

## Attachment 1

332  
8/1

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

RECEIVED  
06 AUG - 1 PM 1:26  
CITY CLERKS OFFICE  
SAN DIEGO, CA

**DATE:** August 1, 2006  
**TO:** Honorable Mayor and City Councilmembers  
**FROM:** City Attorney  
**SUBJECT:** Unauthorized Retention of Outside Legal Counsel and Misappropriation of City Funds Under Contract Re: University City North/South Transportation Corridor Study, Project No. 27445

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**INTRODUCTION**

Today, the City Council is scheduled to hear Item 332: University City North/South Transportation Corridor Study. The Mayor's recommendation currently includes the following actions:

Authorizing the Mayor to proceed with the implementation of the Regents Road Bridge Alternative;

Certifying that the information contained in Project No. 27445 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Environmental Impact Report reflects the independent judgment of the City of San Diego as a Lead Agency;

Stating for the record that the final EIR has been considered prior to selecting the Regents Road Bridge Alternative;

Adopting the Findings and Statement of Overriding Considerations;

R- 301737

Adopting the Mitigation, Monitoring and Reporting Program for the Regents Road Bridge Alternative;

Initiating a community plan amendment to delete the Genesee Avenue Widening Alternative from the University Community Plan;

Directing the City Attorney to prepare the appropriate resolutions.

The EIR was prepared by Project Design Consultants, a consultant hired by the City in 2003, to develop the EIR and respond to public comments. The City's designated representative for the contract is the Engineering and Capital Projects Department. The Engineering and Capital Projects Department utilized the legal services of outside counsel, Theresa McAteer, in the development of the EIR, without City Council approval, without a contract, and in violation of the provisions of City Charter, section 40.

In April 2003, the City's Engineering and Capital Projects Department contracted with Project Design Consultants, to develop an Environmental Impact Report [EIR] for the University City North/South Transportation Corridor Study, Project No. 27445 [2003 Contract]. *See* 2003 Contract as Attachment 1. The 2003 contract expressly states that the services contracted for are "civil engineering services."

The City wants to retain the services of a professional civil engineering firm to provide civil engineering services [Professional Services] on a phase funded basis.

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

The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project [Agreement].

*See Lump Sum Agreement Between The City of San Diego and Project Design Consultants for Consulting Services, Page 1 (April 2003) [2003 Contract].*

Contrary to the clear scope of service provided for under this 2003 contract, Project Design Consultants [PDC] hired Theresa McAteer from the law firm of McAteer & McAteer to provide legal services to City staff in 2004. However, the 2003 contract with the City only provided for civil engineering services not outside legal services. Contrary to the terms of the 2003 contract with the City, Project Design Consultants used City funds provided under its contract with the City to pay for the legal services of Theresa McAteer, as stated verbally by Bruce McIntyre, Senior Vice President, on July 31, 2006. As stated in Theresa McAteer's July

30, 2006 memo, as attached to Patti Boekamp's July 31st memo to the City Council, Ms. McAteer admits she was hired to provide legal services on this project in June 2004. In Ms. McAteer's July 30, 2006 memo, she expressly states that, with respect to her legal services rendered, "advice received by City staff was given in furtherance of PDC's obligation to work with City staff in preparing the document."

On July 26, 2006, upon discovery that the Engineering and Capital Projects Department had accepted outside legal counsel advice to the Department, the City Attorney notified Patti Boekamp, Director of Engineering & Capital Projects Department, of the need to discontinue the use of Ms. McAteer's services because hiring outside legal counsel is a violation of City Charter section 40. In complete disregard of the applicable provisions of City Charter section 40 and after having been informed of this issue, Ms. Boekamp nevertheless proceeded to utilize Ms. McAteer's legal services, which resulted in the issuance of Ms. McAteer's legal memo of July 30, 2006. In addition, the contract's terms regarding the addition of sub-consultants were not complied with, nor were the contract ever amended to provide for legal services.

#### QUESTIONS PRESENTED

1. May City Department staff independently enter into a consulting or sub-consulting contract with outside counsel or otherwise commit or appropriate City funds to pay for legal services rendered by outside counsel?
2. Where a City Council authorizes a contract that specifies the scope and duties under said contract, is the contractor limited under the contract to provide only those services within the project scope, in the absence of additional authorization?

#### SHORT ANSWERS

1. No. City Department staff may not independently enter into a consulting or sub-consulting contract with outside counsel or otherwise commit or appropriate City funds to pay for legal services rendered by outside counsel.
2. Yes. Where a City Council authorizes a contract that specifies the scope and duties under said contract, the contractor is limited under the contract to provide only those services within the project scope, in the absence of additional authorization.

#### ANALYSIS

City departments may not elect to seek legal services from attorneys of their own choosing. Such an act is contrary to and defeats the very purpose of an independently elected City Attorney as expressly provided for in City Charter section 40. It is apparent that the use of McAteer & McAteer for legal services in this matter is a violation of City Charter section 40.

City Charter section 40 expressly provides:

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission.

In addition to this apparent City Charter section 40 violation, it is also clear that such legal services are beyond the contract scope of work. Given that Project Design Consultants were hired not to provide legal services but to provide "civil engineering services," it is illegal to use said contract funds to pay for legal services. Such a use is beyond the express scope of work provided for under the contract. This is a clear misappropriation of funds.

The 2003 contract provides for a fixed fee and compensation schedule and identifies the consultant, and sub-consultant services that are allowed. See Exhibits A.1, A.2, B.1, B.2, and Exhibit C to 2003 Contract. A consultant "includes providers of expert or professional services and excludes providers of Services." (San Diego Municipal Code § 22.3003.) There is no provision allowing for legal services at the consultant or subconsultant level.

1.1 Scope of Services. The Consultant shall perform the Professional Services as set forth in the written Scope of Services [Phase I-Exhibit A.1 and Phase II-Exhibit A.2] at the direction of the City.

Furthermore, no law firms or attorneys are identified in the subconsultant list which is a part of this 2003 contract. See Exhibit D, Attachment BB of 2003 Contract. With respect to subconsultants, the 2003 contract expressly states:

4.4 Subconsultants. The Consultant's hiring or retaining of any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. The Consultant shall list on the Subconsultants List [Exhibit D Attachment BB] all Subconsultants known to the Consultant at the time of this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subconsultant 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 Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant 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 Subconsultant Contract.** All contracts entered into between the Consultant and any Subconsultant shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

**4.4.1.1** Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

**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 Subconsultant 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 Subconsultant Services as described in Section 4.4.1.

A review of City files determined that there were no subsequent contract amendments authorizing the provision of legal services. Any such amendment would have required City Council approval because the consultant contract was in excess of \$250,000, the City Manager's limit for approval. (San Diego Municipal Code § 22.3223(a).)

Any allowance for the hiring of McAteer & McAteer would have required strict compliance with the 2003 contract provisions stated above and would have been limited, by contract terms, to the performance of civil engineering services. Payment rendered to McAteer & McAteer was either reflected in invoices or billings to the City in complete disregard of the terms of the contract or such billings were hidden from City view, although apparently known by City staff. The contract expressly requires proper accounting and documented billing.

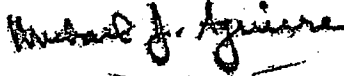
As an additional comment, there is an inherent conflict in allowing City Department staff to use a paid consultant's legal counsel to obtain legal advice which is or may be relied upon by City staff to influence, evaluate or assess the work performance or work product of the paid consultant. This seems to be what has happened here.

Honorable Mayor & City Councilmembers  
August 1, 2006  
Page 6

### CONCLUSION

City Department staff may not independently enter into a consulting or sub-consulting contract with outside counsel or otherwise commit or appropriate City funds to pay for legal services rendered by outside counsel. The use of City funds under the contract to pay for Ms. McAteer's legal services is an unauthorized expenditure of City funds for a service not provided for under the contract and a violation of the City Charter section 40. Said funds must be returned to the City and any expenses incurred by Project Design Consultants for legal services rendered by Ms. McAteer are expenses that must be paid by Project Design Consultants directly and not with City funds. Further, the Department must terminate the unauthorized use of outside legal counsel.

MICHAEL J. AGUIRRE, City Attorney

By 

SE:cfq

cc: Patti Boekamp, Director, Engineering and Capital Projects Department  
Attachment

## Attachment 2



ORIGINAL

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**CAPITAL IMPROVEMENTS  
FOR  
THE CITY OF SAN DIEGO  
ENGINEERING AND CAPITAL PROJECTS DEPARTMENT**

**LUMP SUM AGREEMENT  
FOR  
UNIVERSITY CITY NORTH/SOUTH TRANSPORTATION CORRIDOR STUDY**

**THE CITY OF SAN DIEGO  
AND  
PROJECT DESIGN CONSULTANTS**

DOCUMENT NO. RA-297850

FILED APR 21 2003

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIF. Updated: 3/03

# SUBCONSULTANTS LIST

ATTACHMENT (4)

## INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

Proposal shall include name and complete address of all Subconsultants who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of \$10,000.

Subconsultants shall be used for Scope of Services listed. No changes to this Subconsultant List will be allowed without prior written City approval.

Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

NAME AND ADDRESS SUBCONSULTANTS AND VENDORS	SCOPE OF WORK	PERCENT OF CONTRACT*	DOLLAR AMOUNT OF CONTRACT*	* MBE/ WBE/DBE/ DBVE/OBE	*WHERE CERTIFIED
Katz & Associates 4250 Executive Square, Suite 670 La Jolla, CA 92037-1477 619.452.0031	Public Participation/ Public Outreach	16	\$238,385	WBE/ DBE	Caltrans
TYLin International 5030 Camino De La Siesta, Suite 204 San Diego, CA 92101 619.692-1920	Structures	7	\$109,315	OBE	N/A
Urban Systems Associates 4540 Kearny Villa Road, Suite 106 San Diego, CA 92123	Traffic Engineering	9	\$125,420	OBE	N/A
Safdie Rabines Architects 1101 Washing Place San Diego, CA 92103 619.297.6153	Bridge Modeling/ Architecture	2	\$25,856	DBE/ SMBE	Caltrans
Geocon Inc. 6960 Flanders Drive San Diego, CA 92121 858.558.6900	Geotechnical Engineering	2	\$22,990	OBE	N/A
Merkel & Associates 5434 Ruffin Road San Diego, CA 858.560.5465	Biology	4	\$52,056	OBE	N/A
Gallegos & Associates 5671 Palmer Way #1 Carlsbad, CA 92008 760.929.0055	Archeology	1	\$12,229	MBE/ DBE	Caltrans
Mestre Greve 280 Newport Center Dr., Ste. 230 Newport Beach, CA 92660	Air Quality / Noise	3	\$43,480	OBE	N/A
Wilbur Smith Associates 9370 Sky Park Court, Suite 200 San Diego, CA 92123 858.279.3776	Transportation Planning	3	\$50,000	OBE	N/A
Designed Internet Solutions Eastlake Business Center 2400 Fenton Street, Suite 200 Chula Vista, CA 91914 619-421-2107	Web Site Design	1	\$18,000	DVBE/ SBE	State Dept. of General Services

\*1 For information only. As appropriate, Propose shall identify Subconsultants as:

Certified Minority Business Enterprise  
Certified Woman Business Enterprise  
Certified Disadvantaged Business Enterprise  
Certified Disabled Veteran Business Enterprise  
Other Business Enterprise

MBE  
WBE  
DBE  
DVBE  
OBE

\* For information only. As appropriate, Propose shall identify Subconsultants as:

City of San Diego  
State of California Department of Transportation  
San Diego Joint Agencies Contracting Opportunity Task Force

CITY  
CALTRANS  
JACO

\*As Needed Contract

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:  
March 20, 2003

SUBJECT: Consultant Agreement - University City North/South Corridor Study

**GENERAL CONTRACT INFORMATION**

Recommended Consultant:	Project Design Consultants
Amount of this action:	\$1,773,300
Funding Source:	City
Subconsultant Participation Goal:	15%

**SUBCONSULTANT PARTICIPATION**

Katz & Associates (Caucasian Female/WBE)	\$ 238,385 - 13.44%
TY Lin International (Other)	\$ 109,315 - 6.16%
Urban Systems Associates (Other)	\$ 125,420 - 7.07%
Safdie Rabines Architects (Hispanic Male/DBE)	\$ 25,856 - 1.46%
Geocon Inc. (Other)	\$ 22,990 - 1.30%
Merkel & Associates (Other)	\$ 52,056 - 2.94%
Gallegos & Associates (Hispanic Male/DBE)	\$ 12,229 - .69%
Mestre Greve (Other)	\$ 43,480 - 2.45%
Wilbur Smith Associates (Other)	\$ 50,000 - 2.82%
Designed Internet Solutions (Caucasian Male/DVBE)	\$ 18,000 - 1.02%
<b>TOTAL CERTIFIED SUBCONTRACTING</b>	<b>\$ 294,470 - 16.61%</b>
<b>TOTAL OTHER SUBCONTRACTING</b>	<b>\$ 403,261 - 22.74%</b>
<b>TOTAL SUBCONTRACTING</b>	<b>\$ 697,731 - 39.35%</b>

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

- Equal Opportunity Required
- Project Design Consultants submitted a Work Force Report for their San Diego County office dated March 19, 2003 with a total of 182 employees. The *Work Force Analysis* shows under representations as follows:

African Americans in Engineer/Architect, Technical  
Latinos in Admin. Support  
Asians in Engineer/Architect, Technical  
Filipinos in Engineer/Architect  
Women in Executive, Technical

Staff reviewed and approved Consultant's EO Plan on January 13, 2003.

Stacey Stevenson  
EOCP MANAGER BY ABQ

### ADDITIONAL COMMENTS

The Workforce Analysis is attached.

The first phase of this phase funded project consists of professional services needed for traffic study such as phasing components, trip linkage differences, attractors and generators, and traffic simulation. The second phase will consist of the preparation of an environmental document. The maximum expenditure under the terms of this agreement is \$1,773,330 (\$1,120,300 in Fiscal Year 2003 for Phase I and \$653,000 in Fiscal Year 2004 for Phase II).

## Attachment 3

# MCATEER & MCATEER

A PROFESSIONAL LAW CORPORATION

110 WEST "C" STREET, SUITE 1500

SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 338-9790 • FACSIMILE (619) 338-0105

CHRISTOPHER E. MCATEER  
BUSINESS LAW  
REAL ESTATE  
CONSTRUCTION LAW

THERESA C. MCATEER  
MUNICIPAL LAW  
PUBLIC-PRIVATE TRANSACTIONS  
LEGAL PROJECT MANAGEMENT

June 23, 2004

Mr. Bruce McIntyre  
Project Design Consultants  
701 B Street, Suite 800  
San Diego, California 92101

Re: EIR, Regents Road Bridge and Alternatives  
Retention of McAteer & McAteer, APLC

Dear Mr. McIntyre:

It was a pleasure talking to you this morning about our firm working with you on the above-referenced project. I have enclosed a copy of my resume for your consideration. Although you are familiar with most of my work on the Ballpark project, you will also note that I was involved in a number of other high-profile projects, both during my tenure with the City and since; I have recently been retained by CCDC to carry forward the implementation of the California Public Utilities Commission's grade crossing order I obtained for the City last year, and to perform the legal work required for the establishment of a downtown "quiet zone."

My billing rate for governmental and non-profit organizations is \$200 per hour, although we have also been engaged by both public and private sector clients on a fixed-fee basis. For this project, we propose in either event that we enter into a phased contract. Specifically, we would agree to provide legal consulting services in connection with the preparation of the EIR, through the completion of the first draft (which we understand is anticipated to be released for public comment on or about August 1, 2004). Those services would include review of the current draft and preparation of comments, research in connection with issues raised by you or the City, meetings, and any ancillary services you or the City may request.

For this first "phase," we propose to be compensated either: (1) by a fixed fee of \$12,500, with \$6,250 payable on July 1 and \$6,250 payable on August 1, or (2) on an hourly basis, at \$200 per hour, with a not-to-exceed of \$15,000. The terms of our services for subsequent "phases" (such as the preparation of responses to comments, preparation of the final environmental documents, and any other services) can be negotiated separately and memorialized by amendments to the initial contract.

✓  
Mr. Mozer had them change it  
to not-to-exceed \$12,500

Mr. Bruce McIntyre  
June 23, 2004  
Page - 2 -

By way of information and example, I have enclosed a copy of the agreement I entered into with the City for my work on the PUC grade crossing application; and a subsequent amendment. Subject to approval by the City Attorney's office, we could use these forms as templates for the contract on this project.<sup>1</sup>

Assuming the foregoing meets with your approval and that of the City, we would be pleased to work with you on the project. We recognize the time sensitivity of the current phase of this matter, and can make ourselves available to help ensure the phase is timely completed.

Very truly yours,

McATEER & McATEER, APLC

  
Theresa C. McAteer

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<sup>1/</sup> You will note it reflects an hourly rate of \$150, which was applicable to those matters for which I was retained immediately after leaving the City Attorney's office in November of 2001; my rate for all such work (including, for example, the CCDC contract) is now \$200 per hour.

## Attachment 4





**PROJECTDESIGN CONSULTANTS**  
PLANNING • ENVIRONMENTAL • ENGINEERING • SURVEY/GPS

File: 2399.10  
F04-459

July 1, 2004

Ms. Kris Shackelford  
**CITY OF SAN DIEGO**  
Transportation Engineering-Engineering and Capital Projects  
1010 Second Avenue, Suite 1200  
San Diego, CA 92101-4907

**SUBJECT:** University City North/South Transportation Study  
Approval of Fee Adjustment (9)

Dear Ms. Shackelford:

We are requesting your approval to adjust our fees as follows:

As agreed between Mike Mezey, from the City, and Bruce McIntyre, from ProjectDesign Consultants (PDC), we have hired the law firm of McAteer & McAteer to review the Environmental Impact Report (EIR). The fee for this review is \$13,750 (\$12,500 for McAteer & McAteer, and \$1,250 for PDC administration).

This fee of \$13,750 will be added to Phase II, Task 5.0 – Project Management.

To offset the increase, we will reduce Phase I, Task 1.6.1/2.5 – Roundabouts by the same amount, \$13,750.

Please note that there is no change in the total contract associated with this request.

Please indicate your approval below and return one signed original for our files.

Sincerely,

Gordon K. Lutes, PE  
Senior Vice President

**FEE ADJUSTMENT  
ACKNOWLEDGED AND ACCEPTED BY:**

  
Kris Shackelford

7-8-04  
Date

cc: Bruce McIntyre



## Attachment 5

**From:** Kris Shackelford  
**To:** Mike Mezay  
**Date:** 9/17/04 12:16PM  
**Subject:** Fwd: FW: Addition to NTE in contract with McAteer & McAteer

*Additional Service*

Hi Mike,

Thought I better forward this to you since you originally approved the McAteer contract. Feel free give the authorization directly to PDC.

Kris

**CC:** Nitsuh Aberra

**From:** "Tony Dos Santos" <TonyDS@projectdesign.com>  
**To:** "Kris Shackelford (E-mail)" <kshackelford@sandiego.gov>  
**Date:** 9/15/04 2:48PM  
**Subject:** FW: Addition to NTE in contract with McAteer & McAteer

Hi Kris,

We need your approval for an additional \$2,750 (\$2,500 for McAteer & McAteer and \$250 for PDC admin charges), see the explanation below. We would offset the increase by reducing the amount in another task, so that the total contract remains unchanged.

Because of our effort to submit the various reports to the City for review, we can not submit our formal request this week. However, we anticipate that the formal request for this, the previous for Merkel and Associates, and the work associated with the additional alternative, will be sent to you next week.

Thank you for your consideration.

Tony

Antonio L. Dos Santos  
Senior Project Engineer  
ProjectDesign Consultants  
701 B Street, Suite 800  
San Diego, CA 92101  
Direct Dial: 619-881-3464  
Fax: 619-234-0349  
e-mail: tonyds@projectdesign.com

-----Original Message-----

**From:** Theresa C. McAteer [mailto:tcmatee@pacbell.net]  
**Sent:** Wednesday, September 15, 2004 11:57 AM  
**To:** Tony Dos Santos  
**Cc:** Bruce McIntyre  
**Subject:** Addition to NTE in contract with McAteer & McAteer

Tony:

The present Not to Exceed amount for this contract is \$12,500. That amount was premised on certain tasks being less complicated than they have become, and upon having the draft EIR distributed to the public by early August.

Since entering into the contract, the team identified additional issues - particularly related to the traffic studies - that have required additional review of documents, brief research, and meetings (including one with Council District 1) that were not anticipated when we set the NTE.

Assuming we have now resolved those traffic issues and can proceed with a review of final documents that will result in public distribution of the

draft EIR by the end of September, I would increase the NTE for this phase to \$15,000 (an additional \$2500 over the current NTE of \$12,500).

Please let me know if you need further information.

Theresa C. McAteer

McAteer & McAteer, APLC

CC: "Gordon Lutes" <GordonL@projectdesign.com>, "Bruce McIntyre" <BruceM@ProjectDesign.com>

## Attachment 6



File: 2399.10  
F05-103

February 22, 2005

Ms. Nitsuh Abera, Associate Engineer-Civil  
**CITY OF SAN DIEGO**  
Transportation Engineering-Engineering and Capital Projects  
1010 Second Avenue, Suite 1200  
San Diego, CA 92101-4907

**SUBJECT:** University City North/South Transportation Study  
Approval of Fee Adjustment No. 12

Dear Ms. Abera:

We are requesting your approval to adjust our fees as follows:

An additional \$16,500 (\$15,000 for McAteer & McAteer and \$1,500 for Project Design Consultants (PDC) admin charges) is required for legal advise during the response to comments generated by the Draft EIR review. This will be added to Phase II, Task 5.0 – Project Management.

An additional \$10,500 is required for meetings and project coordination. This is the result of the coordination with the City, specially the Traffic Division and DSD. This also, will be added to Phase II, Task 5.0 – Project Management.

Under our current scope of services, PDC would provide 5 copies of the Draft EIR, and the city would print the rest of the copies. However, in an effort to expedite the release of the draft EIR, PDC produced approximately 100 copies. The additional cost for printing is \$27,965, however, we are only requesting an additional \$27,100. This will be added to Phase II, Task 2.2 – Print EIR.

Our subconsultant, Katz and Associates, has requested a reallocation of the fees within Phase II Task 3.0 – Public Participation. Twenty-two thousand dollars will be transferred from Task 3.2 – Community Relations to the other tasks; \$4,000 to Task 3.3 – Material Development, and \$18,000 to Task 3.4 – EIR Support. The fee for task 3.0 will remain unchanged (at \$101,370). Task 3.3 exceeded the original budget projection because of the higher than anticipated number of newsletters printed to accommodate the large mailing database. Task 3.4 exceeded the original budget projection because of the need for a scoping meeting and a project open house.

IGN CONSULTANTS

Ms. Nisuh Aberra  
File: 2399.10  
February 22, 2005  
Page 2

Our subconsultant, Urban Systems Associates, Inc., has requested an additional \$29,500 for traffic analysis. Please refer to the attached letter, of February 10, 2005, for further details. This will add \$32,450 to Phase II, Task 1.0 - Traffic (\$29,500 for the subconsultant and \$2,950 for PDC)

A summary of the fee increases is as follows:

<u>Phase/Task</u>	<u>Current Fee</u>	<u>Increase</u>	<u>Revised Fee</u>
II/1.0 - Traffic	\$ 27,370	\$ 32,450	\$ 59,820
II/2.2 - Print EIR	\$ 9,370	\$ 27,100	\$ 36,470
II/5.0 - Project Management (\$16,500 + \$10,500)	\$ 190,885	\$ 27,000	\$ 217,885
Total Increase		\$ 86,550	

To offset the increase, we will reduce the following by the amount shown:

<u>Phase/Task</u>	<u>Current Fee</u>	<u>Decrease</u>	<u>Revised Fee</u>
I/1.3 - Geotechnical Studies	\$ 21,760	\$ 3,240	\$ 18,520
I/2.1 - Review other Studies	\$ 5,143	\$ 939	\$ 4,204
I/2.2 - ID Travel Forecast Assumptions	\$ 2,657	\$ 1,249	\$ 1,408
I/2.3 - Update Traffic Counts	\$ 13,052	\$ 1,249	\$ 11,803
I/2.4 - UTC Expansion Review	\$ 2,195	\$ 1,249	\$ 946
I/2.5 - Determine Daily and Peak Hour Traffic	\$ 9,103	\$ 1,248	\$ 7,855
I/2.7 - Transit Analysis	\$ 2,767	\$ 1,248	\$ 1,519
I/2.8 - Community Outreach Support	\$ 2,459	\$ 1,248	\$ 1,211
I/2.9 - Traffic Calming Study	\$ 8,179	\$ 1,248	\$ 6,931
I/3.1.1 - Conduct baseline survey and Research	\$ 37,030	\$ 218	\$ 36,812
I/3.1.2 - Conduct Culture Resources Survey	\$ 3,742.10	\$ 682	\$3,060.10
I/3.1.4 - Conduct a Land Use Inventory	\$ 944	\$ 944	\$ 0
I/3.1.5 - Consider Visual Issue and Identify Viewsheds	\$ 3,784	\$ 3,784	\$ 0
I/3.1.6 - Conduct Field meetings and Follow up	\$ 1,980	\$ 1,980	\$ 0
I/3.1.7 - Review technical studies	\$ 6,640	\$ 6,640	\$ 0
I/3.2.2 - Prepare letter report and matrix	\$ 6,540	\$ 6,540	\$ 0

Previously  
Billed



File: 2399.140

February 13, 2006

Ms. Nitsuh Abera, Associate Engineer  
CITY OF SAN DIEGO  
Transportation Engineering-Engineering and Capital Projects  
1010 Second Avenue, Suite 1200  
San Diego, CA 92101-4907

SUBJECT: University City North/South Transportation Study Approval of Fee Adjustment

*What  
Amendment*

Dear Nitsuh:

This letter is intended to request the City's authorization to reallocate remaining funds in our current contract to pay for expenses which were not anticipated in the budget established under Amendment #1 to our contract which was approved in September 2005. The extension of the process beyond the January 2006 completion date anticipated in the Amendment #1 is largely responsible for the need to reallocate funds. In addition, additional time will be required on the part of Digital Design Simulation to maintain the project website and McAteer & McAteer to assist in the Final EIR and responses to comments, in particular. We are requesting your approval to continue to reallocate existing budgets as necessary for the University City North/South Transportation Study to cover the additional time to prepare the Final EIR and assist with the Council presentation. Although we are anticipating a Council Hearing in April rather than January, we believe that there is sufficient remaining fee in the overall project budget through June without using the "additional services" budget. If the Council hearing occurs beyond June, we would anticipate using "additional services".

At this time, because of the uncertainty of the effort, we propose to continue drawing down the existing budgets. The attached table shows the estimated remaining budgets by task. With your approval we will continue the services of McAteer and McAteer and Digital Design Simulation through the Council hearing. If additional services funds are necessary, prior to invoicing for the additional services, we will provide a recommended allocation for your approval.

*August 05*

Ms. Nitsuh Abera  
File: 2399.10C  
February 13, 2006  
Page 2 of 2

Please indicate your approval below and return one signed original for our files.

Sincerely,

**FEE ADJUSTMENT  
ACKNOWLEDGED AND ACCEPTED BY:**

Gordon K. Lutes, P.E.  
Senior Vice President

\_\_\_\_\_  
Nitsuh Abera  
Associate Engineer - Civil

Date

Task	Description	July 28, 2005 Revised Fee	Amendment 1 Fee	Fee with Amendment 1	Estimated Remaining Budget through January 06
Phase II	Phase II				
3.0	Public Participation	\$ 101,370.00	\$0.00	\$ 101,370.00	\$ 28,000.00
5.0	Project Management	\$ 249,340.00	\$0.00	\$ 249,340.00	\$ 7,000.00
	Additional Engineering	\$ 60,250.00	\$0.00	\$ 60,250.00	\$ 500.00
	Phase II Total	\$ 821,756.00	\$0.00	\$ 821,756.00	
Amendment 1					
	Traffic		\$18,020.00	\$18,020.00	\$ 18,000.00
	Final EIR		\$40,090.00	\$40,090.00	\$ 18,000.00
	Technical Reports		\$34,876.00	\$34,876.00	\$ 11,000.00
	Public Participation		\$10,100.00	\$10,100.00	\$ 10,000.00
	Project Management				
	PDC		\$6,750.00	\$6,750.00	\$ 6,300.00
	McAttee & McAttee		\$16,000.00	\$16,000.00	\$ 18,000.00
	Digital Design Simulation		\$2,000.00	\$2,000.00	\$ 2,000.00
	Additional Services		\$60,000.00	\$60,000.00	\$ 60,000.00
					\$ 174,800.00
	Contract Total	\$1,583,246.00	\$60,000.00	\$1,643,246.00	

File: 2399.10

September 19, 2006

Ms. Nitsuh Abera, Associate Engineer  
**CITY OF SAN DIEGO**  
 Transportation Engineering-Engineering and Capital Projects  
 1010 Second Avenue, Suite 1200  
 San Diego, CA 92101-4907

**SUBJECT:** University City North/South Transportation Study - Approval of Use of Additional Services Budget of Amendment 1

Dear Nitsuh:

This letter requests the City's authorization to release funds from the "Additional Services" portion of our contract to pay for services which cannot be covered by the funds allocated to the initial work for the above-referenced project. As we agreed in February 2006, we would continue to reallocate funds to pay for the time required to finalize the Final EIR and prepare for the upcoming City Council hearing. Since February, we have been reallocating funds accordingly. However, the amount of work required to finalize the Final EIR and the delay in the City Council meeting from April to August, has exhausted the funds remaining in our original budget (see attached table). This has prompted us to initiate this request for allocation from the Additional Services budget.

Based on the table included in this letter, we estimate the need to transfer approximately \$52,000 from the additional services budget. This additional funding will be necessary to cover costs incurred by PDC (\$28,000) as well as McAteer & McAteer (\$6,000 based on their monthly fee to \$3,000) and Digital Design Simulation (\$800 based on their monthly fee of \$400). Another \$15,000 is required to compensate USA for additional traffic services related to responding to public comment and preparing for the City Council hearing. An additional \$1,000 is required for Katz Associates and \$1,000 is required for Merkel & Associates related to planning and participation in the City Council hearing.

Please indicate your approval below and return one signed original for our files.

Sincerely,

**FEE ADJUSTMENT  
 ACKNOWLEDGED AND ACCEPTED BY:**

Gordon K. Lutes, P.E.  
 Senior Vice President

Nitsuh Abera  
 Associate Engineer - Civil

Date

Attachment

## Attachment 7

## Project Design Consultants

Vendor	Invoice #	Invoice Date	Invoice Amount	Date Paid
McATEER & McATEER	14164	6/30/2006	980.00	8/6/2004
McATEER & McATEER	04/07/30	7/30/2004	5,660.00	8/27/2004
McATEER & McATEER	04/08/31	9/5/2004	3,880.00	10/1/2004
McATEER & McATEER	14273	9/3/2004	4,480.00	10/8/2004
McATEER & McATEER	14447	2/23/2005	800.00	3/4/2005
McATEER & McATEER	14476	3/31/2005	5,200.00	5/2/2005
McATEER & McATEER	14503	4/30/2005	3,000.00	5/13/2005
McATEER & McATEER	14566	6/30/2005	3,000.00	8/5/2005
McATEER & McATEER	14635	8/29/2005	3,000.00	11/23/2005
McATEER & McATEER	14667	9/23/2005	3,000.00	11/23/2005
McATEER & McATEER	14699	10/31/2005	3,000.00	12/21/2005
McATEER & McATEER	14735	11/30/2005	3,000.00	12/28/2005
McATEER & McATEER	14771	12/30/2005	3,000.00	3/8/2006
McATEER & McATEER	14852	1/31/2006	3,000.00	3/8/2006
McATEER & McATEER	14888	2/28/2006	3,000.00	5/16/2006
McATEER & McATEER	14925	3/31/2006	3,000.00	5/16/2006
McATEER & McATEER	14960	4/30/2006	3,000.00	7/11/2006
McATEER & McATEER	14998	5/28/2006	3,000.00	7/11/2006
McATEER & McATEER	15034	6/30/2006	3,009.54	not paid yet
McATEER & McATEER	15071	7/31/2006	3,000.00	not paid yet
Total			68,003.54	

## Attachment 8

UC N/S Mtg. 8-24-04

Andy, Justin, Gary H., Patti, Krel, Dave Z., Teresa

1. Patti - model has limitation. problems & SANDAG model.  
freeway available for short trips. operational aspect. - can we  
design for full use of capacity.
2. Model volume - Miramar, L.J. Village, Genesee s/o 52
3. Spider Plot - link use plot.
4. explanation in traffic analysis - projected future development  
can't speculate.
5. Andy to do e/w - 3 segments.



## Attachment 9

**From:** Bruce McIntyre [BruceM@ProjectDesign.com]  
**Sent:** Wednesday, July 28, 2004 10:13 AM  
**To:** Mike Mezey (E-mail)  
**Cc:** Gordon Lutes; Martha Blake (E-mail); Kris Shackelford (E-mail); Katherine Hon (E-mail); Theresa McAteer (E-mail); Ann French Gonsalves (E-mail); Andy Schlaefli (E-mail); Patti Bookamp (E-mail)  
**Subject:** No Project Alternative

Mike~

I spoke to Theresa about our decision to call the Community Plan alternative the No Project Alternative and convert the old No Project alternative to a Biologically Preferred Alternative. She expressed concern over this approach. She believes that the courts may be concerned about this because building or not building the Regents Bridge is the subject of our current project.

We came up with a compromise which I think makes sense. We suggest coming up with two variations on the No Project alternative. The first would be entitled: No Project: Full Community Plan Roadway Changes in the Genesee Avenue and Regents Road Corridors. The second would be called something like: No Project: No Roadway Changes in Genesee Avenue and Regents Road Corridors. This would allow us to have an alternative which is the "do nothing" alternative which people normally expect as well as the pure CEQA no project alternative.

What do you think?

Bruce

---

Bruce McIntyre  
 ProjectDesign Consultants  
 701 B Street, Suite 800  
 San Diego, CA 92101  
 619.881.3300 (direct line)  
 619.234.0381 (fax)

**\*\*This communication may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please reply to the sender indicating that fact and delete the copy you received. This communication is for use by the recipient only.\*\***

10/10/2006

## Attachment 10

**From:** "Theresa C. McAteer" <tcmcatee@pacbell.net>  
**To:** "Patti Boekamp" <PBoekamp@sandiego.gov>  
**Date:** Mon, Oct 11, 2004 5:29 PM  
**Subject:** RE: Coyle memo

I'm also familiar with some of the ... strategies ... she employed to attack the Zoo expansion EIR. We have good, experienced, qualified experts; if their expert testimony supports the placement of this alternative in the "rejected" category, that will stand in spite of any hired gun brought in to provide a contrary opinion. Having said that, Courtney's opportunity to raise this point publicly will be during the public comment period; including any experts she cites to back up her comments. And if they are useful comments, we will of course take them into account. But the time to deal with her at that level is then, not now.

I'll let you know if my discussion with Bruce leads to any different conclusion.

Theresa

-----Original Message-----

**From:** Patti Boekamp [mailto:PBoekamp@sandiego.gov]  
**Sent:** Monday, October 11, 2004 5:22 PM  
**To:** tcmcatee@pacbell.net  
**Subject:** RE: Coyle memo

I suggested that Kris pull the letter she submitted on Sorrento Valley Road (the road improvement EIR that was ultimately rejected by the Council) because she hired an out of town traffic consultant (from the Bay area) to write a letter - I'm suspecting she'll hire someone like that again (maybe the same person)....if no one local wants to take this kind of work to discredit the EIR traffic study.....

Patti

>>> "Theresa C. McAteer" <tcmcatee@pacbell.net> 10/11/04 5:21 >>>  
I've got a call in to Bruce McIntyre to review that new section. Once we see that, we should consider sending her a short note -- perhaps with her copy of the DSEIR -- thanking her for her input and directing her to the section where we discuss it.

I recall some discussion of this combination anyway, including the conclusion it wasn't reasonable because it didn't produce any benefits.

Theresa

-----Original Message-----

**From:** Patti Boekamp [mailto:PBoekamp@sandiego.gov]  
**Sent:** Monday, October 11, 2004 5:09 PM  
**To:** tcmcatee@pacbell.net  
**Subject:** Re: Coyle memo

I figured that was what we would be doing, but wasn't sure if we ought to respond to her now (since it came in BEFORE public review) or presume we do that in response to comments....also, wanted you to be able to weigh in on the considered but rejected strength of argument, since I'm sure they hired

her to disrupt or challenge the EIR.

Patti

>>> "Theresa C. McAteer" <tcmmcatee@pacbell.net> 10/11/04 3:03 >>>

Hi Patti:

I got the memo when we returned from vacation (was out of town from October 1-10), and it looks from other e-mail correspondence that the team is going to address Courtney's idea in the "Alternatives Considered but Rejected" section of the DSEIR. Are you comfortable with that approach? If we can explain the analysis that leads to that conclusion I'm fine with it but wanted to let you know I got this and answer any additional questions you may have.

Theresa

## Attachment 11

From: Kris Shackelford  
To: Theresa C. McAteer  
Date: Wed, Feb 9, 2005 2:04 PM  
Subject: RE: Letter re Defect in University City North/South Transportation Corridor DEIR

Hi Theresa,

Thanks for such a quick response. I had a chance to talk to Andy earlier today and he strongly believes that her allegation about the defect is totally untrue. He did not feel that we should hold off re-releasing the DEIR. Although Andy is confident that the Transnet Extension will not change the outcome of our traffic study, he cautioned me that we may have to do additional work to address their allegation when this comes in as a comment letter.

I'm going to schedule a meeting between all the traffic experts (Patti, Linda Marabian in Planning and Ann Gonsalves in DSD) so that Andy can walk us through the logs of how to respond to this allegation. I will invite you as well. In the mean time I will include this third letter into the response letter to the previous two.

Kris

>>> "Theresa C. McAteer" <tcmaatee@pacbell.net> 02/09/2005 10:32 AM >>>  
Hi Kris:

I reviewed her letter, and I do want to know what our traffic consultant would say about her contention we have omitted something significant in our analysis of the traffic -- do the HOV lanes make a difference in the analysis? Did we deal with them at all? And most importantly, if they change the analysis, is it a significant change?

Unless it significantly changes the picture -- to a level requiring re-circulation -- I'd leave the DEIR as is. Unless this information requires an obvious and major adjustment in the analysis, I'd advise her that we will treat her letter as a comment letter and tell her we look forward to seeing the more detailed information from her expert that she promises to provide.

And I mean it -- her expert's detailed analysis may indeed cause us to re-think our own conclusions. But on the basis of this summary letter alone (and again, unless our expert agrees that on its face, the issue she raises would significantly change our analysis), I would not hold off on distributing the DEIR just because she says the expert says . . . This is exactly what the comment period is for -- and we should ask her to promptly submit the expert's detailed analysis for our consideration during the comment period. And if it causes us then to change our conclusions, so be it.

But it all rests, for now, on what our own expert says.

PS -- do we know anything about her expert? Reputation? Hired gun or solid rep?

Theresa

-----Original Message-----

From: Kris Shackelford [mailto:KShackelford@sandiego.gov]  
Sent: Wednesday, February 09, 2005 8:44 AM

To: [tomcatee@pacbell.net](mailto:tomcatee@pacbell.net)  
 Subject: Fwd: Letter re Defect in University City North/South Trans  
 Corridor DEIR

Hi Theresa,

I'm forwarding you the third letter from Courtney Coyle. My first thought was to go ahead and respond the same way as we discussed on the previous two. However, Patti wants to hear from our Traffic consultant first regarding the validity of her claim. Anyhow, here it is.....

Kris

CC: [BruceM@ProjectDesign.com](mailto:BruceM@ProjectDesign.com)>; Dave Zoumaras; Gordon Lutes  
 Bookamp



## Attachment 12

---

**From:** Bruce McIntyre [BruceM@ProjectDesign.com]  
**Sent:** Friday, January 20, 2006 2:07 PM  
**To:** 'Kris Shackelford'  
**Cc:** 'Nitsuh Abera'; 'Ann Gonsalves'; 'justin@urbansystems.net'; Mike Mezey; Gordon Lutes; Andy Schlaefli (andy@urbansystems.net); Martha Blake; Melyssa Duggan  
**Subject:** Meeting Minutes (1-20-06)

Kris,

I have summarized the discussion and action items which were covered in our meeting today below.

1. We reviewed parking counts done on Regents and concluded that the loss of parking would not be significant for two basic reasons. First, the parking is technically not guaranteed in the long term due to the ultimate plan to complete the roadway and add the bike lane. Secondly, as with Genesee, there appears to be enough unused parking on side streets to accommodate most of the displaced traffic.
2. I indicated that USA had completed their remaining comments and sent them to Ann who is reconciling them with the comments she has already made on the responses to the groups and organizations. Nitsuh is planning to call Ann to determine when she might be finished and able to meet with USA to discuss her comments.
3. I indicated that USA still needs to get feedback from Ann on the traffic accident data she is reviewing in order to finish up their memo regarding pedestrian safety.
4. Martha plans to complete her review of the responses to the groups and organizations by Friday (1/20). I gave her the copy with Mike Mezey's comments so she could combine hers with his.
5. We decided to schedule weekly Friday meetings through the end of February. The meetings will be held on the 12<sup>th</sup> floor at 8:30.
6. I plan to have the individual responses ready to hand out to the team Friday morning at our meeting.
7. PDC is working on revising the EIR per the responses to comments and has set February 10<sup>th</sup> as the target date to submit to the City for review.
8. We discussed the concern that the City Attorney's office has been increasingly involved in reviewing EIRs. In fact, Karen Heuman had previously reviewed the EIR and provided comments to Martha (I received those comments at today's meeting). If the City Attorney's office becomes involved in reviewing the responses to comments, it would likely further delay the process.
9. Martha indicated that she had heard that Councilman Peters was interested in holding a public meeting before considering the EIR for certification. Martha indicated her concern that City staff shouldn't participate in such a meeting because it really wouldn't be in accordance with CEQA. Most expressed the opinion that such a meeting would likely be a duplication of effort.
10. Martha and I are working on a revised schedule and plan to circulate it before next Friday's meeting.

If you, or anyone on the distribution list, have any comments, questions or clarifications. Please let me know.

Thanks,  
Bruce

---

**Bruce McIntyre**  
*Senior Vice President*  
**Project Design Consultants**  
701 B Street, Suite #800  
San Diego, CA 92101  
Phone: 619.881.3300  
Fax: 619.234.0381

10/12/2006

Email: [brucem@projectdesign.com](mailto:brucem@projectdesign.com)

10/12/2006

## Deborah Knight

---

**From:** Bruce McIntyre [BruceM@ProjectDesign.com]  
**Sent:** Thursday, February 23, 2006 11:53 AM  
**To:** 'mblake@SanDiego.gov'  
**Cc:** 'kshackelford@sandiego.gov'; 'NAbera@sandiego.gov'  
**Subject:** Re: Response to individual comments

Great. I'll have them picked up this afternoon.

FYI. I also received Teresa's comments o the individual reponses.

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

**From:** Martha Blake <MBlake@sandiego.gov>  
**To:** BruceM@ProjectDesign.com <BruceM@ProjectDesign.com>  
**CC:** Kris Shackelford <KShackelford@sandiego.gov>; Nitsuh Abera <NAbera@sandiego.gov>  
**Sent:** Thu Feb 23 10:17:33 2006  
**Subject:** Response to individual comments

Hi all -

I completed my review of the individual comments, and will leave them at our fifth floor reception for pick up, if that's okay.

If you have any questions, please let me know!

I will leave them with both Bruce's name/PDC and Nitsuh/ECP because I am not sure who will come by to pick them up.

Thanks,  
Martha

## Attachment 13

## CITY OF SAN DIEGO University City North/South Transportation Corridor

The City of San Diego may require consultant services for the project(s) listed below. Consultant wishing consideration should submit the following for Nominating Committee review: nineteen (19) copies of each 1) Letter of Interest - must be 5 pages or less, 2) Statement of Qualification Questionnaire, 3) Work Force Report, 4) Architect-Engineer Form 255 - Section 10 must be pages or less, and 5) Architect-Engineer Form 254. **NO SUPPLEMENTAL INFORMATION WILL BE ACCEPTED.** Submittals should be stapled, not bound. Neither plastic covers nor dividers are acceptable as part of your submittal. Your Statement of Qualifications Questionnaire must include a Professional Registration Number. All proposed Subconsultants must be listed on Page of the Questionnaire.

### **COMMITMENT TO EQUAL OPPORTUNITY:**

It is the policy of the City of San Diego to encourage equal opportunity in its professional service contracts. Toward this end, proposals from small businesses, disabled owned businesses, women owned businesses, firms owned by African-Americans, Native Americans, Asian-Americans, Filipinos and Latinos, and local firms are strongly encouraged. Prime Consultants are encouraged to subconsult or joint venture with these firms. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth.

### **ARCHITECT-ENGINEER FORMS 255 AND 254:**

If a firm has an office located outside San Diego County, the staffing of the San Diego office must clearly be indicated separately from the firm's total staffing. THE OFFICE LOCATION OF ALL PERSONNEL PROFILED IN BLOCK SEVEN (7) MUST BE CLEARLY INDICATED WITHIN THE BLOCK SEVEN. ALL PERSONNEL PROFILED MUST BE LISTED WITHIN THE PROJECT ORGANIZATION CHART. THE CHART MUST BE INCLUDED SOMEWHERE WITHIN THE FORM 255. Separate Architect-Engineer Forms 254 and 255 should not be submitted for Subconsultants. However, additional Subconsultant information can be provided within the proposer's Architect-Engineer Form 255. All pages profiling Subconsultant information should be clearly marked "Subconsultant Information".

\* Note that all proposed Subconsultants are listed in the Statement of Qualifications Questionnaire.

Firms which may be eligible to be certified as DBE, DVBE, MBE, and/or WBE, and wish to claim that status on City-issued contracts, should contact the City's Equal Opportunity Contracting at (619) 533-4464.

### **REQUEST FOR QUALIFICATIONS PACKAGES:**

To receive the RFQ package, please e-mail John Mendivil at [jmendivil@sandiego.gov](mailto:jmendivil@sandiego.gov) or call (619) 533-3796. All technical questions regarding the project should be directed to the project manager listed below.

### **SUBMIT INFORMATION TO:**

John Mendivil  
Consultant Services Coordinator  
Suite 500