

DUPLICATE

ORIGINAL

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
TRAN CONSULTING ENGINEERS
FOR
SECURITY VULNERABILITY ASSESSMENTS AND EMERGENCY
RESPONSE PLANS FOR THE PUBLIC UTILITIES DEPARTMENT**

CONTRACT NUMBER: H125657

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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) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form
- Exhibit G - Vendor Registration Form
- Exhibit H - Contractor Standards Pledge of Compliance
- Exhibit I - Determination Form
- Exhibit J - Equal Benefits Ordinance Certification of Compliance
- Exhibit K - Regarding Information Requested Under the California Public Records Act
- Exhibit L - American With Disabilities Act (ADA) Compliance Certification
- Exhibit M - Sensitive Information Authorization Acknowledgement
- Exhibit N - Nondisclosure Agreement

**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND TRAN CONSULTING ENGINEERS
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation (City), and Tran Consulting Engineers (Consultant) for the Consultant to provide Security Vulnerability Assessment and Emergency Response Plan services for the City's Public Utilities Department.

RECITALS

The City wants to retain the services of a professional engineering consulting firm to provide Security Vulnerability Assessment and Emergency Response Plan 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, 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 Utilities Department (Department) is the contract administrator for this Agreement. The Consultant shall provide the Professional Services under the direction of a designated representative of the 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 9.10 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. Consultant shall sign a nondisclosure agreement (Exhibit N) as part of this Agreement.

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 September 25, 2013 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 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 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 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 City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, for a total contract amount not exceeding \$149,970. The compensation for the Scope of Services shall not exceed \$149,970, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed \$0.

3.2 Additional Services. The City may require that the Consultant perform additional Professional Services (Additional Services) beyond those 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 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 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 professional engineering consulting firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement (City's Right). The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the 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 Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project 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 Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

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

4.3.4 Required Endorsements

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

4.3.4.1 Commercial General Liability Insurance Endorsements

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

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

4.3.4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of 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 (Subcontractor Services) is subject to prior approval by the City. The Consultant shall list on the Subcontractor List (Exhibit D Attachment BB) all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subcontractor Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Consultant's notice shall include a justification, a description of the Scope of Services, and an estimate of all costs for the Subcontractor Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

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

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

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

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

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

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

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

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

4.6 Non-Discrimination Requirements.

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

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

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

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

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

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

4.7.2.1 The dangers of drug abuse in the work place.

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

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

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

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

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

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

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

4.9.1 If, in performing the 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 I).

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

ARTICLE V RESERVED

ARTICLE VI INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents, and officers, arising out of any services performed under this Agreement, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or 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 1976 Copyright 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 Deliverable Materials/Work product, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

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

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

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 Utilities, 9192 Topaz Way, San Diego CA 92123, Attn: Albert

Sohikish, MS901A and notice to the Consultant shall be addressed to: Tran Consulting Engineers, 4444 El Cajon Boulevard, Ste 15 San Diego, CA 92115.

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: John F. Austin (Project Team). Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

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

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

9.8 Jurisdiction and Attorney Fees. 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. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

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

Registration will be a prerequisite for the following:

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

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

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

9.24 Contractor Standards. This Agreement is subject to the Contractor Standards clause of the Municipal Code Chapter 2, Article 2, Division 32 adopted by Ordinance No. O-19383. All consultants are required to complete the Contractor Standards Pledge of Compliance included herein as (Exhibit H). The Contractor Standards are available online at www.sandiego.gov/purchasing/vendor/index.shtml or by request from the Purchasing & Contracting Department by calling (619) 236-6000.

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

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

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

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

9.26 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 K (Regarding Information Requested under the California Public Records Act).

9.27 Sensitive Information. The Consultant agrees to comply with the City's Protection of Sensitive Data and Information requirements set forth in Administrative Regulation 90.64. The Consultant shall certify to the City that it will comply with these requirements by submitting a Sensitive Information Authorization Acknowledgement form (Exhibit M) for City contractors and vendors.

9.28 Precluded Participation. In order to avoid any prohibited conflicts of interest, Consultant shall be precluded from participating in contracts for services that are required or are subsequently called for by the services provided under this Agreement.

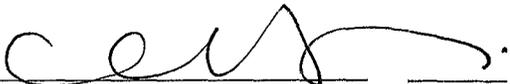
9.29 Nondisclosure Agreement. Consultant shall sign a Nondisclosure Agreement (Exhibit N) as part of this Agreement.

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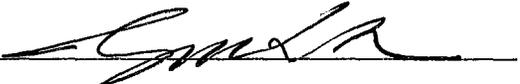
IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to San Diego Municipal Code 22.3207, authorizing such execution, and by the Consultant pursuant to Tran Consulting Engineers' Authorized Signatory Document.

Dated this 6 day of December, 2012.

THE CITY OF SAN DIEGO
Mayor or Designee

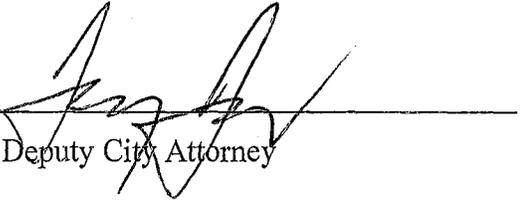
By: 
W. Downs Prior
Principal Contract Specialist
Public Works Contracting

I HEREBY CERTIFY I can legally bind Tran Consulting Engineers and that I have read all of this Agreement, this 11th day of OCTOBER, 2012.

By 
Paul Tran
President, CEO, Secretary

I HEREBY APPROVE the form and legality of the foregoing Agreement this 17 day of December, 2012.

JAN I. GOLDSMITH, City Attorney

By 
Deputy City Attorney

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) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form
- Exhibit G - Vendor Registration Form
- Exhibit H - Contractor Standards Pledge of Compliance
- Exhibit I - Determination Form
- Exhibit J - Equal Benefits Ordinance Certification of Compliance
- Exhibit K - Regarding Information Requested Under the California Public Records Act
- Exhibit L - American With Disabilities Act (ADA) Compliance Certification
- Exhibit M - Sensitive Information Authorization Acknowledgement
- Exhibit N - Nondisclosure Agreement

SCOPE OF SERVICES

SECURITY VULNERABILITY ASSESSMENTS AND EMERGENCY RESPONSE PLANS FOR THE PUBLIC UTILITIES DEPARTMENT

Background

The Water and Wastewater Systems are owned by the City of San Diego and as of July 1, 2009, are jointly operated by the City through the Public Utilities Department. The Department is comprised of three branches consisting of nine divisions that are funded by either, or both, the Water Utility Fund and the Sewer Utility Fund.

The Water Utility provides water service to the more than 1.3 million residents via 270,000 connections delivering approximately 78,200 million gallons of water per year.

The City's water system currently consists of nine raw water storage facilities, three water treatment plants, 31 treated water storage facilities and over 3,222 miles of water lines. One of the nine raw water storage facilities, Lake Hodges Reservoir, is not currently connected to a treatment plant but will be used as part of the Emergency Storage Project pursuant to an agreement between the City and CWA. The City owns and operates three water treatment plants with a combined current capacity of nearly 300 million gallons per day (MGD). The 31 treated water storage facilities ensure consistent delivery to the 128 different pressure zones with the aid of 49 water pump stations.

The Wastewater System consists of two sub-systems, the Municipal Sub-System and the Metropolitan Sub-System. The Municipal Sub-System is a municipal sewage collection system for the City's residents and consists of all elements required for the collection and conveyance of wastewater generated by the service area, including approximately 3,000 miles of tank and collector mains and 79 sewer pump stations, which ultimately discharge into the Metropolitan Sub-System. The Metropolitan Sub-System is a regional sewage treatment and disposal system that serves the City and various other public agencies, including all the facilities associated with treatment plant, two water reclamation plants that produce recycled water, a bio-solids processing facility, and eight large wastewater pump stations. The Metropolitan Sub-System treats and disposes of the wastewater generated by the City and certain amounts from 15 other cities and districts near the City.

The Metropolitan Sub-System was designed to provide sufficient capacity to accommodate a regional population in excess of 2.5 million. The Wastewater System has approximately 275,000 customers, 15 Participating Agencies and covers approximately 450 square miles.

Both the Water and Wastewater systems are among the most complex water/wastewater systems in the nation. Such sizable systems require continuous upgrades and replacement of their aging components to meet current building standards, updated Safe Drinking Water Standards, and complying with the sewage discharge requirements under Federal law. The City is continuing a multi-year capital improvement programs (CIP) to meet the regulatory requirements and upgrade its infrastructure.

Task 1 – Preliminary Project Meeting and Data Acquisition

Tran Consulting Engineers (TCE) will meet with the City of San Diego Public Utilities Department for a preliminary project meeting to exchange information and develop a preliminary listing of facilities to be reviewed and the schedule for field reviews. To facilitate this process, the City will make available personnel that are familiar with the operations and history of the facilities. This meeting will also allow for the City to provide TCE with:

- Existing City documents, examples for this data include:
 - The Vulnerability Assessment report for Water System assets dated December 31, 2002.
 - Existing emergency response plans and/ or security plans that deal with an all hazards approach that includes natural as well as manmade disasters
 - Facility site plans
 - Information about security systems, policies, and standard operating procedures that are planned but not yet implemented
- Employees, contractor and visitor identification and entry authorization systems
- Vehicle identification and entry authorization systems
- List of key management and operations staff to interview

Task 1 – Additional Provisions

The City will provide TCE with PDF digital copies of the existing water VA, ERP and required documents, such as existing Water Facilities RMP-PSM, Cyber Resilience Review Report, Water & Wastewater Seismic Vulnerability Assessment and Analysis, etc. A signed Non-Disclosure Agreement between the City and TCE is required to protect these confidential materials.

Task 2 – Perform Vulnerability Assessments (VA)

The EPA Drinking Water Utility Security Grant Program identified eight elements that are to be considered during the review and written analysis of the City's Water System. TCE shall address each of these eight elements in its update to the existing Water System VA report and in its new VA report for the Wastewater System assets.

2.1 Determination of Public Utilities (Water and Wastewater) system objectives.

This subtask is critical in the performance of the VA. The decisions made during this subtask will set the direction of the remainder of the assessment.

After review of the documents available from Task 1, a meeting will be held with the City to:

- Document the mission/function of the systems.
- Identify the consequences that could affect the mission/function.
- Identify the key assets that need to be protected. For the City of San Diego expect these to be:

- The Department Emergency Operations Center
 - The Dam and Reservoirs
 - The Water Treatment Plant's (WTP)
 - Treated Water Storage Reservoirs and Pump Stations
 - Cyber Systems including the Supervisory Control and Data Acquisition (SCADA), Clean Water Operations Management Network (COMNET), and Water/Wastewater Treatment Plant (WTP) Control Systems
 - The Water Quality Laboratory
 - Wastewater Lab
 - Pump Stations
 - Wastewater Treatment Plants
 - Various Department office buildings
 - Transmission Pipes
 - Collection Pipes
- Identify Malevolent Acts and/or natural and manmade disasters that could reasonably damage assets
 - Provide the City with a timeline for each of the required Tasks.

2.2 **Prioritization of adverse events and consequences affecting the Public Utilities system and the surrounding community.**

Based upon the information identified in subtask 2.1, a meeting will be held to develop subtasks 2.2, 2.3 and 2.4. It is anticipated that this will require two or three meetings and involve decision makers from the City. It is anticipated that other key management and operational staff may be needed during portions of these meetings. The Public Utilities system will be evaluated to identify areas of vulnerability. This evaluation will look at a range of threats and the potential consequences of system disruption. These acts include:

- Breach of security at security check points and perimeter barriers, fences etc.
- Vandalism of data, chemicals, etc.
- Disruption or destruction of power supply, equipment, operations, etc.
- Utilization of chemicals or power to disrupt treatment process
- Intentional contamination of source or finished water.
- Claim of contamination of source or finished water.
- Disruption or destruction of Public Utilities treatment plants, equipment and conveyances.

These acts will then be prioritized based on an assessment of the probability of the occurrence of the act.

2.3 **Definition of how the malevolent acts might be conducted.**

The following types of vulnerability are considered viable, potential threats to Public Utilities systems and will be assessed.

Structural vulnerability consists of the ability to disrupt the flow of Water/Wastewater from and to the customers by targeting and subsequently

damaging critical system components via physical means. These methods may include:

- Cyber attacks on the COMNET, SCADA, and WTP Control systems and/or other process control systems.
- SCADA/Central Operations & Management Center (COMC)/WTP Control system attacks may take the form of physical attacks on remote terminal units, interception or disruption of communication circuits, or cyber attacks on the networks running the SCADA/COMNET/WTP Control system software.
- Aerial attack against storage or pumping facilities through the use of aircraft.
- Physical damage of facilities through the detonation of explosives.
- Physical damage of facilities through the use of fire.
- Physical attacks against Public Utilities system operations and maintenance staff.
- Natural and manmade disasters

Contamination vulnerability consists of the ability to jeopardize the health of water customers via the introduction of toxic agents into the drinking water supply system.

Examples include:

- Chemical and biochemical agents.
- Microbial agents.
- Radioactive agents.
- War agents such as nerve, blood, gasses, and blistering agents.

2.4 Assessment of the likelihood (qualitative probability) of such malevolent acts and/or natural and manmade disasters from defined threat sources (e.g. terrorist, insider, determined vandal, casual vandal, earthquake, etc.)

Each potential disruptive event may have a different likelihood of occurrence. Based on review of the existing VA, a review of the history of malevolent acts to each facility and evaluation of the facilities, an assessment of the probability associated with each of the threats will be developed. This is important information to consider while developing security recommendations for protecting critical system components.

2.5 Systematic site characterization of the Public Utilities system to include the collection of performance data

The VA team will visit the water & wastewater facilities, processes, and assets identified in the subtasks. It is anticipated that the site visit team will consist of 3 or 4 specialists and a representative of the City that is familiar with the facility. Data collection activities encompass and include retrieval of documents and characterization of facilities. Current physical protection systems, security policies and procedures, and system redundancies will be reviewed and documented. History of past performance of the current protection systems will be established through document reviews and interviews with key staff.

2.6 The approach to the VA is “performance-based”, meaning that it evaluates the risk to the Public Utilities system based on the effectiveness of the systems

against the specific malevolent acts and/or natural and manmade disasters determined in Section 2.3.

Evaluate the raw water reservoirs, Water and Wastewater treatment plants, transmission/collection and storage systems to identify areas of manmade or natural disaster vulnerability. In conjunction with the vulnerability assessment, City staff will evaluate the current level of security and, if required, identify further protective measures or redundancies to reduce the risk of damage to infrastructure or the compromising of water quality.

- 2.7. The VA deter mines the most critical assets (targets) in a Public Utilities system, details their interrelationships within other assets in the system, identifies the consequences of malevolent acts and/or natural and manmade disasters, and evaluates the effectiveness of both existing and proposed protection systems.** Identifying the critical components of the system is a key element of the vulnerability assessment. The failure of one (or more) of these key components would reduce the City's ability to safely deliver water and treat wastewater for its customers. Each of the system primary components should be assessed for relative importance as part of the overall Water or Wastewater system. Facility components that are considered to be critical will be identified and assessed in relation to the potentially disruptive events. This assessment includes an evaluation of current security protection and identifies potential security improvements and/or redundancies to reduce vulnerability.
- 2.8. The VA identifies a system's vulnerabilities and provides a prioritized plan for security upgrades and/or redundancy to the system, modifications of operational procedures, and/or policy changes to mitigate identified risks to critical assets. The VA also provides a basis for comparing the cost of protection against risks posed.**

Review the current level of redundancy afforded by the Public Utilities transmission/collection, treatment and storage systems, identify areas of the systems (if any) where damage could appreciably affect water delivery capabilities, and wastewater treatment and conveyance capabilities, make recommendations for protection against these risks.

Areas of vulnerability within the Public Utilities transmission system will be identified and reviewed. Recommendations corresponding to increasing levels of security will be provided and planning level costs estimated.

Telecommunications engineers will survey the various components of the SCADA , COMNET, and WTP Control systems, identify threats and weaknesses and recommend measures for mitigating those threats.

Based on the current protection level afforded to critical Public Utilities system components identified in the investigation phase, recommendations for security system improvements and the corresponding cost of implementation will be provided. Operations plans and communications systems will be evaluated for effectiveness and positive redundancy, and both internal and external communications procedures will be reviewed. Recommendations will be made for enhancing or improving operations and emergency response plans.

Task 2 – Additional Provisions

WATER SYSTEM

TCE's team will meet for a one day workshop to discuss with key City staff for the items to be updated in the City's existing water system Vulnerability Assessment (VA). From the information provided to TCE from that meeting, TCE will conduct the work and submit the update draft VA to the City. Upon receipt of comments from the City TCE will incorporate their comments and submit the final VA. Sandia RAM methodology will be used by TCE for Water VA.

WASTEWATER SYSTEM

TCE will attend three (3) consecutive workshops (over three consecutive days) with key City staff to conclude the following:

- Determine system objectives
- Mission/function of the systems
- Determine a list of ranking criteria, prioritize ranking criteria
- Rank assets based on selected ranking criteria. Rank approximately 116 facilities. Develop a list of critical facilities (approximately 22 critical facilities) and from the 22 critical facilities develop approximately 55 total critical assets
- Determine Threat Assessment value (P_A) for the entire wastewater system
- Determine System Effectiveness values (P_E) for the selected critical assets

Up to two (2) consecutive workshops will be held following site visits of approximately 55 critical assets (during the same week span) with site visits of critical facilities. These workshop(s) will complete the following:

- Determine fault trees for determination of critical assets and Consequence (C)
- Determination of Consequence (C) values for all critical assets
- Calculate Risk (R) of critical assets

A Cyber security questionnaire for the entire wastewater system will be distributed to selected city staff for completion. TCE staff will use the questionnaire and one meeting with City staff to develop a Cyber Security chapter in the VA to describe risks and recommendations to cyber attack.

TCE will compile all data and information obtained from the workshops, site visits, and reviews of available data. The vulnerability assessment will be developed based on the results of the workshops. Approximately 20 of the highest risk critical assets will be discussed in general and recommendations will be drawn for these critical assets. TCE will provide an Action Plan categorizing immediate term, intermediate term and potential major improvements for the 20 critical assets. A cost estimate will be prepared for these items.

The Vulnerability assessment will be submitted as a draft 6 months after the contract is awarded, for review by City Staff. TCE will prepare the draft final within 3 weeks after receiving City Staff's comments. The City will review the final and if additional comments need to be incorporated, TCE will prepare the Final Vulnerability Assessment within 3 weeks. The completed work product will be delivered to the City Public Utilities Department no later than 8 months after award of contract. Sandia RAM will be used by TCE for Wastewater VA.

Task 3 – Create Emergency Response Plans

EXHIBIT A

Create an updated Public Utilities Department (Water Branch) Emergency Response Plan (ERP) and create a new City of San Diego Public Utilities Department (Wastewater Branch) Emergency Response Plan (ERP).

- Assemble and review information - The current federal and state regulations and guidelines will be reviewed. A kickoff meeting will be held to discuss the creation of this new ERP.
- Conduct a minimum of three workshop sessions with upper management to gather information, review findings, and agree upon the new ERP's.
- Incorporate the latest "Emergency Response Plan Guidance" documents from the State of California Department of Health Services.
- Incorporate information and guidelines contained within the EPA Security Toolbox.
- Incorporate all applicable work previously completed, i.e. Risk Management Program (RMP), Process Safety Management (PSM), etc.
- Incorporate and validate any seismic reports that have been created for the Water and/or Wastewater branches of the Public Utilities Department. This includes but is not limited to the January 2002 seismic report created for the Water Department. Include any new facilities that may have come online, or existing facilities that may have been improved or seismically strengthened, or older facilities that may have been decommissioned since the original seismic reports were finalized.
- Incorporate appropriate information contained within the federal mandated vulnerability assessment (VA).
- Incorporate and validate plume studies.
- The Emergency Response Plan will be submitted as a draft 6 months after the contract is awarded for review by City Staff. TCE will prepare the draft final within 3 weeks after receiving City Staff's comments. The City will review the final draft and if additional comments need to be incorporated, TCE will completed the work product and deliver to the City Public Utilities Department no later than 8 months after award of contract.

CLARIFICATIONS:

1. The existing Water ERP does not necessarily need to be used as a guiding document. If changes to the existing ERP format are recommended by the Consultant they must be disclosed prior to the creation of the ERP's.

Task 3 – Additional Provisions

Review and update the water emergency response plan (WERP)

Prepare the wastewater emergency response plan (WWERP)

TCE will attend a kickoff meeting where TCE will obtain the information and data for the WWERP and WERP.

WATER EMERGENCY RESPONSE PLAN

TCE's team will meet with City staff over a full 1 day meeting to discuss background data and information in the existing WERP, acknowledge existing WERP deficiencies and update codes and requirements.

TCE will conduct a review and update to improve the WERP and submit the draft WERP. Upon receipt of City comments TCE will respond and address comments in the ERP and submit the final document.

WASTEWATER EMERGENCY RESPONSE PLAN

TCE's team will meet with City staff over 2 full consecutive days to discuss and receive data and information (including a complete inventory of all bypass pumps, cleaning trucks, CCTV vans maintenance vehicles and portable generators, etc., all other miscellaneous materials such as sandbags, suction and discharge hoses, pipe clamps, etc.). Also included will be information such as existing procedures, to stop sewage spills at pump stations and on major pipelines, cleanup, and reporting. Information will be provided to TCE such as reporting forms, contracts, policies and requirements. Example of reporting forms will also be provided to TCE for illustration. Personnel available to carry out the duties related to the above procedures and equipment will be provided to TCE, by the City. This information will be incorporated into the ERP sections and appendices. During the meeting(s) each section of the ERP guidance document will be discussed and information provided to TCE. The format for this ERP will follow the recommended format of the California Emergency Response Plan Guidance (Dec. 2003) document. Decisions will be made for incorporation of the specific sections of the report.

TCE will, based on the information provided in the two seismic reports for water and wastewater facilities, update these reports to meet current adopted seismic codes.

Incorporate the existing Risk Management Program (RMP), Process Safety Management (PSM), and applicable work documents previously completed including plume studies into the appropriate water or wastewater ERP.

Task 4 – Preparation of Reports

TCE shall provide a report containing the following four distinct sections:

1. Section one - update of the previous Water Department VA; TCE will report any discrepancies or errors observed in VA materials provided by the City.
2. Section two - the new Wastewater VA.
3. Section three - update of the previous Water Department Emergency Response Plan (ERP).
4. Section four - the new Wastewater ERP.

The ERP sections will contain the following:

- o Executive Summary
- o Introduction
- o Emergency Planning Process

EXHIBIT A

- Water and Wastewater System Information
- Water and Wastewater Security Information
- National Incident Management System (NIMS), Integrated Communication System (ICS) Integration
- Water and Wastewater DOC (Department Operations Center) operations manual
- Concept of Operations
- Communications Procedures
- Restoration and Recovery
- Emergency Response Training
- Appendices
- TCE will report any discrepancies or errors observed in ERP materials provided by the City.

After submitting a PDF of the draft report, the draft report will be presented to the City. The schedule for presenting the draft report to the City is six months after award of the contract.

DELIVERABLES:

- A PDF version of the draft report will be provided for review and comment.
- Six copies of the draft final report will be provided for minor comments.
- Nine copies of the final report will be provided for city distribution.
- Training Course – An ERP PowerPoint training course will be created which is anticipated to be 1-2 hours long.

Task 5 – Project Management & Reporting

TCE's project teams will always be available to the City. To best serve the City on this project, biweekly progress meetings are required in addition to the planned meeting for reviews and coordination. In addition, it is required that a monthly progress report be submitted to the City that discusses activities during the reporting period, the schedule, budget, progress to date, activities planned for the next period, and any open issues that need to be resolved.

COMPENSATION AND FEE SCHEDULE

The compensation for the Scope of Services shall not exceed \$149,970 See next page for breakdown

**Compensation and Fee Schedule
Security Vulnerability Assessments & Emergency Response Plans**

Tasks	Labor Hours Summary					Subconsultants & Other Direct Costs	Total Labor Hrs	Total Labor Cost
	Project Manager	Principal Engr.	Senior Engr.	Assoc. Engr.	Clerical			
	\$155	\$135	\$100	\$80	\$40			
TASK 1 – PRELIMINARY PROJECT MEETING AND DATA ACQUISITION	4	8	8				20	\$2,500
TASK 2 – PERFORM VULNERABILITY ASSESSMENTS (VA)								
WATER SYSTEM								
Water System Workshop (1)	4	8				\$ 1,320	12	\$3,020
Review and Update Water System Vulnerability Assessment	4	24					28	\$3,860
WASTEWATER SYSTEM								
Wastewater System Workshops (3)	8	32				\$ 3,960	40	\$9,520
Wastewater Fault Tree & Consequence Determination Workshops (2)	4	24				\$ 2,640	28	\$6,500
Site visits to approximately 22 facilities (5 days)	4	40				\$ 5,610	44	\$11,630
Compile and process data of work above	4	80	10			\$ 13,200	94	\$25,620
Cyber Risk Assessment	4	48				\$ 9,900	52	\$17,000
TASK 3 – PERFORM EMERGENCY RESPONSE PLANS (ERP)								
Kickoff Meeting	2	8					10	\$1,390
Seismic Report Update	4	40	60				104	\$12,020
WATER SYSTEM								
Update Workshop (1 day)	2	8					10	\$1,390
Collection and process Data and information from above	4	30					34	\$4,670
WASTEWATER SYSTEM								
Workshop (2 days)	4	32					36	\$4,940
Collection and process Data and Information from above	4	80	16				100	\$13,020
TASK 4 – PREPARATION OF REPORTS								
Water Dept VA	8	8	8			\$ 500	24	\$3,620
Wastewater Dept VA	8	40	8			\$ 500	56	\$7,940
Water Dept ERP	8	8	8			\$ 500	24	\$3,620
Wastewater Dept ERP	8	68	6			\$ 500	82	\$11,520
Prepare PowerPoint Training and Deliver training	2	16					18	\$2,470
TASK 5 – PROJECT MANAGEMENT & REPORTING	24						24	\$3,720
TOTALS =	114	602	124	0	0	\$ 38,630	840	\$149,970

TIME SCHEDULE

Award the Contract to TCE	2012
Water System Workshop (1)	November 2012
Wastewater Workshop (3)	December 2012
Site Visits & 2 Additional Workshops	January 2012
Compile Data from Site Visits & Workshops	February 2013
Develop Vulnerability Assessment	March 2013
Develop Emergency Response Plan	March 2013
Submit Draft Reports to City	April 2013
City Provides Comments	May 2013
TCE Incorporate Comments an Submit Draft Final	May 2013
TCE Submit Final Reports	June 2013

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

CONSULTANT REQUIREMENTS

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- I. **City’s Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and Subcontractors of Consultants doing business with the City. The City encourages its Consultants to share this commitment. Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors. *Failure to submit the required EOCP documentation indicated below shall result in a determination of the Consultant being non-responsive.*
- II. **Nondiscrimination in Contracting Ordinance.** All Consultants doing business with the City, and their Subcontractors, must comply with requirements of the City’s *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.
- A. Proposal Documents to include Disclosure of Discrimination Complaints. As part of its bid or proposal, Consultant shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Consultant in a legal or administrative proceeding alleging that Consultant discriminated against its employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

EXHIBIT D

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

Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

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

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

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

EXHIBIT D

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

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

1. For proposals ranking as qualified or acceptable, or any higher ranking, the City shall apply a maximum of 12 additional points for SLBE or ELBE participation. Points will be awarded as follows:

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

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

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

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

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

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

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

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

EXHIBIT D

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

3. Equal Opportunity Employment. Listing of Consultant's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Consultant's *Workforce Report* as compared to the County's Labor Force Availability.
4. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

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

VI. Definitions.

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

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

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

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

EXHIBIT D

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

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

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

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

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

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

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

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

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

VIII. Certification.

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

City of San Diego:

ELBE, SLBE

Caltrans:

DBE, SDBE, SWBE

EXHIBIT D

Dept. of General Services:	DVBE
CA Public Utilities Commission:	MBE, WBE
City of Los Angeles:	DBE, WBE, MBE
SD Regional Minority Supplier Diversity Council:	MBE, WBE

IX. List of Attachments.

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



City of San Diego.

ATTACHMENT AA

EQUAL OPPORTUNITY CONTRACTING (EOC)

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

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

WORK FORCE REPORT

ADMINISTRATIVE

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

CONTRACTOR IDENTIFICATION

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

Name of Company: TRAN CONSULTING ENGINEERS

AKA/DBA:

Address (Corporate Headquarters, where applicable): 4444 EL CAJON BLVD, SUITE 15

City SAN DIEGO County SAN DIEGO State CA Zip 92115

Telephone Number: (619) 563-7650 FAX Number: (619) 563-7821

Name of Company CEO: PAUL HOA TRAN

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

Address:

City County State Zip

Telephone Number: () FAX Number: ()

Type of Business: CONSULTING ENGINEERING Type of License: PROFESSIONAL ENGINEERING

The Company has appointed: MS. HUONG NGUYEN

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 4444 EL CAJON BLVD, SUITE 6, SAN DIEGO CA 92115

Telephone Number: (619) 285-1522 FAX Number: (619) 584-0682

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

Check the box above that applies to this WFR.

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

I, the undersigned representative of TRAN CONSULTING ENGINEERS (Firm Name)

SAN DIEGO, CA hereby certify that information provided (County) (State)

herein is true and correct. This document was executed on this 2ND day of OCTOBER, 2012

[Signature] (Authorized Signature)

PAUL HOA TRAN (Print Authorized Signature)

WORK FORCE REPORT - NAME OF FIRM: TRAN CONSULTING ENGINEERS DATE: OCTOBER 2, 2012

OFFICE(S) or BRANCH(ES): OFFICE COUNTY: SAN DIEGO

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

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

OCCUPATIONAL CATEGORY	Black, African-American	Hispanic, Latino, Mexican-American, Puerto Rican	Asian, Pacific Islander	American Indian, Eskimo	Filipino	White, Caucasian	Other ethnicity; not falling into other groups
Management & Financial			1				
Professional		1		1			4
A&E, Science, Computer			3				3
Technical		1		1		1	3
Sales							
Administrative Support				1			
Services							
Crafts							
Operative Workers							
Transportation							
Laborers*							

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

Totals Each Column		1	1	4	3		1	10	
--------------------	--	---	---	---	---	--	---	----	--

Grand Total All Employees 20

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

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

Non-Profit Organizations Only:

Board of Directors								
Volunteers								
Artists								



CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm’s work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm’s work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of

your firm from each of the three counties.^{1,2} On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.²

MANAGING OFFICE WORK FORCE

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

TYPES OF WORK FORCE REPORTS:

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

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

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

Exhibit: Work Force Report Job categories

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

Management & Financial

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

Professional

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

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

Architecture & Engineering, Science, Computer

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

Technical

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

Sales

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

Administrative Support

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

Services

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

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

Crafts

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

Operative Workers

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

Transportation

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

Laborers

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

SUBCONTRACTOR PARTICIPATION LIST

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

Contractor shall also submit Subcontractor commitment letters on Subcontractor’s letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of 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
Business Protection Specialists 250 Gorham Street Canandaigua, New York 14424	Security Vulnerability Assessment Support	19%	OBE	N/A
Cybernet Consulting, Inc. 2244 Faraday Ave., Suite 188 Carlsbad, CA 92008	Cyber- Vulnerability Support	6.6%	SLBE	CITY

**Listed for informational purposes only.*

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

List of Abbreviations:

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

CONTRACT ACTIVITY REPORT

Consultants are required by contract to report Subcontractor activity in this format. Reports shall be submitted via the Project Manager to the Equal Opportunity Contracting Program (EOCP) no later than thirty (30) days after the close of each quarter.

PROJECT: VULNERABILITY ASSESSMENT (H126567) PRIME CONTRACTOR: TRAN CONSULTING ENGINEERS

CONTRACT AMOUNT: \$149,970.00 INVOICE PERIOD: _____ DATE: _____

Include Additional Services Not-to-Exceed Amount

Subcontractor	Indicate SLBE, ELBE, MBE, WBE, DBE, DVBE or OBE	Current Period		Paid to Date		Original Commitment	
		Dollar Amount	% of Contract	Dollar Amount	% of Contract	Dollar Amount	% of Contract
BUSINESS PROTECTION SPECIALIST	OBE					\$28,310.00	19
CYBERNET CONSULTING	SLBE					\$9,900.00	6.6
Prime Contractor Total:		\$111,760.00					
Contract Total:		\$149,970.00					

Completed by: 

EXHIBIT E

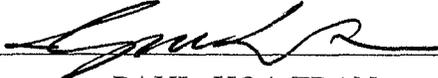
CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: SECURITY VULNERABILITY ASSESSMENTS AND ENGINEERING RESPONSE PLANS FOR THE PUBLIC UTILITIES DEPARTMENT (H126567)

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:

TRAN CONSULTING ENGINEERS
Name under which business is conducted

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

Signed 
Printed Name PAUL HOA TRAN
Title PRESIDENT
Date 10/2/2012

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

Section III

SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

Item _____ : _____

(*Supporting documentation attached yes _____ no _____)

**CONTRACTOR / VENDOR
REGISTRATION FORM**



The City of San Diego

Purchasing and Contracting Department

Contractor / Vendor Registration

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

Vendor ID:

(ID Number will be provided by City)

Firm Information

Firm Name:

Doing Business As:

Firm Address:

City:

State:

Zip:

Phone:

Fax:

Taxpayer ID:

Business License:

Website:

Contact Info:

Name:

Title:

Email:

Phone:

Cell:

Alternate Address (If different from above) to Receive Remittance:

Mailing Address:

City:

State:

Zip:

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

Mailing Address:

City:

State:

Zip:

Contractor Licenses (If applicable)

License Number:

License Type:

License Number:

License Type:

License Number:

License Type:

Firm Name:

Tran Consulting Engineers

Product/Services Description:

Furnish Civil Engineering services

Product/Services Information:

NIGP Codes:

96847 INSPECTION SERVICES, CONSTRUCTION,
 92517 CIVIL ENGINEERING,
 92533 ENGINEER SERVICES, PROFESSIONAL
 92531 ELECTRICAL ENGINEERING,
 92588 STRUCTURAL ENGINEERING,
 92535 ENVIRONMENTAL ENGINEERING

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

The City requires this information for statistical purposes only.

Primary Owner of the Firm
 (51% ownership or more)

Male
 Female or

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Non-Profit
- Governmental/Municipality/Regulatory Agency
- Utility

Ethnicity:

Ethnicity:

* ASIAN AMERICAN

* select one from the following List of Ethnicities:

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

Ownership Classification

Classification:

*SLBE and MBE

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

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

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

Certification #:

MBE, Firm no. 29264

Agency:

Caltrans

Certification #:

SLBE License type CSD-12

Agency:

City of San Diego

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

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

Or fax to: 619/236-5904

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

Effective December 24, 2008, the Council of the City of San Diego adopted Ordinance No. O-19808 to extend the Contractor Standards Ordinance to all contracts greater than \$50,000. The intent of the Contractor Standards clause of San Diego Municipal Code §22.3224 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of §22.3224(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

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

A. PROJECT TITLE:

SECURITY VULNERABILITY ASSESSMENTS AND ENGINEERING RESPONSE PLANS FOR THE PUBLIC UTILITIES DEPARTMENT (+126563)

B. BIDDER/CONTRACTOR INFORMATION:

TRAN CONSULTING ENGINEERS

Legal Name	DBA		
<u>4444 EL CAJON BLVD, STE 15</u>	<u>CA</u>	<u>SAN DIEGO</u>	<u>92115</u>
Street Address	State	City	Zip
<u>PAUL HOA TRAN, PRESIDENT</u>	<u>619-563-7821</u>	<u>619-563-7650</u>	<u>619-563-7821</u>
Contact Person, Title	Fax	Phone	

C. OWNERSHIP AND NAME CHANGES:

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

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

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

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

EXHIBIT H

D. BUSINESS ORGANIZATION/STRUCTURE: Indicate the organizational structure of your firm. Check one only on this page. Use *Pledge of Compliance Attachment "A"* if more space is required.

Corporation Date incorporated: 5/29/2001 State of incorporation: CALIFORNIA

List corporation's current officers: President: PAUL HOA TRAN
Vice Pres: PAUL HOA TRAN
Secretary: PAUL HOA TRAN
Treasurer: PAUL HOA TRAN

Is your firm a publicly traded corporation? Yes No

If Yes, name those who own five percent (5%) or more of the corporation's stocks:

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

List names of members who own five percent (5%) or more of the company:

Partnership Date formed: ___/___/___ State of formation: _____

List names of all firm partners:

Sole Proprietorship Date started: ___/___/___

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

Joint Venture Date formed: ___/___/___

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

Note: Each member of a Joint Venture must complete a separate *Contractor Standards Pledge of Compliance* for a Joint Venture's submission to be considered responsive.

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

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

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

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

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

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

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

F. PERFORMANCE HISTORY:

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

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

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

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

G. COMPLIANCE:

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

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

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

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include name of entity involved, specific infraction, dates, and outcome.

H. BUSINESS INTEGRITY:

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

Yes No

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

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

Yes No

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

I. TYPE OF SUBMISSION: This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated 10 / 23 / 2017

Complete all questions and sign below. Each *Pledge of Compliance Attachment "A"* page must be signed. Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Pledge of Compliance* and that I am responsible for completeness and accuracy of responses and all information provided is true to the best of my knowledge and belief. I further certify my agreement to the following provisions of San Diego Municipal Code §22,3224:

- (a) To comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).
- (c) To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) To provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days if a change occurs which would modify any response.
- (e) To notify the Purchasing Agent within fifteen (15) days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (f) To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

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

PAUL HOA TRAN, PRESIDENT
Print Name, Title


Signature

10 / 2 / 2017
Date

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

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

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

PAUL HOA TRAN, PRESIDENT
Print Name, Title


Signature

10/3/2012
Date

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

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

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

http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm

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

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

www.sandiego.gov/city-clerk/elections/eid/codes.shtml

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

DISCLOSURE DETERMINATION FOR CONSULTANT

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

- 1. Department / Board / Commission / Agency Name: City of San Diego Public Utilities Department
2. Name of Specific Consultant & Company: Tran Consulting Engineers
3. Address, City, State, ZIP: 4444 El Cajon Boulevard , Suite 15 El Cajon, CA 92115
4. Project Title (as shown on 1472, "Request for Council Action"): City of San Diego Public Utilities Vulnerability Assessment
5. Consultant Duties for Project: Develop Vulnerability Assessment (VA) including updating the existing Water System report, issuing a new report for the Wastewater System assets, and an Emergency Response Plan.

6. Disclosure Determination [select applicable disclosure requirement]:

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

- or -

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

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

- or -

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

Four horizontal lines for listing specific economic interests.

By: Guann Hwang, Deputy Director

Date: 10/8/2012

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.

**EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE**

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



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

COMPANY INFORMATION

Company Name: Tran Consulting Engineers	Contact Name: Paul Hoa Tran
Company Address: 4444 El Cajon Blvd., Suite 15, San Diego CA 92115	Contact Phone: 619-563-7650
	Contact Email: Tran@tran-c-e.com

CONTRACT INFORMATION

Contract Title: Security Vulnerability Assessments and Emergency Response Plans	Start Date:
Contract Number (if no number, state location): H125657	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

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

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

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

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.

Paul Hoa Tran, President

11/19/2012

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.

TRAN CONSULTING ENGINEERS

Name of Firm



Signature of Authorized Representative

PAUL HOA TRAN

Printed/Typed Name

10/2/2012

Date

CONSULTANT CERTIFICATION

AMERICAN WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: Security Vulnerability Assessments and Engineering Response
Plans for the Public Utilities Department (H126567)

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

TRAN CONSULTING ENGINEERS
(Name under which business is conducted)

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

Signed 

Printed Name PAUL HOA TRAN

Title PRESIDENT

CITY OF SAN DIEGO

Sensitive Information Authorization Acknowledgement Form – City Contractors/Vendors

Authorized Person (City Contractor/Vendor requesting authorized access to Sensitive Information):

<i>Name (Printed)</i>	<i>Mail Address</i>	<i>Network (AD) / Login (User ID)</i>
Paul Hoa Tran	Tran@tran-c-e.com	
<i>Company/Organization</i>	<i>Contractor/Vendor Office Phone</i>	
Tran Consulting Engineers	(619) 563-7650	
<i>City Department (managing contract)</i>	<i>Contractor/Vendor Office FAX</i>	
City of San Diego, Public Utilities Dept.	(619) 563-7821	
<i>City Contract Manager's Name (Printed)</i>	<i>City Contract Manager's Phone</i>	<i>City Contract Manager's Mail Sta.</i>
Sohlkish, Albert		

Policy Summary (pertinent excerpts from City Administrative Regulation 90.64):

4.1 Sensitive Information shall be maintained in a confidential manner and access restricted to only employees or individuals properly authorized by his or her Appointing Authority and approved by the Information/Data Owner, based on verified business needs to have access to such information and/or in compliance with specific legal requirements.

4.3 Authorization to access or use Sensitive Information shall be based on a functional role (job duties) and not linked directly with a specific individual, such that when an authorized person's job duties no longer require access to or use of Sensitive Information, the ability to access or use such information shall be revoked. At no time shall a contractor's or vendor's access to Sensitive Information extend beyond the termination of the authorizing contract, and such access shall be revoked as soon as the duties requiring access or use have ended, regardless of the end date of the contract.

4.5 Authorized Persons shall access or use Sensitive Information only for its intended purpose for which it was obtained and maintained by the City of San Diego. An employee or individual authorized to access or use Sensitive Information shall sign an Authorization Acknowledgement Form stating he or she has read, understands, and agrees to abide by this policy.

4.7 Violation of this policy, either by unauthorized persons accessing or attempting to access Sensitive Information, or by Authorized Persons accessing or using Sensitive Information for other than its intended purpose or beyond the scope of their duties, may result in disciplinary action, up to and including termination of employment, and also subject the violating individual(s) to personal liability without the option of City legal defense. In the case of contractors or vendors, violation of this policy will be considered a breach of contract and appropriate actions taken on that basis. If deemed necessary, information regarding employee, volunteer, contractor or vendor violation of this policy may be referred to the appropriate agency for any civil and/or criminal action, as applicable.

Acknowledgement

By signing below, the above City Contractor/Vendor acknowledges that he or she understands that the Terms and Conditions of the underlying City Contract contain the provisions of the full policy stated above, and he or she agrees to comply with such contract provisions. City Contractor/Vendor understands that this form will be kept on file with the underlying contract documents in the City Purchasing & Contracting Department, and that he or she may receive a copy, if requested. The City Contract Manager acknowledges that he or she has discussed the contract Terms and Conditions related to this policy with the above Contractor/Vendor and understands the supervisor's obligations regarding the Contractor's/Vendor's access to the City's Sensitive Information under this policy.


 Contractor's/Vendor's Signature

10/2/2012
 Date Signed


 City Contract Manager's Signature

12/6/12
 Date Signed

W. Downs Prior
 Principal Contract Specialist
 Public Works Contracting

(City Contractor/Vendor Form)

**NONDISCLOSURE AGREEMENT
FOR
SECURITY VULNERABILITY ASSESSMENTS AND EMERGENCY RESPONSE PLANS FOR
THE CITY OF SAN DIEGO PUBLIC UTILITIES DEPARTMENT**

This Nondisclosure Agreement (“Agreement”) is made by and between Tran Consulting Engineers (“Consultant”), and the City of San Diego, a municipal corporation (“City”).

1. **Purpose.** This Agreement is intended to allow the Consultant to view certain Confidential Information in order to analyze and provide security vulnerability assessment and emergency response plans for the City’s Public Utilities Department under Contract #H125657, while ensuring that the Confidential Information is protected from unauthorized use or disclosure.

2. **Confidential Information.** “Confidential Information” means the following documents and all information contained therein:

- Alvarado RMP-PSM 2011 Update June 2011
- Miramar RMP-PSM 2011 Update June 2011
- Otay RMP-PSM 2011 Update June 2011
- Water Emergency Response Plan, dated December 2006
- Water Seismic Vulnerability Assessment Report, dated May 2001
- Cyber Resilience Review Report, dated April 2011
- Seismic Vulnerability Analysis of Metropolitan Wastewater Department Pump Stations and Pipelines, dated September 29, 2000

3. **Nondisclosure of Confidential Information**

(a) Consultant agrees not to use the Confidential Information for any purpose other than the purpose stated in Section 1. Consultant shall not disclose or permit disclosure of the Confidential Information to third parties or to employees of Consultant (including consultants and agents) who are not required to have the information for the aforementioned purpose. Consultant shall have its employees (including consultants and agents) who have access to the Confidential Information sign a nondisclosure agreement in content substantially similar to this Agreement. Consultant agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of the Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Consultant utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Consultant agrees to notify the City in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to Consultant’s attention.

EXHIBIT N

(b) Consultant shall not have liability to the City with regard to any Confidential Information which the Consultant can prove:

(i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Consultant;

(ii) was known to the Consultant, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

(iii) is disclosed with the prior written approval of the City;

(iv) becomes known to the Consultant, without restriction, from a source other than the City without breach of this Agreement by the Consultant and otherwise not in violation of City's rights;

(v) is disclosed generally to third parties by the City without restrictions similar to those contained in this Agreement; or

(vi) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Consultant shall provide prompt notice of such court order or requirement to the City to enable the City to seek a protective order or otherwise prevent or restrict such disclosure.

4. **Remedies; Indemnification.** The Consultant agrees that its obligations set forth in this Agreement are necessary and reasonable in order to protect the City and its business. The Consultant expressly agrees that due to the unique nature of the Confidential Information, monetary damages would be inadequate to compensate the City for any breach by the Consultant of its covenants and agreements set forth in this Agreement. Accordingly, the Consultant agrees and acknowledges that any such violation or threatened violation shall cause irreparable injury to the City and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the City shall be entitled (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Consultant, without the necessity of proving actual damages, and (b) to be indemnified by the Consultant from any loss or harm, including but not limited to attorney's fees, arising out of or in connection with any breach or enforcement of the Consultant's obligations under this Agreement or the unauthorized use or disclosure of the Confidential Information.

5. **Return of Materials.** All copies of the Confidential Information shall be promptly returned to the City by the Consultant within ten (10) days after (a) completion of services under Contract #H125657; or (b) the written request of the City.

6. **No Rights Granted.** Nothing in this Agreement shall be construed as granting the Consultant any rights in or to the Confidential Information other than the limited right to review such Confidential Information solely for the purpose stated in Section 1.

7. **Term.** The commitments and obligations under this Agreement shall continue for a period terminating on the later of (a) five (5) years following the date of execution of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement.

EXHIBIT N

8. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Confidential Information of the City may not be assigned without the prior written consent of the City unless the assignee shall be the successor entity to the assignor upon the dissolution of the assignor in its present form. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

10. **Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Each of the parties hereto consents to the exclusive jurisdiction and venue of the courts of San Diego County, California.

11. **Amendment and Waiver.** Any term of this Agreement may be amended with the written consent of the Consultant and City. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

13. **Entire Agreement.** This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

14. **No Publicity.** Consultant shall not, without the prior consent of the City, disclose to any other person the fact that Confidential Information has been and/or may be disclosed under this Agreement, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the City.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT N

The parties have executed this Nondisclosure Agreement as of the date of the last party to sign.

Tran Consulting Engineers

City of San Diego

By: [Signature]

By: [Signature]

Name: PAUL HOA TRAN

W. Downs Prior
Principal Contract Specialist
Public Works Contracting

Title: PRESIDENT

Date: 10/2/2012

Date: 12/6/12

I HEREBY APPROVE the form and legality of the foregoing Agreement this 2nd day of OCTOBER, 2012. 17th
December

JAN I. GOLDSMITH, City Attorney

By: [Signature]
Deputy City Attorney