



Document No. **C-16045**
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Office of the City Clerk
San Diego, California

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO
AND THE EKARD COMPANY
FOR CONSULTING SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and The Ekard Company [Consultant] for the Consultant to provide Professional Services for the City of San Diego.

ARTICLE I

PROFESSIONAL SERVICES

1. **Scope of Services.** The Consultant shall provide Services to the City per the attached Scope of Services (Attachment "A") at the direction of the City.

ARTICLE II

DURATION OF AGREEMENT

- 2.1 **Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or June 30, 2014; whichever is the earliest.
- 2.2 **Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.
- 2.3 **City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. Consultant will be entitled to fair and reasonable compensation for all Professional Services completed in compliance with this Agreement prior to the notice of termination.
- 2.4 **City's Right to Terminate for Default.** If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or

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

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The City shall pay the Consultant for performance of all Professional Services rendered in accordance with the scope of work in Section 1 of this Agreement, including reasonably related expenses outlined in Exhibit A for a total not to exceed (\$150,000.00) ONE HUNDRED FIFTY THOUSAND DOLLARS through Fiscal Year 2014.

3.2 Additional Services. The City may require that the Consultant perform additional Professional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule.

3.3 Manner of Payment. The City shall pay the Consultant monthly. For monthly invoicing, the City shall pay the Consultant on the 30th of each month for all services provided in the previous month. Final payment will be made upon receipt of the completed deliverables for the project. For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in 3.1. The Consultant shall submit invoices via email to City of San Diego Interim Chief Operating Officer, Scott Chadwick at SChadwick@sandiego.gov in accordance 3.1 which shall include a description of completed Professional Services. The City will pay undisputed portions of the invoice within thirty (30) calendar days of receipt.

3.4 Electronic Payment. The City now offers vendors the option of receiving payments electronically rather than by check. This allows for a more timely receipt of payments and provides the vendor with the ability to better manage account receivables. You can obtain information and forms at <http://www.sandiego.gov/purchasing/vendor> and click on Consultant/Vendor Registration "Electronic Payments".

ARTICLE IV

CONSULTANT ADMINISTRATION DATA

4.0 Notice to Proceed. The Consultant shall not proceed with any performance of services or supply of goods required by this contract without a written Notice to Proceed from the City of San Diego. Any work performed or expenses incurred by the Consultant prior to the Consultant's receipt of Notice to Proceed shall be entirely at the Consultant's risk.

4.1 Conflict of Interest. The Consultant is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at Section 27.3501 to 27.3595. The City may determine that a conflict of interest code requires the Consultant to complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Consultant shall submit the necessary documents to the City.

The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the

appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

In connection with any task, Consultant shall not recommend or specify any product, supplier, or consultant with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

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

4.2 Availability of Funds. Multi-year Contracts are subject to annual appropriation of funds by the City Council. Purchase Orders are funded when issued, so are not subject to any subsequent appropriation of funds. All goods and services will be ordered by means of a Purchase Order or through a Procurement Card transaction.

In the event sufficient funds are not appropriated for the next fiscal year, the Contract may be terminated at the end of the current fiscal year. The City shall not be obligated to make further payments. In the event of termination or reduction of services or quantity of goods, Consultant shall be compensated in accordance with auditable costs for services or products provided prior to notification of termination.

4.3 Insurance. Consultant shall not begin any work under Agreement until it has: (a) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in below; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City. The Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

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

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

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

Professional Liability. The winning Proposer shall obtain, at its sole cost and expense, Professional Liability coverage with limits of at least \$1,000,000.00 (one million) per occurrence and \$2,000,000.00 (two million) aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, the winning Proposer must ensure that the policy retro date is on or before the date of the award of this RFP and that coverage is maintained or the policy has a reporting period of at least three (3) years following completion or termination of the performance of professional services under this RFP.

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

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

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

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

Commercial General Liability Insurance Endorsements

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

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

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements

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

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

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

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

4.4 Jurisdiction, Venue. The venue for any suit or proceeding concerning Proposals or the Contract Documents, the interpretation or application of any of its Terms, or any related disputes shall be in the County of San Diego, State of California.

4.5 Legal Requirements. Federal, state, county and local laws, ordinance, rules and regulations that in any manner affect the goods or services covered herein apply. Lack of knowledge by the Consultant will in no way be a cause for relief from responsibility. Any acts or omissions of Consultant in violation of federal, state, or municipal law, City Charter, City Policies or regulations [regarding anti-competitive practices, unfair trade practices, collusion, gratuities, kickbacks, contingent fees, contemporaneous employment, or similar violations creating an unfair influence on the public solicitation and award process pertaining to this Contract] shall void this Contract. In addition to all other remedies or damages allowed by law, Consultant is liable to City for all damages arising out of the violation of any applicable law, including costs for substitute performance, and is subject to Suspension and Debarment.

4.6 Changes. The Purchasing Agent may, at any time, by written order and without notice to the sureties, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Consultant's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change unless the Purchasing Agent grants a further period of time before the date of final payment under the contract.

4.61 No services for which an additional cost or fee will be charged by the Consultant shall be furnished without the prior written authorization of the Purchasing Agent.

4.62 The Contract Documents fully express all understandings of the parties concerning the matters therein. No verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing.

4.7 Drug-Free Workplace. The Consultant agrees to comply with the City's Drug-Free Workplace requirements adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference.

4.8 Notices. Notices under this Contract shall be in writing, shall reference the Contract Number, and shall be considered effective upon personal delivery to the individuals listed below or five (5) calendar days after deposit in any U.S. mailbox, first class and addressed to the other party as follows:

The City of San Diego:
Purchasing Agent
Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego CA 92101-4195

4.9 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or the Consultant's employees, agents, and officers, arising out of performance involving this Contract, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 4.11.

4.10 The City of San Diego Restrictions. In the event any City of San Diego restrictions may be imposed which would necessitate alteration of material, quality, workmanship or performance of the goods or services offered, it shall be the responsibility of the Consultant to immediately notify in writing specifying the regulation which requires alteration. The City of San Diego reserves the right to accept any such alteration, including any reasonable price adjustments occasioned thereby, or to cancel the contract at no expense to the City of San Diego.

4.11 Assignment or Transfer. The Consultant shall not assign or transfer any interest in the contract, in whole or part, without written approval of the Purchasing Agent. Claims for sums of money due, or to become due from the City of San Diego pursuant to the contract may be assigned to a bank, trust company or other financial institution. The City of San Diego is hereby expressly relieved and absolved of any and all liability in the event a purported assignment or subcontracting of the contract is attempted in the absence of the Consultant obtaining the Purchasing Agent's prior written approval.

Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Contract, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

4.12 Availability of Records. The Consultant shall retain and maintain all records and documents relating to City Contracts for five (5) years after receipt of final payment by the City

or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the City, including the Purchasing Agent or designee.

The Consultant shall make available all requested data and records at reasonable locations within the City or County of San Diego, at any time during normal business hours, and as often as the City deems necessary. If records are not made available within the City or County of San Diego, the Consultant shall pay the City's travel costs to the location where the records are maintained.

Failure to make requested records available for audit by the date requested may result in termination of the Contract. Consultant must include this provision in all subcontracts.

4.13 Removal of Employees. The City of San Diego may request the Consultant immediately remove from assignment to the City of San Diego any employee found unfit to perform duties at the discretion of the City of San Diego and Consultant shall comply with all such requests.

4.14 Supervision. The Consultant shall provide adequate and competent supervision at all times during the performance of the contract. The Consultant or his designated representative shall be readily available to meet with the City of San Diego personnel. The Consultant shall provide the telephone numbers where its representative(s) can be reached.

4.15 Performance Evaluation Meeting. The Consultant shall be readily available to meet with representatives of the City of San Diego weekly during the first month of the contract and as often as necessary thereafter for the purpose of evaluating Consultant's performance on the Contract. A mutual effort will be made to resolve any and all performance problems identified at these meetings.

4.16 Federal, State and Local Reporting Compliance. The Consultant shall provide such financial and program information as required by the City of San Diego to comply with all Federal, State and local law reporting requirements.

4.17 Nondiscrimination.

4.17.1 Nondiscrimination in Employment. The consultant shall comply with the City's Equal Opportunity Contracting Program. For applicable rules see: San Diego Municipal Code Chapter 2, Article 2, Division 27 (Section 22.2701 et. seq.), and <http://www.sandiego.gov/eoc/index.shtml>. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

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

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

4.18 Project Personnel. Except as formally approved by the City of San Diego, the key personnel identified in the Consultant's Bid shall be the individuals who will actually complete the work, at the proposed levels of effort. Changes in staffing must be proposed in writing to the City of San Diego and approved.

4.19 Gratuities

4.19.1 The right of the Consultant to proceed may be terminated by written notice if, after notice and hearing, the Purchasing Agent or a designee determines that the Consultant, its agent, or another representative:

4.19.1.1 Offered or gave a gratuity (e.g. an entertainment or gift) to an officer, or employee of the City of San Diego; and

4.219.1.2 Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

4.19.2 The facts supporting this determination may be reviewed by any court having lawful jurisdiction. If this contract is terminated under the first paragraph above, The City of San Diego is entitled to pursue breach of contract remedies and all other remedies available at law.

4.20 Termination.

4.20.1 Termination for Default. The City may, by written notice of default to the Consultant, terminate the whole, or any part of, this Contract, provided that Consultant fails to cure such default within ten (10) days after receipt of such notice. The following are considered defaults:

4.20.1.1 Failure to make delivery of the goods or to perform the services within the time specified; or

4.20.1.2 Failure to perform any of the obligations of this Contract, or to make progress in performance which may jeopardize full performance.

In the event the City terminates this Contract, in whole or in part, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, goods or services and the Consultant shall be liable to the City for any excess costs. The Consultant shall also continue performance to the extent not terminated.

4.20.1.3 Termination for Convenience. The Purchasing Agent, by written thirty (30) day notice, may terminate this Contract, in whole or in part, when it is in the best

interest of the City. Consultant shall be compensated in accordance with auditable costs for services or products provided prior to notification of termination.

The Purchasing Agent may, by written notice to the Consultant, terminate this contract in whole or in part at any time as stated above. Upon receipt of such notice, the Consultant shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2)

4.20.1.4 Deliver to the Purchasing Agent all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this contract, whether completed or in process.

4.20.1.5 If the termination is for the convenience of the City of San Diego and if this is a fixed price contract, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

4.20.1.6 If, after notice of termination for failure to fulfill contract obligations (default), it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City of San Diego. In such event, adjustment in the contract price shall be made as provided in paragraph (2) of this clause.

4.20.1.7 The rights and remedies of the City of San Diego provided in this clause are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this contract.

4.21 Insolvency. In the event the Consultant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Consultant agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Purchasing Agent responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of the City of San Diego contract numbers and Contracting offices for all the City of San Diego contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

4.22 Dispute Resolution. Except as otherwise provided in this Contract any dispute concerning a question of fact arising under this Contract, shall be decided by the Purchasing Agent. The decision of the Purchasing Agent is final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Consultant mails or otherwise furnishes to the Purchasing Agent a written appeal. The decision of the Purchasing Agent, or his duly authorized representative for the determination of such appeals, is final and conclusive. In connection with any appeal proceeding under this clause, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with the performance of the Contract and in accordance with the Purchasing Agent's decision.

4.23 Patents and Royalties. Unless otherwise specified, the Consultant shall pay all royalties, license and patent fees. In submitting a Proposal, the Consultant warrants that the materials to be supplied do not infringe upon any patent, trademark or copyright and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, whether general, exemplary or punitive, as a result of any actual or claimed infringement asserted against the City, the Consultant or those furnishing material to the

Consultant pursuant to this Contract. The Consultant, without exception, shall defend, indemnify and hold harmless The City of San Diego and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by The City of San Diego. If the Consultant uses any design, device, or materials covered by letters, patent, or copyright, it is mutually understood and agreed without exception that the contract prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work.

4.24 Warranty of Services. "Acceptance," as used in this clause, means the act of an authorized representative of the City of San Diego by which the City of San Diego assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract. "Correction," as used in this clause, means the elimination of defect.

4.24.1 Notwithstanding inspection and acceptance by the City of San Diego or any provision concerning the conclusiveness thereof, the Consultant warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Purchasing Agent shall give written notice of any defect or nonconformance to the Consultant within twenty-four (24) hours. This notice shall state either (1) that the Consultant shall correct or re-perform any defective or nonconforming services, or (2) that the City of San Diego does not require correction or re-performance.

4.24.2 If the Consultant is required to correct or re-perform, it shall be at no cost to the City of San Diego, and any services corrected or re-performed by the Consultant shall be subject to this clause to the same extent as work initially performed. If the Consultant fails or refuses to correct or re-perform, the Purchasing Agent may, by contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the City of San Diego thereby, or make an equitable adjustment in the contract price.

4.25 Licenses and Permits. The Consultant shall, without additional expense to the City of San Diego, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of the work or to the products or services to be provided under this contract including, but not limited to, any laws or regulations requiring the use of licensed Consultants to perform parts of the work.

4.26 Taxes. I.R.S. regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide services or products to the City. This information is necessary to complete Form 1099 at the end of each tax year.

In order to comply with I.R.S. regulations, the City requires each Consultant to provide a Form W-9 prior to Award of Contract. Failure to provide a completed Form W-9 within ten (10) business days of the City's request may result in a Proposal being declared non-responsive and rejected.

4.27 Protection of the City of San Diego Property. The Consultant shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on or about premises owned by, or under the control of, the City of San Diego. If the Consultant's failure to use reasonable care causes damage to any of this property, the Consultant shall replace or repair the damage at no expense to the City of San Diego as the Purchasing Agent directs. If the Consultant fails or refuses to make such repair or replacement, the Consultant shall be liable for the cost, which may be deducted from the contract price.

4.28 Publicity Releases. All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this contract or the work, hereunder, which the Consultant or any of its subcontractors desires to make for purposes of publication in whole or in part, shall be subject to approval by the Purchasing Agent prior to release.

4.29 Suspension of Work. The Purchasing Agent may order the Consultant in writing to suspend all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the City of San Diego. In the case of delay caused by the City, the Consultant may be entitled to an adjustment. However, no part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

4.30 Standards of Performance. The Consultant shall perform all services required by this contract in accordance with high professional standards prevailing in the Consultant's field of work.

Services performed and goods provided, must be acceptable to the City, in strict conformity with all instructions, conditions, and terms of the Contract Documents and performed in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Mayor, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good business practices.

4.31 Notice of Labor Disputes. If the Consultant has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Consultant immediately shall give notice, including all relevant information, to the Purchasing Agent.

The Consultant agrees to insert the substance of this clause, including this paragraph, in any subcontract under which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Consultant, as the case may be, of all relevant information concerning the dispute.

4.32 Pending Legal Dispute. Unless the Consultant specifically indicates otherwise in the Proposal, submission of a proposal is deemed a warranty by Consultant that no judgments or awards have been entered against Consultant and that it is not currently involved in litigation or arbitration concerning Consultant's provision of services or goods similar to those which are the subject of this Contract. If Consultant discloses that such a warranty cannot be made, the City will require Consultant to furnish the City with a performance bond executed by a surety company authorized to do business in the State of California and approved by the City in a sum equal to one hundred percent (100%) of the Contract Amount.

It is the policy of the City of San Diego that one factor, among others, that are to be considered when awarding a contract or approving a purchase order is the existence of a pending legal dispute - whether in court or an alternative dispute forum - with any contractor or Consultant which has submitted a bid or proposal. Before including a consideration of the legal dispute as a factor, a Purchasing Agent shall seek the advice of the City Attorney regarding the legal dispute.

4.33 Time of Essence. Time is of the essence for each provision of the Contract Documents, unless specified otherwise.

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

4.35 Debarment Proceedings. Consultant misconduct may be punishable by suspension or debarment in accordance with San Diego Municipal Code Sections 22.0800, *et seq.*

4.36 Public Agency. Other public agencies as defined by Cal. Gov. Code § 6500 may choose to use this Contract, subject to the Consultant's acceptance. The City is not liable or responsible for any obligations related to a subsequent agreement between the Consultant and another public agency. If agreements are entered into by other agencies and the Consultant, Consultant shall furnish the City with an annual report showing the name of the agencies, contact person and phone number for each agency, and details of goods or services provided, including quantities. This report shall be furnished to the City upon request.

4.37 Product Endorsements. Consultant is prohibited from indicating, either directly or by implication, that the City has endorsed its goods or services without prior written authorization by the City.

4.38 Severability. The unenforceability, invalidity, or illegality of any provision of the Contract Documents shall not render any other provision unenforceable, invalid, or illegal.

4.39 No Waiver. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

4.40 Covenants and Conditions. All provisions in the Contract expressed as either covenants or conditions on the part of the City or Consultant shall be deemed to be both covenants and conditions.

4.41 Headings. All article headings are for convenience only and shall not affect the interpretation of these Contract Documents.

4.42 Independent Contractors. The Consultant and any subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions in the Contract that may appear to give the City any right to direct the Consultant concerning the details of performance, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

4.43 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

4.44 Intellectual Property.

4.44.1 Work For Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine,

originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City. The Consultant, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

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

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

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

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

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

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

4.44.8 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 4.11.

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

4.51 Business Tax Certificate. Any company doing business with the City of San Diego is required to comply with Section 31.0301 of the San Diego Municipal Code regarding Business Tax. For more information please visit the City of San Diego website at www.sandiego.gov/treasurer/ or call (619) 615-1500. The City requires that each Consultant provide a copy of their Business Tax Certificate, or a copy of their application receipt. Failure to provide the required documents within ten (10) business days of the City's request may result in a Bid being declared non-responsive and rejected.

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

4.53 Equal Benefits. Effective January 1, 2011, any contract awarded from this solicitation is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, contractors must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the contract [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of the contract [SDMC §22.4304(e)]. Contractors must notify employees of their equal benefits policy at the time of hire and during

open enrollment periods and must post a copy of the following statement in an area frequented by employees:

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

Contractors also must give the City access to documents and records sufficient for the City to verify the contractors are providing equal benefits and otherwise complying with EBO requirements.

Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

4.54 Contractor Standards. This Contract is subject to the Contractor Standards clause of the Municipal Code, Chapter 2, Article 2, Division 32 adopted by Ordinance No. O-19383. All Contractors are required to complete the Contractor Standards Pledge of Compliance included in this RFP (refer to Section J).

4.55 Submittals Required of all Contractors. Failure to provide the required submittals listed below with the agreement shall delay completion of the agreement, and therefore, commencement of scope of work and payments to Consultant.

- Complete Insurance Certificates with all Endorsements;
- Signed Drug Free Workplace Form (Form Attached);
- Business Tax Certificate;
- Taxpayer Identification Number (W-9) as specified in City of San Diego General Provisions, Section C, paragraph 15, if not currently on file. (<http://www.irs.gov/formspubs/lists>);
- Equal Benefits Form (Form Attached)

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to San Diego City Charter Section 265 authorizing such execution, and by the Consultant, The Ekard Company.

I HEREBY CERTIFY that I can legally bind Consultant and that I have read all of this Agreement this 11th day of April, 2013.

THE EKARD COMPANY

BY: Walter Oued
CONSULTANT

DATE: 4/11/13

**CITY OF SAN DIEGO
A MUNICIPAL CORPORATION**

BY: [Signature]
Al Rechany, Interim Director
Purchasing & Contracting

DATE 11/4/13

I HEREBY APPROVE the form and legality of the foregoing Agreement this
_____ day of _____, 2013.

Jan Goldsmith, City Attorney:

By: Bill Gersten

DATE SIGNED 4/25/13
Bill Gersten, Deputy City Attorney

EXHIBIT A

SCOPE OF SERVICES

The Consultant will serve as an expert consultant in government management and shall use its best efforts to provide consultant services in a competent and professional manner in the field of government management to address organization efficiencies with best management practices.

Compensation & Fee Schedule:

The Consultant will be paid by the City at a billable hourly rate of \$250.00, per hour, up to eight hours a day. The maximum daily billed amount will not exceed \$2,000.00 . Any additional work performed by the Consultant on that day will be provided by the Consultant at no charge to the City.

In addition, the Consultant will not charge the City for additional work that the Consultant may perform during non-standard work hours (any time after 7 p.m. or weekends)

Time Schedule:

Consultant will provide services as requested by City. Time schedule to be determined.

EXHIBIT B
INSURANCE

**FORWARD THESE REQUIREMENTS TO YOUR INSURANCE AGENT TO ENSURE ACCURACY ON THE INSURANCE
CERTIFICATE**

The insurance certificate must be prepared pursuant to the requirements listed below. Failure to comply with these requirements in a timely manner may jeopardize the renewal and/or continuation of this contract.

1. The **FULL** name of the Company(s) affording coverage must be named on the certificate of insurance. Insurance Company(s) selected **MUST** be authorized to do business in the State of California and rated "A-, VI" or better by the A.M. Best Key Rating Guide. A **Service of Suit Clause** must be furnished in the event a Company is a Surplus Lines Company.
2. **Commercial General Liability** insurance should be written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. (1) The CGL policy shall include wording that the policy is Primary and Non-Contributory.
3. The City of San Diego must be named as **additional insured** on **Commercial General Liability and Automobile Liability** coverage. (A specific City department shall not be named.) The City requires Contractors to submit: (1) an ACORD certificate with Additional Insured Endorsement naming the "City of San Diego, its respective elected officials, officers, employees, agents and representatives" as an additional insured, (2) a separate Additional Insured Endorsement page (CG 2010, CG 2026, or equivalent) also listing the "City of San Diego, its respective elected officials, officers, employees, agents and representatives" as an additional insured.
4. The authorized Insurance Agency Representative's original signature is required.
5. A notation of "**All Operations**" or the **Bid/P.O. Number and/or Job Title** must be included on the certificate (one (1) per certificate). (**Note:** The "All Operations" endorsement covers all current and future operations with the City of San Diego. Minimum coverage must be in accordance with bid or contract specifications)

6. **Certificate holder information must read as follows:**

City of San Diego, Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego, CA 92101-4195

ALL said insurance shall be maintained by the Contractor in full force and effect during the ENTIRE PERIOD OF PERFORMANCE under the agreement. Renewal certificates must be received by the Insurance Coordinator, City of San Diego Purchasing & Contracting Department, 1200 Third Ave, Ste 200, San Diego, CA 92101-4195 prior to the expiration date in order to ensure continuation of contracts. (6/08-ydk)

EXHIBIT C

DRUG-FREE WORKPLACE

A. GENERAL

All City projects are now subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. All Underwriters should be aware of the provisions of San Diego City Council Policy No. 100-17 which was established by the above numbered resolution. The policy applies equally to the Contractor and all Subcontractors. The elements of the policy are outlined below.

B. DEFINITIONS

- 1) "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, or for professional, or nonprofessional services rendered on behalf of the City 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.
- 2) "Employee" means the employee of a Contractor directly engaged in the performance of work pursuant to a contract as described in Section C.
- 3) "Controlled Substance" means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).
- 4) "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.

C. CITY CONTRACTOR REQUIREMENTS

- 1) 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:
 - a) 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.
 - b) Posting the statement required by subdivision (1) in a prominent place at Contractor's 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.

- 2) Contractors shall include in each subcontract agreement language which indicates the Subcontractor's agreement to abide by the provisions of subdivisions a) through c) inclusive of Section C1. Contractors and Subcontractors shall be individually responsible for their own Drug-Free Workplace programs.

NOTE: The requirements of a Drug-Free Awareness Program can be satisfied by periodic tailgate sessions covering the various aspects of drug-abuse education. Although an in-house employee assistance program is not required, Contractors should be able to provide a listing of drug rehabilitation and counseling programs available in the community at large.

Questions about the City's Drug-Free Workplace Policy should be referred to the Purchasing Agent.

THIS DOCUMENT MUST BE COMPLETED, SIGNED, AND SUBMITTED PRIOR TO CONTRACT AWARD DRUG-FREE WORKPLACE CONTRACTOR CERTIFICATION

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined and that,

Walt Ekard

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 Subcontractor's agreement to abide by the provisions of subdivisions a) through c) of the policy as outlined.

SIGNED: Walt Ekard

PRINTED NAME: Walt Ekard

TITLE: Owner

COMPANY NAME: The Ekard Company

ADDRESS: [REDACTED]

TELEPHONE: [REDACTED]

DATE: 4/16/13



EXHIBIT D: EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

For additional information, contact:

CITY OF SAN DIEGO

EQUAL BENEFITS PROGRAM

202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

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

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

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

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

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

- ☐ I affirm **compliance** with the EBO because my firm (*contractor must select one reason*):
- ☐ Provides equal benefits to spouses and domestic partners.
 - ☐ Provides no benefits to spouses or domestic partners.
 - ☒ Has no employees.
 - ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- ☐ I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

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

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

<u>Walter Starnes, owner The Equal Company</u>	<u>Walter Starnes</u>	<u>4/15/15</u>
Name/Title of Signatory	Signature	Date

FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved – Reason:
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rev 02/15/2011