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Professional Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Professional Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

**4.3.2 Deductibles.** All deductibles on any policy shall be the responsibility of the 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 automobile 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.

**4.3.5 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, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The 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 Consultant's organization must make disclosures of relevant financial interests is set forth in the Determination Form (Exhibit H).

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

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

**4.15 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.

**4.15.1. 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.

**4.15.1.1.** 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.

**4.15.1.2.** 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.

**4.15.2. 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.

**4.15.3. 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.

**4.15.3.1.** 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.

**4.15.4. 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.

**4.15.5. 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.

**4.15.6. 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.

**4.15.7. 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."

**4.15.8. 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.

**4.15.9. 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.

**4.15.9.1.** 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 Consultant, 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 Consultant, 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.

**8.9 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.

## **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, Attn: Michael Marks, MS18, 9485 Aero Drive, San Diego CA 92123, and notice to the Consultant shall be addressed to: NV5, Inc., Attn: Roland Elvera, 15092 Avenue of Science, Suite 200, San Diego, CA 92128.

**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: Carmen Kasner and Roland Elvera [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.

**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 F).

**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 G. 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 Equal Benefits Ordinance.** Unless an exception applies, Consultant shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (§22.4304(f)). Failure to maintain equal benefits is a material breach of this Agreement. By signing this Agreement, Consultant certifies that Consultant is aware of, and will comply with, this City-mandated clause throughout the duration of the Agreement.

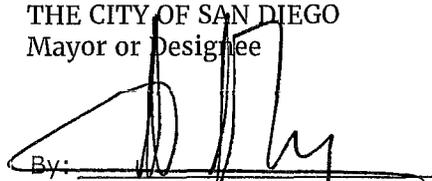
**9.25 Public Records.** This contract is public document subject to the California Public Records Act, and as such may be subject to public review per Exhibit I (Regarding Information Requested under the California Public Records Act).

*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- 310351, authorizing such execution, and by the Consultant pursuant to the Certificate of Secretary.

Dated this 28<sup>th</sup> day of APRIL, 2016.

THE CITY OF SAN DIEGO  
Mayor or Designee

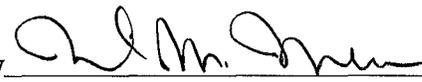
By:   
Albert P. Redhany  
Deputy Director  
Public Works Contracts

I HEREBY CERTIFY I can legally bind NV5, Inc. and that I have read all of this Agreement, this 7<sup>th</sup> day of March, 2016.

By:   
Alex Hockman  
President

I HEREBY APPROVE the form of the foregoing Agreement this 28<sup>th</sup> day of April, 2016.

JAN I. GOLDSMITH, City Attorney

By:   
Deputy City Attorney

## SCOPE OF SERVICES

### MIRAMAR CLEARWELL IMPROVEMENTS PROJECT MIRAMAR WATER TREATMENT PLANT CONSTRUCTION MANAGEMENT SERVICES

#### GENERAL INFORMATION

The City of San Diego's Public Works Department (PW) Field Engineering Division (FE) is responsible for providing construction management, inspection, material testing and land surveying services for public improvements and private land development which benefit the community, improve safety and comply with engineering standards. The City of San Diego is currently in the process of completing the design of the Miramar Clearwell Improvements Project (MCI) at the Miramar Water Treatment Plant (MWTP). It is the intent of PW FE to hire a Construction Management Firm (CMF) to provide professional services under this contract.

#### PROJECT INFORMATION

The MWTP, first constructed in 1962, is one of San Diego's three drinking water treatment plants. Since its last major modification in 1974 when the second clearwell was built, more stringent building codes have been established. As both clearwells now approach the end of their service lives, it is necessary for the city to replace the clearwells in order to maintain water quality and reliability in the region.

The project scope of the Miramar Clearwell Improvements Project (MCI) includes:

- Replacement of the existing clearwells (CW 1 and CW 2) with two new rectangular clearwells (59 MG).
- 215 MGD New Chlorine Contact Chamber (CCC).
- Two new clearwell inlets: from the chlorine contact chamber.
- New clearwell effluent pipelines to be located on the north and south side of the clearwell connected to the Miramar Pipeline.
- 215 MGD Low Lift Vertical Axial Flow Pump Station and Building.
- Replacement of portion of the existing Miramar WTP Pipeline.
- New 5675 SF maintenance facility.
- New security guard shack and entrance security surveillance equipment.
- Landscaping and paving for the elements described above.

- Installation of One (1) MW photovoltaic solar system atop CW 2.

To assist in preparation for your proposal, an FTP site has been created for your review of the draft 100% contract documents. The FTP site is:

<ftp://ftp.sannet.gov/OUT/ECP/AEP/Miramar%20Clearwell%20Improvements%20Data/>

It is a requirement that MWTP not be interrupted during construction. Therefore, each clearwell will be constructed independently of one another including the associated site piping and existing piping and connections. The sequencing includes the independent isolation of the clearwells for pipeline and vault construction, shoring for protection of pipelines and the remaining clearwell during construction. It is essential that the Maintenance Of Plant Operation (MOPO) be coordinated by the CMF in order to maintain water reliability for the region.

## **CONSTRUCTION COSTS AND SCHEDULES**

The design firm of Kleinfelder/Simon Wong is the designer of record for the MCI project. Construction of this project is slated to start in February 2016 and be completed in April of 2020 (1025 Working Days). There is a potential the CMF agreement duration will be over 5 years and would require an ordinance approved by the City Council. The estimated construction cost for the MIC is estimated at \$93,000,000.

## **SCOPE OF WORK**

The CMF shall perform the services outlined in this Scope of Services and shall include, but not be limited to, Tasks 1 through 5 (below) that include pre-construction activities, construction management, field engineering and administration, inspection and additional services for the Miramar Clearwell Improvements Project. It is the City's expectation the CMF will enforce the contract documents, take ownership and accountability for their work and develop and foster a partnering relationship with the Construction Contractor in order to provide the highest quality of services to the citizens of San Diego.

### *Task 1 – Pre-Construction Activities*

The CMF shall provide experienced staff, led primarily by the Construction Manager (CM), to perform services under this task:

- 1.0 Kickoff and Team Coordination: Participate in a kickoff meeting with City staff, the design engineer, and other project team members. CMF is expected to familiarize themselves with the roles and responsibilities of all team members prior to the meeting, and be prepared to discuss the schedule and sequence of events leading up to construction. The CMF will prepare exhibits in conjunction with the design engineer to promote a better understanding of the sequence of work including shutdowns and construction phasing.

Coordinate with other team members to prepare for construction and to generally foster an understanding of the status of work performed to date if required.

- 1.1 Pre-Construction Conferences: Arrange and conduct a pre-construction conference to introduce project personnel, review administrative procedures, discuss environmental mitigation and safety requirements, and review coordination procedures in accordance with FE standards.
- 1.2 Construction Management Plan: The CMF shall develop a Construction Management Plan (CMP). The CMP shall include but not be limited to, at a minimum, all project related items contained in the items bulleted at the end of this paragraph. This plan shall be used as the CMP's plan for how they will be handling the day to day business of managing the construction for this project. A draft CMP shall be prepared and distributed 30 days after award of the Construction Management Services contract. The City shall have an opportunity to make comments on the draft CMP. The CMF shall incorporate those comments, make necessary revisions to the CMP and re-distribute the draft CMP 30 days after the City's review time, for the City's acceptance. In addition, the City shall review and approve all procedures developed subsequent to the accepted CMP. The CMP shall include:
  - Project description
  - Milestone schedule
  - QA/ QC plan including project specific checklists arranged in CSI format
  - Organization
  - Staffing Plan with roles and responsibilities
  - Environmental paleontological considerations
  - CMF's Standard Operating Procedures (SOP's)
  - Management information system
  - Communication protocol
  - Guidelines and procedures for processing project paperwork
  - Construction inspection plan, guidelines, and procedures to include at least:
    - Explanation of responsibilities, authorities, limitations and relationships of onsite staff
    - Series of general inspection guidelines arranged in Construction Specifications Institute (CSI) Uniform Construction Index format
    - Standard tests and details specific to the projects
    - Project specific forms such as: daily reports, contract modifications, cost reimbursable sheets, etc.
    - Use of photographs and how they will be documented and stored for ease of retrieval (photographs shall include but not be limited to: pre-

construction activities, progress records of bid items and installations; completed underground structures prior to backfill; material and equipment delivery and conditions; material stockpiles showing condition, location, and method of storage; defective or rejected work; 'typical items' frequently referred to in daily reports; change order activities; typical construction tools and special tools)

1.3 Public Relations/Outreach (None)

- There will be no Public Relations/Outreach required for this contract. It is being provided under a separate contract.
- The CMF's MCI team shall be available throughout the project to assist in Outreach and Public Relations on issues relating to the construction of the project.

*Task 2 – Construction Management*

The CMF shall provide experienced staff, led primarily by the Construction Manager (CM), to perform services under this task:

- 2.1 Coordination and Correspondence: Serve as the focal point for coordination among the Construction Contractor, Owner, Design Consultant, and other parties. Receive Construction Contractor correspondence and prepare and transmit responses.
- 2.2 Change Order Management: Apply The CM's skill and experience to minimize change orders during construction.
- 2.3 Claims Mitigation: The CM shall perform normal claims mitigation work that shall include but not be limited to: minimizing claims resulting from construction by maintaining positive working relationship with Construction Contractor; assisting in identifying and resolving Construction Contractor requests for additional compensation and/or time extensions early and equitably; and applying procedures for enabling work to proceed in the event differences arise over the responsibility for, or cost of, extra work, analyzing Construction Contractor requests for additional compensation and/or additional contract time submitted during construction; preparation of responses to Construction Contractor request for additional compensation and/or additional contract time; administration of Construction Contractor claims to include coordination and monitoring of requests, request resolution negotiations, logging, tracking and informing City on the status of all such requests and formal claims.
- 2.4 Schedule Management: Review Construction Contractor's as-planned schedule for conformance with the specifications and for reasonableness of activity duration, sequence, and cost loading. Review schedule issues with City. Review work progress as compared to the Construction Contractor's monthly schedule updates, and appraise City of any schedule deviations and recovery plans. Analyze the schedule to determine impact of change orders, weather delays on overall project schedule. Negotiate time extensions due to changes, weather, and other delays.

- 2.5 Progress Meetings: The CM will conduct weekly progress meetings with Contractor, Design Engineer, and subcontractor representatives to discuss status of the work and short term work activities planned by the contractor. The CMF will schedule and conduct MOPO meetings for planning, sequencing, and organizing the required plant shut downs. The CMF will provide notice to and coordination with Water Operations and Maintenance personnel on all aspects of any plant shut down. The CMF will request the Contractor and the City of San Diego to submit agenda items for the weekly progress meetings. Using the proposed agenda items, the CMF will prepare the meeting agendas and minutes and distribute to meeting attendees. The CMF will ask for concurrence of the previous week's minutes or ask for suggested corrections. Minutes will then be filed as approved or amended.

Each meeting will cover site safety, construction progress, job problems, and actions requiring clarification of design intent, ambiguities in contract documents, scheduled testing, and other key issues. At each meeting the CMF will present the current status of the construction schedule and any delays or changes to that schedule, explanations for those delays or changes, and will cover appropriate corrective action recommendations. Action monitoring will be implemented for compliance and timely response by all parties. Minutes will be prepared and distributed to the City, Contractor and the Design Engineer.

The CMF shall request the Construction Contractor's progress report data so that he has it at least one (1) day prior to the progress meeting. The CMF shall review the progress report data prior to the progress meeting for discussion at the meeting

- 2.6 Progress Reports: Prepare and submit a status report describing key issues, cost status, schedule status, and project progress. One progress report, issued monthly will cover all the on-going construction activities and provide a look ahead to upcoming issues.
- 2.7 Payment Recommendations: The CMF shall review the Construction Contractor's initial CPM schedule and cost breakdown for reasonableness and ease of monitoring. The CM shall review and recommend for City's approval the Construction Contractors' Schedule of Values. Review Construction Contractor's monthly schedule updates, payment requests, and prepare and process payment recommendations to City. The CMF shall perform an independent assessment of progress including (at a minimum) quantities of material placed, equipment delivered and installed, etc. as the basis for his monthly negotiation of payment.
- 2.8 Safety: The CMF will coordinate with responsible parties to correct conditions that do not meet applicable federal, state and local occupational safety and health laws and regulations throughout the course of construction. Regardless of CMF's efforts in managing its' safety at the job site, the City's construction contractor shall remain solely responsible for all construction safety.
- 2.9 Environmental Coordination: The CMF shall assist in the identification, planning, and scheduling of all environmental work activities as stipulated in the Construction Management Plan. The CM will coordinate with environmental monitors and coordinators in an effort to meet specified mitigation requirements and to minimize the impact of mitigation measures on the construction cost and schedule.

- 2.10 Storm Water Pollution Prevention: The CMF will insure the Storm water Pollution Prevention Plan is enforced. The CM will coordinate with the contractor and set up inspections as required to insure that all Best Management Practices (BMP's) meet City, State and Federal requirements and regulations.
- 2.11 Partnering: The CMF shall develop and foster a partnering relationship with the Contractor and the project team. The details associated with the partnering effort will be developed in conjunction with the Construction Contractor.
- 2.12 Review contractor's potholing plan; monitor and coordinate all contractor's potholing plan, if required, providing a quality control check of the proposed sequence of potholing and resolution of mis-marked utilities.
- 2.13 Coordination with the Department of Safety and Dams (DSOD).

### *Task 3 – Field Engineering and Administration*

The CMF shall provide experienced staff, led primarily by the Construction Manager (CM), to perform services under this task:

- 3.1 Document Control System: Set up and maintain a hardcopy and electronic project file system for all project documents. The CMF shall maintain the project files for the purpose of recording, distributing, and tracking the status of all information to be received, assembled, developed, or otherwise processed as a consequence of the Work to be performed by the CMF under this Agreement. The document controls system shall be in accordance with City guidelines.
- 3.2 Submittal Management: Receive, stamp, and log submittals, perform a cursory review for compliance with the contract documents and distribute for review. Monitor review of submittals to foster timely review and return of submittals to Construction Contractors. Review administrative submittals, such as the construction schedule, and provide to the City recommendations based on the CM's skill and experience. Track all submittals and report out on all delinquent submittals.
- 3.3 Request for Information (RFI) Management: Receive, process, review and monitor RFI's from the Construction Contractor. The CM will review all RFI's for completeness and verify the RFI is reasonable and understandable and perform a technical review to determine if the RFI is addressed adequately in the contract documents. The CM will return the RFI if the question is unclear or, in the opinion of CMF staff, the answer is contained in the contract documents. The CM will prepare responses to RFI's that are related to construction issues and transmit design-related RFI's to Design Engineer and track responses and progress. Track and follow up on delinquent responses with all parties to help assist with the quickest possible resolution of any and all outstanding issues. Estimate, and provide to the City's Construction Manager, the timeline required for a resolution of those items which have the potential to extend the duration of construction. Conduct discussions and/or meetings with the Construction Contractor, Design Consultant, City, and other parties together or separately as needed to resolve RFI's which become either delinquent or critical to the construction schedule.

- 3.4 Change Order and Field Order Management: The CMF will apply its skill and experience to minimize the impact of Change Orders and Field Orders during construction through the timely processing of construction documents; minimizing changes arising from constructive acceleration; working with the Contractor to minimize the impact of field conditions that could result in added work; developing a screening process for change requests initiated by the City or Design Consultant. The CM will review all proposed change and field orders for constructability and notify the City's Construction Manager of any resulting concerns with City.

The CM will develop a process for initiation, negotiation, approval, payment, and documentation of change orders, and perform change order administration, including issuing proposed change orders to contractor, maintaining logs of proposed and approved change orders, receiving Change Order and Field Order quotations from Contractor, negotiating Change Order and Field Order costs and time extensions, processing final negotiated Change Orders and Field Orders, and incorporating approved Change Orders and Field Orders into progress payment schedule of values. This procedure will be reviewed and approved by the City. In addition, the CMF will perform quantity and cost analysis as required for negotiation of Change Orders and Field Orders, evaluate all schedule impacts of changes, and will coordinate with the City as required for processing for Change Orders and Field Orders. The CM shall lead the negotiations with the Construction Contractor.

All contract modifications must be issued through the City's Construction Manager. Approvals and/or denials will be returned through the CMF to the Contractor.

Any Contractor requested changes will be reviewed by the CM, Design Engineer and City to determine if the requested change is acceptable. A favorable decision will trigger the Change Order or Field Order process for additional costs or credits. All time and materials (T&M) Change Orders and Field Orders will be monitored and verified with daily reports. All T&M sheets will be signed within twenty four (24) hours of the actual work being performed

The CM or other field staff on site will prepare independent cost estimates of Change Orders with an estimated cost of over \$20,000. Upon City approval, CMF may have estimates prepared by non field staff.

- 3.5 Coordination of Equipment and Services: Develop lists and monitor status of manufacturer's certificates, services, spare parts and manuals. Receive log and turn over spare parts to City. Receive, log, and distribute manufacturer's O&M manuals for review and acceptance. Coordinate manufacturer's training services with City operations and maintenance staff.
- 3.6 Coordination and Development of Testing and Start-up Procedures: CM to monitor facility construction and help develop Start-up Procedures with the Contractor. Ensure that all testing and start-up efforts are being carried out by the Contractor and are in accordance with the contract requirements. Coordinate with all parties (Contractor, Manufacturer, Design Consultant, and City Personnel) as required to ensure expectations are being met and understandings as to schedule, party participation, and progress and of all required testing and start-up procedures are consistent between all

parties, and act immediately to notify the parties of, and help resolve, any reported or observed disparities.

- 3.7 Contract Closeout: Coordinate warranty services with Construction Contractor and City through final completion and acceptance of the project. Complete documentation and coordination required for final acceptance and closeout of the Construction Contract.
- 3.8 Field Offices: Manage the City offices and office furnishings and equipment for the CMF's use. City to provide the office related direct operations and maintenance expenses for the CMF's office trailer installation including desk top computers.
- 3.9 Minor Variations in the Work: Authorize and notify the City's Construction Manager of minor variations in the work which do not involve an adjustment in the Construction Contractors' contract price nor time for construction and are not inconsistent with the intent of Construct Contract documents.

#### *Task 4 – Inspection Services*

The CMF shall provide experienced construction inspectors and specialty sub-consultants as required to perform services under this task.

- 4.1 Inspection: Provide resident civil, structural, mechanical, electrical/I&C inspectors for day-to-day on-the-job observation of the work in progress. The inspectors shall be qualified to ensure that the work is being completed in accordance with the contract documents. The purpose for these inspections is to identify visible defects and deficiencies in the work of the Construction Contractor and to determine if the provisions of the contract documents are being fulfilled. Coordinate and conduct final inspection. Perform periodic, short duration factory inspections as required. The CMF shall ensure that during periods when certain inspection trades are not needed, the inspectors related to those trades will not be billing the project. The CMF will provide a workload breakdown quarterly to evaluate staffing levels and ensure so that they are being maximized.
- 4.2 Documentation: Prepare daily inspection reports documenting observed construction activities and job site conditions including weather conditions, Construction Contractors' manpower and equipment, work performed, materials used, and site visitors; measure pay quantities; coordinate, witness, and record leakage tests for piping and water bearing structures; take progress photographs and bind and label them; mark up a field blue line set of drawings based on field observations, compare blue lined set with Construction Contractors' red lined set periodically to ensure agreement as to the execution of work and the quick discovery and for resolution of discrepancies. Provide Contractor with information to incorporate this information on the Construction Contractor record drawing markups; prepare punch lists. Coordinate with and review marked up sets as needed with the designer to help ensure the integrity of both the design and the as-built drawings. All documentation shall be made available to City through the Document Control System.

- 4.3 Construction Coordination: Coordinate the activities of materials testing firms, building department inspections, and other services as required. Assist with equipment testing and start-up and other matters relating to construction of the project.
- 4.4 Materials Testing: The City of San Diego's Material Testing Laboratory will provide all of the material testing for concrete strength, trial batching, soils compaction, and aggregate gradation analysis. The CMF may be required to augment these services as additional services but should not be construed as core services and shall not be included as required subconsultant participation. *No credit will be given for subconsultant/SLBE percentages for additional work at the time of award.*
- 4.5 Special Inspection: The CMF shall provide all special inspections required during the project. These inspections include, but are not limited to Reinforcing Steel, Anchor Bolts, High Strength Bolts, Concrete, Pre-stressed Concrete, Erection of Precast Concrete Members, Post-tensioned Concrete, Welding Structural Steel and Pipe.
- 4.6 Paleontological Resources Monitor: The CMF shall provide paleontological resources monitors in accordance with the environmental mitigation requirements for the project.
- 4.7 Tunneling/Horizontal Drilling: The CMF shall provide a tunneling expert for cursory review of tunneling submittals and provide inspections for tunneling/horizontal drilling methods to assure that the work is being completed in accordance with the contract documents.
- 4.8 Structural Engineer for Shoring Systems: The CMF shall provide a licensed structural engineer to provide technical support and quality assurance for the Contractors shoring plan. The structural engineer will perform periodic inspections of installed shoring and report on any defects or potential problems.

*Task 5 – Additional Services*

Due to the uncertain nature of the necessity for Additional Services the City for their sole discretionary use has established an allowance in the Agreement. The CMF shall not perform, not be compensated for, any work associated with these subtasks without the written authorization of the City. Such authorization may be given subsequent to a determination during the course of the project of the need for an Additional Service, a definition of the scope and cost of the same. Additional services shall not be construed as core services and shall not be included as subconsultant participation due to the probability that no work may be performed. *No credit will be given for subconsultant/SLBE percentages for additional work at the time of award.*

- 5.1 Materials Testing: Material testing for concrete strength, soils compaction, aggregate gradation analysis, non-destructive weld testing and any other construction related tests.
- 5.2 Archeology Services.
- 5.3 Services related to City-furnished offices, furniture, furnishings, office equipment, operations and maintenance that are not currently part of the Agreement.

- 5.4 Services made necessary by the default of a construction contractor including preparation of documentation with the surety and activities required from the default to notice to proceed of a new contractor.
- 5.5 Assistance to the City in litigation arising from the construction of the project.
- 5.6 Preparing to serve or serving as a witness in connection with any public hearing or legal proceeding.
- 5.7 Contractor requested overtime.
- 5.8 Other unanticipated work required for completion of the project.

-End of Exhibit A Scope of Services-

*Exhibit B*  
*Fee and Compensation Schedule*  
*Page 1 of 3*

**Miramar Clearwell Improvements Project**  
**Budget Overview**

Company	Cost
NV5 Inc.	\$ 4,607,944
CPM Partners	\$ 1,900,322
Rockwell Construction Services	\$ 333,396
Brian F. Smith	\$ 56,963
McMillan Jacobs	\$ 60,603
Garbini and Garbini	\$ 60,669
ODC's (FACS)	\$ 69,800
<b>Basic Services Total</b>	<b>\$ 7,089,697</b>
<b>Additional Services</b>	<b>\$ 354,485</b>
<b>Grand Total</b>	<b>\$ 7,444,182</b>

**Miramar Clearwell Improvements Project**  
**Phase Funded Schedule**

CONTRACT	Phase 1 (FY16)	Phase 2 (FY17)	Phase 3 (FY18)	Phase 4 (FY19)	Phase 5 (FY20)	TOTAL
Miramar Clearwell Improvements	\$553,627	\$1,892,504	\$1,905,343	\$1,544,328	\$1,193,895	<b>\$7,089,697</b>
Additional Services	\$50,000	\$100,000	\$150,000	\$54,485	\$0	<b>\$354,485</b>
<b>TOTAL</b>	<b>\$603,627</b>	<b>\$1,992,504</b>	<b>\$2,055,343</b>	<b>\$1,598,813</b>	<b>\$1,193,895</b>	<b>\$7,444,182</b>

GRAND TOTAL **\$7,444,182**

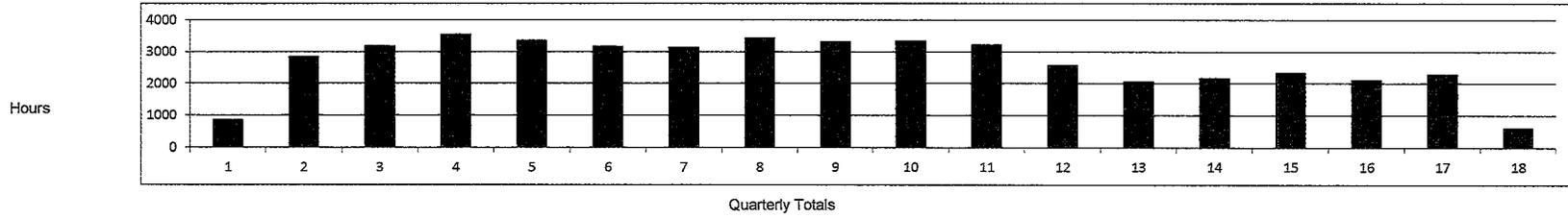
**Miramar Clearwell Improvements Project**  
**Billing Rate Table**

Position	Name	Company	Rate
Principal In Charge	Carmen Kasner	NV5	\$ 270.00
Construction Manager / PM	Roland Elvera	NV5	\$ 186.30
Resident Engineer	Eric Strickland	CPM	\$ 178.00
Assistant RE/Inspection	Aaron Schneider	NV5	\$ 150.00
Inspector (Lead)	Richard Mathes	NV5	\$ 120.18
Inspector	TBD	NV5	\$ 120.18
Office Engineer/Doc Control	TBD	NV5	\$ 94.50
Scheduling/Project Controls	Brad Boyd	CPM	\$ 165.00
Electrical/I&C Tech Insp	Jim Hudson	RCS	\$ 135.00
Landscape Inspection	Gall Garbini	Garbini and Garbini	\$ 135.00
Paleo Monitoring	TBD	Brian F Smith	\$ 62.50
Special Inspection	TBD	NV5	\$ 114.78
Shoring Engineer	TBD	NV5	\$ 185.00
Senior Tunnel Inspector	King So	McMillan Jacobs	\$ 163.00

*Exhibit B*  
*Fee and Compensation Schedule*  
*Notes, Assumptions, and Additional Services*  
*Page 2 of 3*

*Notes and Assumptions*

1. NV5 loaded rate's include vehicle mileage and expenses, laptops with mifi's, cell phones, and office supplies.
2. No overtime hours included in the base scope of work. The CM Team will shift hours of personnel as necessary to minimize any overtime to the fullest extent possible. Any overtime that cannot be accommodated by shifting hours will be considered an Additional Service.
3. The Construction Management Firm may request on a yearly basis an escalation of base rates. Approval is at the sole discretion of the City, but approval won't be unreasonably withheld. Escalation will only apply to those employees not subject to prevailing wage. The City must approve any rate adjustments in writing before they become effective.
4. Additional staff may be brought onto the project when work in the field dictates in order to better manage the overall budget.
5. 5% markup on sub-consultants.



	FY 16		FY 17				FY 18				FY 19				FY 20				TOTAL
	3/16-5/16	6/16-8/16	9/16-11/16	12/16-2/17	3/17-5/17	6/17-8/17	9/17-11/17	12/17-2/18	3/18-5/18	6/18-8/18	9/18-11/18	12/18-2/19	3/19-5/19	6/19-8/19	9/19-11/19	12/19-2/20	3/20-5/20	6/20-8/20	
Pre Construction/NV5 NTP	[Gantt bar]																		
Construction NTP	[Gantt bar]																		
Miramar Pipeline	[Gantt bar]																		
Chlorine Contacter	[Gantt bar]																		
Clearwell 2 Replacement	[Gantt bar]																		
Solar System	[Gantt bar]																		
Clearwell 1 Replacement	[Gantt bar]																		
Maint Bldg/Guard Shack	[Gantt bar]																		
Final Piping/Tie Ins	[Gantt bar]																		
Landscaping	[Gantt bar]																		
Closeout	[Gantt bar]																		
Labor Hours	854	2840	3187	3568	3370	3183	3150	3450	3325	3351	3224	2581	2066	2179	2329	2111	2287	614	47,669
Costs	\$553,627		\$1,892,504				\$1,905,343				\$1,544,328				\$1,193,895				\$7,089,697
Additional Services	\$50,000		\$100,000				\$150,000				\$54,485				\$0				\$354,485
TOTAL	\$603,627		\$1,992,504				\$2,055,343				\$1,598,813				\$1,193,895				\$7,444,182





WORK FORCE REPORT – NAME OF FIRM: NV5, Inc. DATE: February 1, 2016

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

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

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

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			2								18	5		
Professional			7	3	2	3				1	16	11		1
A&E, Science, Computer											32	2		
Technical	3		17		2	1	1	1						
Sales											1	10		
Administrative Support						1						9		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

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

Totals Each Column	3		26	3	4	5	1	1		1	67	37		1
--------------------	---	--	----	---	---	---	---	---	--	---	----	----	--	---

Grand Total All Employees	149
---------------------------	-----

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

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

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

## SUBCONTRACTOR PARTICIPATION LIST

This list shall include the name and complete address of all Subcontractors who qualify as SLBEs or ELBEs. Contractors 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.

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

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

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF SERVICES	PERCENT OF CONTRACT	SLBE/ELBE (MBE/ WBE/DBE/ DVBE/OBE*)	WHERE CERTIFIED**
CPM Partners 535 Encinitas Blvd. Suite 114 Encinitas, CA 92024	Resident Engineer, CPM Scheduling Services, and Dispute Resolution Services	27%	ELBE; SB; DBE; SWBE; WBE; SBE	City of San Diego; Ca Dept. General Services; DOD; CPUC; SDCWA; SCRRA; SBA; SANDAG; DOT
Rockwell Construction Services 31480 Justin Place Valley Center, CA 92082	Electrical, Instrumentation/Controls, and SCADA Inspections	3.8%	OBE	N/A
Garbini & Garbini Landscape Architecture, Inc. 715 J Street, Suite 307 San Diego, CA 92101	Landscaping Inspection	1%	ELBE; WBE; DBE	City of San Diego; DOT
Brian F. Smith and Associates 14010 Poway Road, Suite A Poway, CA 92064	Paleontological Resources	.7%	SLBE	City of San Diego
McMillen Jacobs 8880 Rio San Diego Dr., Suite 800 San Diego, CA 92108	Tunneling Support	As-Needed	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 the first three projects listed in response to the 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: San Diego Gas & Electric (SDG&E) – Distribution Planning-Land Survey Services (Release 5660030744) - July 2014 – June 2015

TYPE OF PROJECT: Engineering & Survey DOLLAR VALUE OF CONTRACT: \$2,282,895 (56% Equal Opportunity Participation)

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 <sup>®</sup>	WHERE CERTIFIED <sup>®</sup>
Name: <u>Airx Utility Surveyors, Inc.</u> Address: <u>2534 East El Norte Parkway</u> City: <u>Escondido</u> State: <u>CA</u> Zip: <u>92027</u> Phone: <u>(760) 480-2347</u>	Contractor	Potholing/Markout	\$810,696	WBE, SBE, SLBE	CPUC, City of San Diego
Name: <u>Montgomery &amp; Associates</u> Address: <u>7311 Greenhaven Drive, #207</u> City: <u>Sacramento</u> State: <u>CA</u> Zip: <u>95831</u> Phone: <u>(916) 476-4903</u>	Contractor	Project Management, Survey, Drafting	\$117,702	WBE	CPUC
Name: <u>TSAC Engineering</u> Address: <u>16885 Via Del Camp Court, Suite 304</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92127</u> Phone: <u>(858) 217-6870</u>	Contractor	Survey	\$313,373	WBE, SBE, SLBE	CPUC, Metro Water District, City of San Diego

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, Consultant 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 the first three projects listed in response to the 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: San Diego Gas & Electric (SDG&E) – Distribution Planning-Land Survey Services (Release 5660030744) - July 2014 – June 2015

TYPE OF PROJECT: Engineering & Survey

DOLLAR VALUE OF CONTRACT: \$2,282,895 (56% Equal Opportunity Participation)

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 <sup>®</sup>	WHERE CERTIFIED <sup>®</sup>
Name: <u>AeroTech Mapping Inc.</u> Address: <u>2580 Montessori Street, Suite 104</u> City: <u>Las Vegas</u> State: <u>NV</u> Zip: <u>89117</u> Phone: <u>702-288-6277</u>	Contractor	Aerial Mapping	\$25,735	MBE, DBE, SBE	CPUC, CUCP
Name: <u>CO's Traffic Control, Inc.</u> Address: <u>1221 S. 26<sup>th</sup> Street</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92113</u> Phone: <u>(619) 239-8200</u>	Contractor	Traffic Control	\$3,050	WBE	CPUC
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, Consultant 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:** Construction Management Services for Miramar Clearwell Improvements

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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:

NV5, 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 *Carmen C. Kasner P.E.*  
Printed Name Carmen C. Kasner, PE  
Title Regional Chief Executive  
Date February 1, 2016

# CITY OF SAN DIEGO

**EXHIBIT F**

## Consultant Performance Evaluation

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

**Section I**

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

Section II		SPECIFIC RATING							
DESIGN EVALUATION	EXCELLENT	SATISFACTORY	POOR	N/A	CONSTRUCTION SUPPORT 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"/>
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 \_\_\_\_\_ : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Item

Item

(\*Supporting documentation attached: Yes  No )

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

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

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

Construction Management Services for Miramar Clearwell Improvements

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**B. BIDDER/PROPOSER INFORMATION:**

NV5, Inc.

Legal Name

DBA

15092 Avenue of Science, Suite 200

Street Address

San Diego

City

California

State

92128

Zip

Roland Elvera, PE, QSP

Contact Person, Title

858.688.6958

Phone

858.385.0400

Fax

**C. OWNERSHIP AND NAME CHANGES:**

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

Yes       No

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

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

Yes       No

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

**D. BUSINESS ORGANIZATION/STRUCTURE:**

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

**Corporation** Date incorporated: 01 /26 /1981 State of incorporation: California

List corporation's current officers: President: Dickerson Wright, CEO

Vice Pres: Alex Hockman, COO/President

Secretary: MaryJo O'Brien

Treasurer: Michael Rama, CFO

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:

Principals/Officers of NV5 Holdings, Inc.: Dickerson Wright, CEO; Alex Hockman, COO/President;  
MaryJo O'Brien, Executive Vice President/Secretary; Michael Rama, CFO; Richard Tong; Executive  
Vice President/Legal

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

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

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

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

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

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

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

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

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

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

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

2. In the past five (5) years, has your firm been denied bonding?  
 **Yes**  **No**

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

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
 **Yes**       **No**

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

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?  
 **Yes**       **No**

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

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

Point of Contact: Donna Jackson, EVP, Private Banking

Address: 12220 El Camino Real, Suite 110, San Diego, CA 92130

Phone Number 858.523.4631

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

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?  
 **Yes**       **No**

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

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?  
 **Yes**       **No**

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

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?  
 **Yes**       **No**

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

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?  
 Yes       No

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

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?  
 Yes       No

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

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?  
 Yes       No

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

7. Performance References:

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

Company Name: City of San Diego SRPS

Contact Name and Phone Number: Michael Marks, 619.980.1568

Contact Email: mmarks@sandiego.gov

Address: 1010 Second Avenue, Suite 1400 San Diego, CA 92101

Contract Date: August 2013 - May 2014

Contract Amount: NV5 Fee: \$689,638

Requirements of Contract: Pre-construction, construction management, field engineering and administration, inspection

Company Name: City of San Diego MWTP - Contract D

Contact Name and Phone Number: Anh Nguyen, 619.533.4627

Contact Email: anguyen@sandiego.gov

Address: 1010 Second Avenue, Suite 1400 San Diego, CA 92101

Contract Date: May 2012 - March 2013

Contract Amount: NV5 Fee: \$189,826

Requirements of Contract: Pre-construction, construction management, field engineering and administration, inspection

Company Name: Seeley Water District WWTP West Aeration Pond Liner

Contact Name and Phone Number: Esperanza Colio, 760.482.4986

Contact Email: esperanzacolio@co.imperial.ca.us

Address: 940 W. Main Street, Suite 203 El Centro, CA 92243

Contract Date: April 2015 - August 2015

Contract Amount: \$75,000

Requirements of Contract: Pre-construction, construction management, field engineering and administration, inspection

**G. COMPLIANCE:**

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

Yes  No

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

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

Yes  No

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

**H. BUSINESS INTEGRITY:**

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

Yes  No

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

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

Yes  No

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

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

Yes  No

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

**I. WAGE COMPLIANCE:**

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

**J. STATEMENT OF SUBCONTRACTORS:**

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

Company Name: CPM Partners, Inc.

Contact Name and Phone Number: Sevda Koraltan, 619.961.7902

Contact Email: sevda@cpm-partners.com

Address: 535 Encinitas Blvd. Suite 114

Contract Date: December 2015

Sub-Contract Dollar Amount: \$1,800,000

Requirements of Contract: Provide resident engineer, CPM scheduling services, and dispute resolution services

What portion of work will be assigned to this subcontractor: 27%

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: Garbini & Garbini Landscape Architecture, Inc.

Contact Name and Phone Number: Gail Garbini, 619.232.4747 ext.12

Contact Email: ggarbini@garbiniandgarbini.com

Address: 715 J St #307, San Diego, CA 92101

Contract Date: December 2015

Sub-Contract Dollar Amount: \$80,000

Requirements of Contract: Quality assurance for landscaping work

What portion of work will be assigned to this subcontractor: 1.2%

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.

Please see Attachment A for Addtl. Subcontractors

**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: NOT APPLICABLE

Owned  Rented  Other  (explain below)

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

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

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

Equipment Description: NOT APPLICABLE

Owned  Rented  Other  (explain below)

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

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

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

Equipment Description: NOT APPLICABLE

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 04 / 17 / 15.

**Complete all questions and sign below.**

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

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

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

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

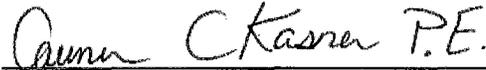
(c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

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

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

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

Carmen C. Kasner, Regional Chief  
Executive



February 1, 2016

Name and Title

Signature

Date

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

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

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

Prior Legal Name: Nolte Associates, Inc

Address: (California HQ)  
2525 Natomas Park Drive, Suite 300  
Sacramento, CA 95833

Dates Used: 1957-2014

Reason for Name

Change: Expansion of Services through acquisition of another firm.

**J. STATEMENT OF SUBCONTRACTORS:**

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

Company Name: Brian F. Smith

Contact Name and Phone Number: Kyle Guerrero, 760.809.1677

Contact Email: kguerrero@bfsa-ca.com

Address: 14010 Poway Road, Suite A Poway, CA 92064

Contract Date: December 2015

Sub-Contract Dollar Amount: \$50,000

Requirements of Contract: Paleontological resources monitoring

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

Is the Subcontractor a certified ELBE, SLBE, 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: Rockwell Construction Services

Contact Name and Phone Number: Jim Hudson, 760.715.3082

Contact Email: jim.hudson.rcs@gmail.com

Address: 31480 Justin Place Valley Center, CA 92082

Contract Date: December 2015

Sub-Contract Dollar Amount: \$250,000

Requirements of Contract: Electrical, instrumentation/controls, and SCADA inspections

What portion of work will be assigned to this subcontractor: 3.8%

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

February 1, 2016

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

Carmen C. Kasner, PE  
Print Name, Title

Carmen C. Kasner P.E.  
Signature

February 1, 2016  
Date

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

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

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

Company Name: McMillen Jacobs  
Contact Name and Phone: Tara Nicoletti, 212.376.1334  
Contact Email: nicoletti@mcmjac.com  
Address: 8880 Rio San Diego Dr., Suite 800 San Diego, CA 92108  
Contract Date: December 2015  
Sub-Contract Dollar Amount: 0%  
Requirements of Contract: As-Needed tunneling support  
What portion of work will be assigned to this subcontractor: TBD  
Is the Subcontractor a certified ELBE, SLBE, 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.

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

Carmen C. Kasner, PE  
Print Name, Title

Carmen C. Kasner P.E.  
Signature

February 1, 2016  
Date

## 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: City of San Diego – Public Works
2. Name of Specific Consultant & Company: NV5, Inc.
3. Address, City, State, ZIP: 15092 Avenue of Science, Suite 200, San Diego, CA 92128
4. Project Title (as shown on 1472, "Request for Council Action"): Agreement with NV5, Inc. for Construction Management Services for Miramar Clearwells Improvement Project
5. Consultant Duties for Project: Construction Management, Contract Administration and Inspection Services. Overall direct communication with City's Contractor. Provides recommendations for change order management, monthly payment approvals, quality assurance, project closeout

## 6. Disclosure Determination [select applicable disclosure requirement]:

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

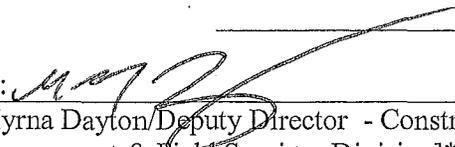
- or -

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

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

- or -

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

By:   
[Myrna Dayton/Deputy Director - Construction Management & Field Services Division]\*

[Date] 4/5/16

*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.

Regulation 18701 (a)(2)  
[http://www.fppc.ca.gov/index.html?ID=52&r\\_id=/legal/regs/18701.htm](http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm)  
1/28/2006

**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: NV5, Inc.	Contact Name: Carmen C. Kasner, PE
Company Address: 15092 Avenue of Science, Suite 200	Contact Phone: 858.385.0500
San Diego, CA 92128	Contact Email: carmen.kasner@nv5.com

**CONTRACT INFORMATION**

Contract Title: Construction Management Services for Miramar Clearwell Improvements	Start Date: Dec. 2015
Contract Number (if no number, state location): H156522	End Date: TBD

**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.

Carmen C. Kasner, PE \_\_\_\_\_ *Carmen C. Kasner P.E.* \_\_\_\_\_ February 1, 2016  
 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.

NV5, Inc.

Name of Firm

*Carmen C. Kasner P.E.*

Signature of Authorized Representative

Carmen C. Kasner, PE

Printed/Typed Name

February 1, 2016

Date

**CONSULTANT CERTIFICATION**

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

**PROJECT TITLE: Construction Management Services for Miramar Clearwell Improvements**

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

NV5, Inc.

(Name under which business is conducted)

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

Signed *Carmen C. Kasner P.E.*

Printed Name Carmen C. Kasner, PE

Title Regional Chief Executive