



REQUEST FOR QUALIFICATIONS
FOR
GENERAL COUNSEL SERVICES

Distribution/Advertisement: October 1, 2010
Submittal Deadline: October 29, 2010 at 5:00 p.m.

Contact: Stacey Fulhorst, Executive Director
City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, CA 92101
(619) 533-3476
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www.sandiego.gov/ethics

1.0 INTRODUCTION

1.1 General Information

The San Diego Ethics Commission [Ethics Commission] was established by the City Council in 2001. The Ethics Commission is composed of seven volunteer Commissioners appointed by the Mayor and City Council. The staff consists of an Executive Director, an Education Program Manager, an Investigator, an Auditor, and an Executive Secretary. Pursuant to City Charter amendments approved by the voters in 2002 and 2004, the Ethics Commission has subpoena power as well as the ability to retain its own legal counsel independent of the City Attorney's Office.

The Ethics Commission is charged with monitoring, administering, and enforcing the City's governmental ethics laws, which include the Election Campaign Control Ordinance, the Municipal Lobbying Ordinance, and the Ethics Ordinance. Specifically, the Ethics Commission and its staff advise and educate City officials and regulated members of the public regarding governmental ethics laws, conduct investigations, audit disclosure statements, and propose governmental ethics law reforms. The jurisdiction of the Ethics Commission extends to all elected officials of the City; all candidates for elective City office; all unclassified City employees, members of City boards, and consultants who are required to file conflict of interest disclosure forms; and all lobbyists required to register with the City.

1.2 Purpose of Solicitation

The Ethics Commission, an equal opportunity contractor, is seeking a well-qualified municipal law firm or individual to serve as its General Counsel. The purpose of this Request for Qualifications [RFQ] is to identify qualified firms and individuals that can provide the Ethics Commission with the legal services described below. The primary attorneys who provide legal services to the Ethics Commission will be required to file a Statement of Economic Interests (FPPC Form 700).

The Ethics Commission will not provide reimbursement for any expenses incurred in connection with this RFQ including the costs of preparing the response, providing information, and attending any interviews.

It is the policy of the City of San Diego and the Ethics Commission to encourage equal opportunity in its professional services contracts. Toward this end, proposals from small businesses, disabled owned businesses, women owned businesses, firms owned by African-Americans, American Indians, Asian-Americans, Filipinos, and Latinos, and local firms, are strongly encouraged. The Ethics Commission endeavors to do business with firms sharing its commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, ancestry, age, gender, disability, medical condition, or place of birth.

2.0 SCOPE OF SERVICES

2.1 Tasks

The law firm or individual selected to serve as the Ethics Commission's General Counsel will be required to provide knowledgeable personnel who have successfully provided the professional services of a general counsel, preferably to one or more public agencies. The attorney(s) will be required to perform legal analyses of complex issues and provide advice, recommendations, and legal opinions; prepare correspondence and written reports; interact with staff and Commissioners; make public presentations; and attend public meetings.

The General Counsel will report directly to the Executive Director. The anticipated scope of services will encompass legal advice and guidance on all matters associated with the operation of the Ethics Commission including, but not limited to, the following:

- Attending meetings of the Ethics Commission and providing legal and practical advice including, but not limited to, adherence with the Ralph M. Brown Act.
- Assisting with the investigation and enforcement program including, but not limited to: conducting legal research, participating in witness interviews, communicating with opposing counsel and respondents, preparing closed session memoranda, and preparing various enforcement-related documents.
- Assisting with the preparation of matters for probable cause and administrative hearings.
- Serving as the Petitioner at Ethics Commission hearings and representing the Ethics Commission in matters before the San Diego Superior Court. (Note that other attorneys and/or law firms may be retained to perform these duties.)
- Drafting and reviewing written advisory opinions prepared by staff at the request of City Officials and other individuals within the Ethics Commission's jurisdiction.
- Assisting the Program Manager in providing technical assistance (informal advice) requested by City Officials, City candidates and their staff, and lobbyists.
- Assisting the Program Manager in monitoring federal and state judicial decisions and statutory and regulatory amendments relevant to the City's governmental ethics laws.
- Providing input and advice regarding proposed amendments to the City's governmental ethics laws.
- Drafting and reviewing resolutions and ordinances related to proposed amendments to the City's governmental ethics laws and the Ethics Commission's investigative and enforcement procedures.
- Providing advice to the Ethics Commission staff regarding public records requests and disclosure requirements.

2.2 Term

The Ethics Commission anticipates that the term of this agreement will commence on January 1, 2011, and continue through June 30, 2011. See information below in Section 4.1 concerning the submittal schedule. The Ethics Commission may issue another RFQ at a later date for General Counsel services commencing on July 1, 2011.

2.3 Budget

The budget for this engagement will be an amount not to exceed \$55,000 for the term of the agreement.

3.0 SUBMITTAL REQUIREMENTS

This section contains instructions on how to prepare and submit a response to this solicitation. All respondents shall follow the format specified below. The contents of the submittal must be clear, concise and complete. Each section of the submittal shall be tabbed and labeled in the order shown below.

3.1 Submittal Cover

The submittal cover shall include the RFQ title and submittal due date, as well as the name, address, telephone and fax numbers, and e-mail address of the principal contact.

3.2 Table of Contents

The table of contents shall be complete and clear, listing headings and pages to enable easy reference.

3.3 Cover Letter

The cover letter shall be brief and shall include a description of the delivery of services to the Ethics Commission, including any conditions, constraints or problems that may adversely affect either the cost or the firm's ability to perform certain tasks. The cover letter shall identify the team members, and include the title and signature of the firm's contact person for this response. This signatory shall be a person with the official authority to bind the company.

3.4 Statement of Understanding and Methodology

The statement of understanding and methodology shall contain a written narrative that demonstrates the respondent's understanding of the solicitation and a methodology for implementing the Scope of Services described above in Section 2.1.

3.5 Qualifications and Experience

This section shall include a description of the respondent's experience in providing General Counsel services for public agencies during the past ten years, as well as examples specifically

related to the Scope of Services described above in Section 2.1. Examples of other clients represented is critical and contact information should be provided for reference checks.

3.6 Project Personnel

Provide a resume for each professional proposed to work on Ethics Commission business. The resumes shall include relevant municipal law experience and at least three references from previous assignments with contact information.

3.7 Insurance

This section shall include proof of insurance as follows:

- A. Commercial general liability insurance for personal injury, bodily injury, and property damage, with limits of one million dollars (\$1,000,000) per occurrence. The selected respondent shall provide evidence that the City of San Diego and the Ethics Commission are named as additional insureds.
- B. Workers Compensation Insurance as required by the State of California.
- C. Errors and omissions insurance in an amount not less than one million dollars (\$1,000,000) per claim with an annual aggregate of two million dollars (\$2,000,000). The selected respondent shall provide evidence that the City of San Diego and the Ethics Commission are named as additional insureds.
- D. All required insurance shall be issued only by insurers rated "A-, VII" or better in the most recent edition of the AM Best Key Rating Guide, which are licensed to do business in the State of California and have been approved by the City.

3.8 Schedule of Rates

Include a Schedule of Rates that identifies all personnel that may provide services under this contract.

3.9 Conflicts of Interest

Describe fully the nature of any potential conflict of interest, actual or potential, you or your firm might have in connection with providing legal services to the Ethics Commission including, but not limited to, the matters described in this paragraph. State whether any attorney in the firm has represented or been adverse to any of the following within the past five years:

- An elected or appointed official, employee, department, agency, board, or commission of the City of San Diego;
- A City candidate or ballot measure committee;

- An individual or organization that made expenditures or received compensation for the purpose of influencing one or more City Officials concerning any municipal decisions;
- A person or on organization seeking advice concerning the City’s campaign laws, lobbying laws, and ethics laws.
- A person or organization that was the subject of an Ethics Commission investigation or enforcement action.

3.10 Additional Required Documents

This section shall include required documents (documents that must be filled out and returned with response) not requested in other sections of the submittal:

- Equal Opportunity Agreement (Attachment 3)
- Work Force Report (Attachment 4)
- Certification for a Drug-Free Workplace (Attachment 6)

4.0 SUBMITTAL PROCESS AND EVALUATION CRITERIA

4.1 Submittal Schedule and Delivery

The solicitation, receipt, and evaluation of submittals, and the selection of the firm or individual to provide services as General Council, shall conform to the following schedule:
(Note: dates are subject to change.)

Distribution/Advertisement:	October 1, 2010
Deadline for Submittal:	October 29, 2010 at 5:00 p.m.
Submittal Evaluation:	November 5, 2010
Interviews:	November 19, 2010
Selection and Contract Negotiation:	December 17, 2010
Notice to Proceed:	December 31, 2010

One (1) original and four (4) copies of the proposal shall be delivered **not later than 5:00 p.m. on October 29, 2010**, to:

San Diego Ethics Commission
 Attn: Stacey Fulhorst, Executive Director
 1010 Second Avenue, Suite 1530
 San Diego, CA 92101

4.2 Selection Process

A Selection Committee composed of the Ethics Commission’s Executive Director and two to three Ethics Commissioners will review submittals that meet the requirements stated herein. The Committee will identify the most qualified respondents, utilizing the selection criteria listed below, and conduct interviews of those firms and/or individuals. It is mandatory that at least one

firm principal and the attorney who will be designated to perform the General Counsel duties attend the interview. The Ethics Commission Executive Director will make the final selection after consulting with the other members of the Selection Committee.

4.3 Evaluation Criteria

Submittals received by the Ethics Commission will be evaluated according to the criteria listed below:

- Conformance to the specified RFQ format;
- Organization, presentation, and content of the submittal;
- Specialized experience and technical competence of the firm, including record of performance and the strength of the key personnel who will be dedicated to providing the lead service as General Counsel;
- Demonstrated experience in the provision of advice to government agencies, including knowledge of the Ralph M. Brown Act and the California Public Records Act;
- Knowledge of governmental ethics laws (campaign finance laws, lobbying laws, and laws pertaining to conflicts of interest and other ethics-related matters); and
- References provided by current and former clients.

5.0 ADDITIONAL TERMS AND CONDITIONS

5.1 Ethics Commission Rights Pertinent to This Solicitation

Issuance of this RFQ does not commit the Ethics Commission to award a contract. The Ethics Commission retains the right to reject all submittals for any reason without indicating the reason for said rejection. The Ethics Commission reserves the right to withdraw this solicitation at any time without prior notice and makes no representation that any agreement will be awarded to any respondent. Selection is dependent upon the negotiation of a mutually acceptable contract with the successful respondent. The Ethics Commission accepts no financial responsibility for any costs incurred by the respondent in connection with this RFQ.

5.2 Ethics Commission Contact

Any questions concerning this RFQ may be directed to:

Stacey Fulhorst, Executive Director
City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, CA 92101
sfulhorst@sandiego.gov

5.3 Independent Contractor Status

If selected, the respondent shall perform the services of Ethics Commission General Counsel as independent contractor(s) and not employee(s) of the Ethics Commission or the City of San Diego. Neither the Ethics Commission nor the City of San Diego will be considered the employer or joint employer of the selected respondent.

5.4 Public Disclosure

As a general rule all documents received by the Ethics Commission are considered public records. Therefore all submittals shall be made available for public inspection according to applicable disclosure rules and regulations. If the respondent considers any documents submitted in response to this RFQ to be proprietary and/or otherwise exempt from disclosure, he or she must submit a written request for a determination of whether the documents can be withheld from public disclosure no later than 15 days prior to the due date of the submittal. Ethics Commission staff shall consult outside counsel and make a determination of confidentiality. If a determination is not obtained prior to the submittal deadline, all documents submitted shall be subject to public disclosure.

5.5 Confidential Solicitation

The Ethics Commission will not share the details of individual responses to this RFQ with competing respondents during the selection process. After the selection process ends, all solicitations will become public information (except portions otherwise deemed confidential as noted in Section 5.4).

5.6 Conflict of Interest/Financial Disclosure

The attorney or the key personnel at the law firm selected to perform the work described in this RFQ will be required to comply with the financial disclosure obligations set forth in the Ethics Ordinance and the Ethics Commission's Conflict of Interest Code.

5.7 Indemnification

If selected, the respondent will be required to indemnify and hold harmless the City of San Diego and the Ethics Commission, and all officers and employees of the Ethics Commission, from any and all liability, claims, costs (including reasonable attorneys' fees), demands, damages, expenses, and causes of action as outlined in the sample contract (Attachment 7).

5.8 Examination of Solicitation

The respondent understands that the information provided herein is intended solely to assist the respondent in submittal preparation. To the best of the Ethics Commission's knowledge, the information provided is accurate. However, the Ethics Commission does not warrant such accuracy, and any errors or omissions subsequently identified will not be construed as a basis for invalidating this solicitation. Further, by submitting a response to this RFQ, the respondent

represents that he or she has thoroughly examined and become familiar with work required in the solicitation and is capable of performing quality work to achieve the objectives of the Ethics Commission.

5.9 Equal Opportunity Requirements

This RFQ is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Municipal Code sections 27.2701 through 27.2702) and Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501 through 22.3517), copies of which are provided (Attachments 1 and 2). All respondents must complete and sign the Equal Opportunity Agreement (Attachment 3) and the Work Force Report (Attachment 4).

- Attachment 1 - San Diego Municipal Code, Chapter 2 Article 2, Division 27
(Equal Employment Opportunity Outreach Program)
- Attachment 2 - San Diego Municipal Code, Chapter 2 Article 2, Division 35
(Nondiscrimination in Contracting)
- Attachment 3 - Equal Opportunity Agreement
- Attachment 4 - Work Force Report
- Attachment 5 - City Council Policy No. 100-17
- Attachment 6 - Certification for a Drug-Free Workplace
- Attachment 7 - Sample Contract

Article 2: Administrative Code

Division 27: Equal Employment Opportunity Outreach Program

§22.2701 Purpose & Intent

The overall objective of the City’s Equal Employment Opportunity (“EEO”) Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, 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.
(Amended 5-1-1995 by O-18173 N.S.)

§22.2702 Definitions

Unless stated otherwise, the following definitions apply to this Division:

“City” means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

“Contract” means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

“Contractor” means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of, or collected by, the City.

“Equal Employment Opportunity Plan” means a document prepared by a Contractor in accordance with a form and format supplied by the City which describes the Contractor’s plan of action.

“Gender” means the character of being male or female.

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“Program Manager” means the Program Manager for the City’s Equal Opportunity Contracting Program or his or her designee.

“Work Force Analysis” means a comparison of a Contractor’s Work Force Report with applicable County Labor Force Availability Data.

“Work Force Report” means a report, in a format supplied by the City but compiled by the Contractor, of the Contractor’s total work force which indicates the number of males and females in each identified ethnic group by occupational category.
(Amended 5-1-1995 by O-18173 N.S.)

§22.2703 Scope

Except as provided in Section 22.2704, this Division applies to all Contractors except:

- (a) Contractors and subcontractors who do less than a total of \$10,000 worth of business with the City during the preceding twelve (12) months or who have less than a total of fifteen (15) employees, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.
- (b) Contracts to which any City (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.
- (c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.
- (d) Emergency Contracts, if a written partial or full waiver is granted by the City Manager, except that Contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such Contract. For purposes of this Section, the term “emergency” has the same meaning as in San Diego City Charter section 94.

(Amended 5-1-95 by O-18173 N.S.)

§22.2704 Mandatory Nondiscrimination Contract Clause

Notwithstanding the provisions of Section 22.2703, every Contract shall contain a nondiscrimination clause which shall read as follows:

Contractor 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. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

(Amended 5-1-1995 by O-18173 N.S.)

§22.2705 Duty to Submit Reports

- (a) If a Contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a Contract is not competitively solicited, the Contractor shall submit to the Equal Opportunity Contracting program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed Contract documents to the City for signature.

- (b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the Contractor will submit a plan for approval by the Program Manager.
- (c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.
- (d) If the apparent low bidder or Contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this section, for purposes of awarding the Contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

(Retitled to "Duty to Submit Reports" and amended 5-1-1995 by O-18173 N.S.)

§22.2706 Duty To Comply With Equal Employment Opportunity Plan

A Contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.

(Retitled to “Duty To Comply With Equal Employment Opportunity Plan” and amended 5-23-1995 by O-18173 N.S.)

§22.2707 Reviews

- (a) The Program Manager shall conduct periodic reviews of Contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.
- (b) If the City Manager determines, after review, that the Contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the Contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.

(Retitled to “Reviews” and amended 5-1-1995 by O-18173 N.S.)

§22.2708 Policies And Procedures

The City Manager shall promulgate policies and procedures necessary to implement this Division.

(Retitled to “Policies And Procedures” and amended 5-1-1995 by O-18173 N.S.)

Article 2: Administrative Code

Division 35: Nondiscrimination in Contracting
*(“Nondiscrimination in Contracting”
added 4-10-2000 by O-18785 N.S.)*

§22.3501 Purpose and Intent

This Division is intended to further the *City’s* policy not to engage in business with *business firms* that discriminate in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability by providing a procedure for receiving, investigating, and resolving complaints of *discrimination* filed against *business firms* that have submitted a bid or proposal for, have been selected to engage in, or are engaged in doing business with the *City*.
(“Purpose and Intent” added 4-10-2000 by O-18785 N.S.)

§22.3502 Definitions

All terms defined in this Division appear in italics. For purposes of this Division:

Appeals Officer means an individual appointed by the City Manager to conduct hearings on appeals of decisions issued by the *Hearing Officer*.

Business firm means any *person*, firm, partnership, corporation, or other business entity or combination thereof, including any *financial institution*, prime contractor, subcontractor, supplier, or vendor, that has submitted a bid or proposal, has been selected to do business, or is doing business with the *City*, including selling or leasing supplies, or goods, or providing construction, financial, professional, or other services, for a fee.

City means the City of San Diego and those agencies, boards, commissions, and corporations authorized to act on behalf of, or as agent for, the City of San Diego.

Contract means an agreement with any *person* let by or on behalf of the City for that *person* to provide labor, materials, goods, supplies, or services. It includes *major public works contracts* and *minor public works contracts* as defined in Section 30.3003 of this Municipal Code.

Director means the Deputy Director responsible for the *program*, or his or her representative.

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Discrimination means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a *business firm* because of the race, gender, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination regarding the characteristics of its employees or owners.

Financial institution means any *person* or entity engaged in the business of lending money, guaranteeing loans, extending credit, securing bonds, providing venture or equity capital, or that offers financial services in connection with *City* projects. *Financial institution* includes banks, savings and loans, venture capital companies, insurance companies, bonding companies, mortgage companies, credit unions, and brokers.

Hearing Officer means an individual appointed by the City Manager to conduct hearings under this Division.

Person has the same meaning as in Municipal Code section 11.0210.

Program means the Equal Opportunity Contracting Program or its successor.

Subcontract means an agreement for the performance of a particular portion of work to be performed under a *contract* with the *City*.
(Amended 9-3-2002 by O-19095 N.S.)

§22.3503 Scope

This Division applies to all *business firms*, *contracts*, and *subcontracts*, but does not apply to *contracts* to which any city (other than the *City*), county, district, or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is also a party.
(“*Scope*” added 4-10-2000 by O-18785 N.S.)

§22.3504 Nondiscrimination Policy

It is the policy of the City of San Diego not to accept bids or proposals from, nor to engage in business with, any *business firm* that has discriminated on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, disability, or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.
(“*Nondiscrimination Policy*” added 4-10-2000 by O-18785 N.S.)

§22.3505 Complaints of Discrimination

Any *person* may file an administrative complaint with the *Director* stating facts showing or tending to show that a *business firm* has engaged in *discrimination* against one or more other businesses. Within ten business days, the *Director* shall notify the *business firm* against whom the complaint was filed that a complaint has been received.

(“*Complaints of Discrimination*” added 4-10-2000 by O-18785 N.S.)

§22.3506 Investigation of Complaints

The *Program’s* investigative unit shall review and investigate *discrimination* complaints filed under this Division.

(“*Investigation of Complaints*” added 4-10-2000 by O-18785 N.S.)

§22.3507 Initial Findings and Recommendations

Based upon the investigative unit’s review and investigation, the *Director* shall make an initial non-binding finding of each allegation stated in the complaint, that either:

- (a) the investigation produced sufficient evidence to find that the alleged *discrimination* did take place (“sustained”);
- (b) the investigation failed to produce sufficient evidence to find whether the alleged *discrimination* took place (“not sustained”);
- (c) the investigation produced sufficient evidence to find that the alleged *discrimination* did not take place (“unfounded”);
- (d) the investigation produced sufficient evidence to establish that the complainant knowingly made one or more false or frivolous allegations (“false or frivolous”);
- (e) the allegation has been settled or otherwise resolved with the agreement of the interested parties; or
- (f) the allegation has been withdrawn.

The *Director* shall recommend to the City Manager, or his or her representative appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies or other action consistent with this Division. The initial non-binding findings and recommendations shall be made by the *Director*

within 120 calendar days of receipt of the complaint. The City Manager may extend this time limit at the request of the *Director* and for good cause or if the parties agree to mediate the complaint pursuant to Division 11, Article 2 of Chapter 1. The *Director* shall notify the complainant and the *business firm* within five business days of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.

(“Initial Findings and Recommendations” added 4-10-2000 by O-18785 N.S.)

§22.3508 Hearings

- (a) If the *Director* determines that one or more allegations are sustained, the *business firm* against whom the allegations were made shall be entitled to an administrative hearing on the allegations and an opportunity to participate in the administrative hearing. The *business firm* must request an administrative hearing within fifteen calendar days of notice of the initial findings. The hearing shall be held before a *Hearing Officer* within sixty calendar days of issuance of the *Director*’s initial findings.
- (b) Based upon the evidence presented at the administrative hearing, and within thirty calendar days of the hearing, the *Hearing Officer* may affirm or reject the initial findings and recommendations, may substitute different findings and order appropriate remedies, or may return the case to the *Director* for further investigation and findings.
- (c) Except where they conflict with this Division or the rules and regulations established by the City Manager pursuant to this Division, the hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

(“Hearings” added 4-10-2000 by O-18785 N.S.)

§22.3509 Remedies

When a complaint is sustained, the *Hearing Officer* shall order any one or more of the following actions:

- (a) Any remedy provided by law or agreed to by the *business firm*;
- (b) Recommendation to the City Manager and City Attorney for debarment of the *business firm* from bidding and contract awards on City projects for a period of not more than three years, according to the procedures set forth in Division 8, Article 2 of Chapter 2;

- (c) Suspension or termination of any current *contract* between the *business firm* and the *City*; or,
- (d) Referral of the matter for criminal prosecution, if appropriate under the circumstances.
(“*Remedies*” added 4-10-2000 by O-18785 N.S.)

§22.3510 Sanctions For The Filing Of A False or Frivolous Complaint

If the *Director* determines that one or more allegations of a complaint are false and that the complainant knew them to be false when filed, or that one or more of the allegations of a complaint are so frivolous that they are wholly without merit, the *Director* may refuse to review or investigate any complaint filed under this Division by the same complainant for a period of up to three years. The *Director* may also recommend monetary sanctions against the complainant in the amount of the costs incurred by the *City* for the investigation and review of the false or frivolous complaint.

(“*Sanctions For The Filing Of A False or Frivolous Complaint*” added 4-10-2000 by O-18785 N.S.)

§22.3511 Appeals

A *business firm* against whom a complaint has been filed or a complainant may appeal the decision of the *Hearing Officer* by filing a request for an appeal in writing with the City Manager within ten calendar days from service of the notice of the decision. The City Manager, or his or her representative, shall within ten calendar days of receipt, grant or deny the request for an appeal. If the request for an appeal is denied, the *Hearing Officer’s* decision shall be the final administrative decision. If the request for an appeal is granted, the City Manager shall designate an *Appeals Officer* to hear the appeal. The appeal shall be heard and the *Appeals Officer* shall render a final administrative decision within forty-five calendar days of granting the request for an appeal. Except where they conflict with this Division or the rules and regulations established by the City Manager pursuant to this Division, the appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

(“*Appeals*” added 4-10-2000 by O-18785 N.S.)

§22.3512 Mandatory Nondiscrimination Contract Clause

Every *contract* and *subcontract* shall contain a nondiscrimination clause that reads as follows:

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. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor 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.
(“Mandatory Nondiscrimination Contract Clause” added 4-10-2000 by O-18785 N.S.)

§22.3513 Contractor Bid Requirements

All requests for bids or proposals issued by the *City* shall include the following language:

As part of its bid or proposal, Bidder shall provide to the *City* a list of all instances within the past ten years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
(“Contractor Bid Requirements” added 4-10-2000 by O-18785 N.S.)

§22.3514 Contract Disclosure Requirements

Every *contract* issued by the *City* shall include the following language:

Upon the *City’s* request, Contractor 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 Contractor 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 Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by the *City* pursuant to the *City’s* Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.
(“Contract Disclosure Requirements” added 4-10-2000 by O-18785 N.S.)

§22.3515 Other Legal Remedies

The remedies provided by this section are in addition to any other statutory, legal, or equitable remedies that may be available and are not intended to be exclusive.
(“Other Legal Remedies” added 4-10-2000 by O-18785 N.S.)

§22.3516 Non-Interruption of Performance

The filing, investigation, hearing, and appeal of a complaint under this Division shall not hinder or affect the award of, performance of, or payment on a *contract* prior to a final administrative decision that establishes a violation.
(“Non-Interruption of Performance” added 4-10-2000 by O-18785 N.S.)

§22.3517 Policies and Procedures

The City Manager shall establish such rules and regulations as may be necessary to implement this Division.
(“Policies and Procedures” added 4-10-2000 by O-18785 N.S.)



EQUAL OPPORTUNITY AGREEMENT

NON-DISCRIMINATION CLAUSE: Contractor 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. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

EQUAL EMPLOYMENT OPPORTUNITY (EEO): Contractor has received, read, understands and agrees to be bound by the City of San Diego Municipal Code, Chapter II, Article 2, Division 27 (Equal Employment Opportunity Program) provided with this Agreement. Contractor has submitted either a Work Force Report or an Equal Employment Opportunity Plan as required by Section 22.2705 of the City of San Diego Municipal Code to the Ethics Commission and Contractor agree that compliance with EEO provisions may be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

EQUAL OPPORTUNITY CONTRACTING: Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the Agreement. If requested, Contractor shall submit the Outreach and Teaming Survey. Contractor agrees to provide updated reports as requested by the City.

Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: _____ *Bid No.:* _____

Company Name: _____ *Date:* _____

Authorized Signature

Print Authorized Signature Name



WORK FORCE REPORT

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

CONTRACTOR IDENTIFICATION

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

Name of Company: _____

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ FAX Number: () _____

Name of Company CEO: _____

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: _____ Type of License: _____

The Company has appointed: _____

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: _____

Telephone Number: () _____ FAX Number: () _____

For Firms: San Diego Work Force and/or Managing Office Work Force

I, the undersigned representative of

(Firm Name)

_____, _____ hereby certify that information provided

(County) (State)

herein is true and correct. This document was executed on this day of _____, 200__.

(Authorized Signature)

(Print Authorized Signature Name)

WORK FORCE REPORT - Page 2

NAME OF FIRM: _____ DATE: _____

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

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

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

TOTALS EACH COLUMN														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES														
---------------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

SUBJECT: DRUG-FREE WORKPLACE/CITY CONTRACTORS

POLICY NO.: 100-17

EFFECTIVE DATE: May 20, 1991

BACKGROUND:

The issue of substance abuse, the misuse of both legal and illegal drugs, has been identified as a major problem. It is well documented that substance abuse in the workplace can negatively impact employee performance, worker safety and the safety of the general public.

PURPOSE:

It is the intent of the City Council that the City of San Diego take a leadership role in addressing the issue of drug abuse in the workplace. It is the purpose of this policy to establish the requirement that all City construction contractors, consultants, grantees and providers of non-professional services agree to comply with this Drug-Free Workplace Policy.

POLICY:

Section 1. Definitions

- A. "Drug-free workplace" means a site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.
- B. "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to a contract as described in Section 2.
- C. "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. Sec. 812).
- D. "Contractor" means the department, division, or other unit of a person or organization responsible to the contractor for the performance of a portion of the work under the contract.

Section 2. City Contractor Requirements

- A. Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all of the following:
 - (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

- (2) Establishing a drug-free awareness program to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace.
 - (b) The person's or organization's policy of maintaining a drug-free workplace.
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (d) The penalties that may be imposed upon employees for drug abuse violations.
 - (3) Posting the statement required by subdivision (1) in a prominent place at contractors main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.
- B. Contractors shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of subdivisions (1) through (3) inclusive of Section 2A. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.

HISTORY:

Adopted by Resolution R-277952 05/20/1991

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: _____

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 qualifications, and that:

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 Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed _____
Printed Name _____
Title _____
Date _____

DRAFT

AGREEMENT

BETWEEN THE CITY OF SAN DIEGO ETHICS COMMISSION

AND

FOR LEGAL SERVICES

AGREEMENT

THIS AGREEMENT is made between the City of San Diego Ethics Commission [Ethics Commission], governed by San Diego Municipal Code Chapter 2, Article 6, Division 4, and _____ [Firm].

1. Scope of Services

A. General Legal Services:

The Ethics Commission retains the Firm for the purpose of providing General Counsel services to the Ethics Commission. The Ethics Commission shall have the right to determine the services to be performed by the Firm under this Agreement. These services may include, but are not limited to, the following:

- Attending meetings of the Ethics Commission and providing legal and practical advice including, but not limited to, adherence with the Ralph M. Brown Act.
- Assisting with the investigation and enforcement program including, but not limited to: conducting legal research, participating in witness interviews, communicating with opposing counsel and respondents, preparing closed session memoranda, and preparing various enforcement-related documents.
- Assisting with the preparation of matters for probable cause and administrative hearings.
- Serving as the Petitioner at Ethics Commission hearings and representing the Commission in matters before the San Diego Superior Court. (Note that other attorneys and/or law firms may be retained to perform these duties.)
- Reviewing written advisory opinions prepared by staff at the request of City Officials and other individuals within the Ethics Commission's jurisdiction.
- Assisting the Program Manager in providing technical assistance (informal advice) requested by City Officials, City candidates and their staff, and lobbyists.
- Assisting the Program Manager in monitoring federal and state judicial decisions and statutory and regulatory amendments relevant to the City's governmental ethics laws.
- Providing input and advice regarding proposed amendments to the City's governmental ethics laws.
- Drafting and reviewing resolutions and ordinances related to proposed amendments to the City's governmental ethics laws and the Commission's investigative and enforcement procedures.
- Providing advice to the Commission staff regarding public records requests and disclosure requirements.

B. Direction of Legal Services:

- (1) The services under this Agreement shall be performed under the direction of the Executive Director of the City of San Diego Ethics Commission, who will be the Firm's principal contact.
- (2) Compensation for services rendered to the Ethics Commission is from the City of San Diego. It is understood, however, that the attorney/client relationship will exist only between the Firm and the Ethics Commission, and that neither the City of San Diego nor any other City of San Diego department or agency are client(s) of the Firm for purposes of this Agreement. It is further understood that neither the City of San Diego nor any other City of San Diego department or agency have a right to information regarding the Firm's representation of the Ethics Commission or a right to control or direct the Firm in providing the services under this Agreement.

2. Effective Date and Term

The Effective Date of this Agreement is _____. The Term of this Agreement will be from the Effective Date through June 30, 2011.

3. Compensation

A. Maximum Contract Amount:

- (1) The Ethics Commission has appropriated or otherwise duly authorized the payment of an amount not to exceed \$60,000 for legal services and out-of-pocket disbursements for the term of this Agreement for authorized services performed at the direction of the Ethics Commission. In no event shall the total fees plus out-of-pocket disbursements exceed \$60,000 without the specific written authorization of the Ethics Commission.
- (2) The Ethics Commission shall not be obligated to pay the Firm more than \$60,000 unless the Ethics Commission makes additional amounts available for the performance of additional legal services under this Agreement. Additional services and compensation must be agreed to in a written document executed by the Ethics Commission and the Firm.

B. Rate:

The Ethics Commission agrees to pay the Firm based on the following hourly rates for authorized legal services under this Agreement:

Partner - \$_____ per hour for _____ or another partner approved by the Ethics Commission to provide services under this Agreement.

Associate - \$_____ per hour for _____ or another associate approved by the Ethics Commission to provide services under this Agreement.

Paralegal - \$_____ per hour for paralegal assistance.

All office, travel and meeting time will be billed at such rates in increments not exceeding one tenth (0.1) of an hour.

C. Allocation of Legal Work:

The Firm shall not use more than one attorney for the same specific task without the Ethics Commission's written approval. The Firm may use the minimum number of attorneys for this engagement consistent with good professional practice after consulting with and obtaining written approval by the Ethics Commission. Paralegals shall perform legal tasks whenever cost effective and appropriate.

D. Out-of-Pocket Disbursements:

The Ethics Commission agrees to reimburse the Firm, in accordance with the procedures set forth herein, for telephone, facsimile, mail, messengers, federal express deliveries, and similar out-of-pocket expenses charged by the Firm as a standard practice to its clients. In any billing for disbursements, the Firm shall provide the Ethics Commission with a statement breaking down the amounts by category of expense.

The following items will not be reimbursed, unless the Ethics Commission has specifically agreed to accept the following expenses:

- (1) Word Processing, clerical, or secretarial charges, whether expressed as a dollar disbursement or time charge, including any overtime for such functions.
- (2) Storage of open or closed files, rent, electricity, air conditioning, local telephone, receipt or local transmission of facsimile documents, rental of equipment including computers, meals served at meetings, or any other items traditionally associated with overhead.
- (3) Charges for time spent to provide necessary information for Ethics Commission audits, billing, or budget inquiries.
- (4) Litigation support or any other service in excess of the amount actually expended by the Firm for such service. The Ethics Commission will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.
- (5) Photocopy charges in excess of \$.10 (ten cents) per page.

- (6) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.
- (7) Equipment, books, periodicals, research materials, online research, Westlaw/Lexis, or like items.
- (8) Express charges, overnight mail charges, messenger services or the like, without the Ethics Commission's prior consent. The Ethics Commission expects these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, the Ethics Commission will consider reimbursement on a case-by-case basis.
- (9) Air travel, lodging, meals, or ground transportation unless the Ethics Commission gives prior written approval.
- (10) Videotaping of depositions, investigative services, outside photocopying, and computer litigation support services unless the Ethics Commission gives prior written approval.

E. Records:

In accordance with generally accepted accounting principles, the Firm shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Ethics Commission at all reasonable times. The individual disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the Ethics Commission in support of bills rendered by the Firm.

F. Invoices:

The Firm agrees to forward to the Ethics Commission a statement of account for each one month period of services under this Agreement, and the Ethics Commission agrees to compensate the Firm on this basis.

The Firm will submit monthly invoices to the attention of:

Kathy Hunt, City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, California 92101
Tel: (619) 533-3476
Fax: (619) 533-3448

Invoices shall refer to the matter number for which services were provided or other descriptor, such as a meeting date.

Both the amount invoiced for the billing period and the total amount then owed (the balance forward) shall be set forth. Invoices shall include detailed billing information including, but not limited to: a detailed description of the service rendered, date of service, attorney time devoted to service, attorney name, billing rate, and total amount billed for each service. Invoices will also include a breakdown of all disbursements by category of expense. A receipt for each category of expense must accompany the invoice to qualify for reimbursement by the Ethics Commission. The parties agree that if the Ethics Commission questions any item on an invoice, the Firm will provide all supporting information to substantiate the billing and will make any appropriate adjustments.

The Firm agrees to provide a completed W-9 Form upon execution of this Agreement to facilitate tax reporting for payments made by the Ethics Commission to the Firm pursuant to this Agreement.

4. Performance of Duties

The Firm shall be responsible for performance of all services set forth in the Scope of Services, and shall perform such services in compliance with all applicable provisions of state and local regulations as well as any guidelines specified and required by the Ethics Commission.

5. Key Personnel

The Firm acknowledges that the qualifications and expertise of its attorneys and key personnel, as identified above in section 3B, are a primary consideration in the Ethics Commission's selection of the Firm. Accordingly, the Firm agrees that it shall not replace or change the identified personnel without first obtaining the Ethics Commission's consent to such replacement or change.

6. Subconsulting

No services covered by this Agreement shall be subcontracted without the prior written consent of the Ethics Commission.

7. Independent Contractor

The Ethics Commission and the Firm agree that the Firm will act as an independent contractor and will have control of all work and the manner in which it is performed. The Firm is not an agent or employee of the Ethics Commission or the City of San Diego, and is not entitled to participate in any pension plan, insurance, bonus or similar benefits the Ethics Commission provides for its employees in connection with the services provided by the Firm under this agreement. Any provision in this Agreement that may appear to give the Ethics Commission the right to direct the Firm as to the details of doing the work or to exercise a measure of control over the work means that the Firm will follow the direction of the Ethics Commission as to end results of the work only.

8. Acceptability of Work

The Ethics Commission shall decide all questions regarding the quality or acceptability of the services performed and the amount of compensation due. In the event the Firm disagrees with the Ethics Commission's determination, the Firm shall inform the Ethics Commission in writing of the disagreement. Within ten business days of the Firm's notice, the Firm shall prepare a report which supports its position and file it with the Ethics Commission. The Ethics Commission shall then, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to the Firm.

9. Termination

The Ethics Commission may terminate this Agreement with or without cause at any time by serving the Firm with notification of such termination by mail or fax, or by oral notice given by the Ethics Commission's Executive Director or any other authorized representative of the Ethics Commission followed by written confirmation of same served on the Firm by mail. Subject to the obligations of the Firm under California Business and Professions Code, Rule 3-700, the Firm may terminate this Agreement with or without cause at any time by serving the Ethics Commission with notification of such termination by mail, by fax, or by the Firm's representative's oral notice of termination followed by written confirmation of same served on the Ethics Commission by mail.

10. Ownership of Materials and Documents

Any and all correspondence, memoranda, pleadings, and other materials and documents prepared by the Firm pursuant to this Agreement shall be the joint property of the Ethics Commission and the Firm from the moment of their preparation, and the Firm shall deliver such materials and documents to the Ethics Commission whenever requested to do so by the Ethics Commission. However, the Firm shall have the right to make duplicate copies of such materials and documents for the Firm's own files, or other purposes as may be authorized in writing by the Ethics Commission.

11. Non-Disclosure

Any and all documents prepared or acquired by the Firm pursuant to this Agreement (including any duplicate copies kept by the Firm), shall not be shown or disclosed to any other public or private person or entity, directly or indirectly, except as authorized by the Ethics Commission. The Firm shall not disclose to any other public or private person or entity any information regarding the activities of the Ethics Commission during or after the term of this Agreement, except as authorized by the Ethics Commission.

12. Conflict of Interest

Pursuant to the City of San Diego's Ethics Ordinance and the Ethics Commission's duly adopted Conflict of Interest Code, key personnel who will be performing services under

this Agreement are required to disclose their economic interests on a Statement of Economic Interests.

The Rules of Professional Conduct applicable to attorneys require the Firm to advise the Ethics Commission of any conflicts or potential conflicts of interest that may arise out of the Firm's representation of the Ethics Commission under this Agreement. At this time, the Firm is not aware of any conflict or potential conflict of interest that may arise out of the Firm's representation of the Ethics Commission in this matter.

In addition to the requirements regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, the Firm agrees that neither the Firm nor any attorney employed by the Firm will represent a client with respect to any matter currently or formerly pending before the Ethics Commission, during the time this agreement is in effect and for a period of one year from the date of the completion of the services to be provided to the Ethics Commission pursuant to this Agreement or the early termination of such services in the manner provided by this Agreement. The provisions of this paragraph may be waived by the written consent of the Ethics Commission's Executive Director.

13. Indemnification

To the fullest extent permitted by law, the Firm agrees to defend, indemnify, protect, and hold harmless the City of San Diego, the Ethics Commission, individual Ethics Commissioners, and all officers, appointees, and employees of the Ethics Commission, from all claims that arise from or are directly connected with the Firm's negligence or failure to perform the work or other obligations under this Agreement, and from all expenses of investigating and defending against same. This duty to defend, indemnify, protect, and hold harmless shall not include any claim based upon the alleged errors or omissions of the Firm related to the rendering of or the failure to render professional services arising from the sole negligence or willful misconduct of the Ethics Commission, its officers, agents, or employees.

14. Insurance

The Firm shall not commence work under this Agreement until it has obtained insurance. At its expense, the Firm shall take out and maintain in full force and effect at all times during the term of this Agreement the following policies of insurance:

- A. Commercial general liability insurance for personal injury, bodily injury, and property damage, with limits of one million dollars (\$1,000,000) per occurrence with the City of San Diego and the Ethics Commission named as additional insureds.
- B. For all of the Firm's employees who are subject to this Agreement, Workers Compensation Insurance as required by the State of California.

- C. Errors and omissions insurance in an amount not less than one million dollars (\$1,000,000) per claim with an annual aggregate of two million dollars (\$2,000,000) with the City of San Diego and the Ethics Commission named as additional insureds.
- D. All insurance required by this Agreement shall be issued only by insurers rated “A-, VII” or better in the most recent edition of the AM Best Key Rating Guide, which are licensed to do business in the State of California and have been approved by the City.

15. Drug Free Work Place

The Firm agrees to comply with the City’s Drug-Free Workplace requirements as set forth in City Council Policy No. 100-17.

16. Equal Opportunity Program

The Firm agrees to be bound by and comply with the City of San Diego’s Equal Employment Opportunity Outreach Program as set forth in San Diego Municipal Code Chapter 2, Article 2, Division 27.

17. Non Discrimination Ordinance

The Firm agrees to be bound by and comply with the City of San Diego’s Nondiscrimination in Contracting Ordinance as set forth in San Diego Municipal Code Chapter 2, Article 2, Division 35.

18. Americans with Disabilities Act

Every person or organization awarded a contract, lease or grant by the City of San Diego acknowledges and agrees to comply with Council Policy 100-04, adopted by Resolution No. 282153 relating to the Federally mandated Americans With Disabilities Act [ADA]. The Firm will be individually responsible for its own ADA program.

19. Compliance Investigations

Upon the Ethics Commission’s request, the Firm agrees to provide the Ethics Commission, within 60 days, a truthful and complete list of the names of all subconsultants, vendors, and suppliers that the Firm has used in the past five years on any of its contracts that were undertaken within San Diego County, including the dollar amount paid by the Firm for each subcontract or supply contract. The Firm further agrees to fully cooperate in any investigation conducted by the Ethics Commission or the City of San Diego pursuant to the City of San Diego’s Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501 through 22.3517) [Ordinance]. The Firm understands and agrees that a violation of this Article shall be considered a material breach of this Agreement and may result in remedies being ordered against the

Firm up to and including termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Ordinance. The Firm further understands and agrees that the procedures, remedies, and sanctions provided for in the Ordinance apply only to violations of the Ordinance.

20. Notices

In all cases where written notice is to be given under this Agreement, service shall be sufficient if the notice is deposited in the United States mail, postage paid. The notice shall be effective from the date of mailing. The notice shall be addressed as follows:

To the Ethics Commission:

Stacey Fulhorst, Executive Director
1010 Second Avenue, Suite 1530
San Diego, CA 92101
sfulhorst@sandiego.gov
Tel: (619) 533-3476
Fax: (619) 533-3448

To the Firm:

21. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all which together shall constitute one and the same agreement.

22. Headings

All Article Headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

23. Time of Essence

Time is of the essence for each provision of this Agreement.

24. Municipal Powers

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City of San Diego as a chartered city of the State of California.

25. California Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Firm agrees to submit to the personal jurisdiction of any state court in the City of San Diego, the State of California for any dispute, claim, or matter.

26. Integrated Agreement

This Agreement, including Attachments and/or Exhibits, contains all of the Agreements of the parties. This Agreement cannot be amended or modified except by written agreement, mutually agreed upon and executed by the Ethics Commission and the Firm.

27. Severability

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

28. Attorneys' Fees and Costs

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

29. Waiver

The Ethics Commission's review or acceptance of, or payment for, work product prepared by the Firm under this Agreement will not be construed to operate as a waiver of any rights the Commission may have under this Agreement or of any cause of action arising from the Firm's performance. A waiver by the Ethics Commission of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

30. Maintenance of Records

The Firm shall maintain books, records, logs, documents, and other evidence sufficient to record all actions taken with respect to the rendering of the services described in its Agreement and for a period of four years following completion of the services pursuant to

this Agreement. The Firm agrees to allow the Ethics Commission to inspect, copy, and audit such books, records, documents, and other evidence at all reasonable times.

IT IS AGREED:

CITY OF SAN DIEGO ETHICS COMMISSION

Date: _____

By: _____
Stacey Fulhorst, Executive Director

[FIRM NAME]

Date: _____

By: _____
[Firm Principal]