

City of San Diego

CITY CONTACT

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REQUEST FOR PROPOSAL (RFP)

PRE-CONSTRUCTION SERVICES FOR THE UPAS STREET PIPELINE REPLACEMENT PROJECT CONSTRUCTION MANAGER AT RISK

| | | |
|----------------------|-------|--------------------|
| BID NO.: | _____ | K-12-5416-CMAR-3-C |
| SAP NO. (WBS/IO/CC): | _____ | S-11022 |
| CLIENT DEPARTMENT: | _____ | PUD |
| COUNCIL DISTRICT: | _____ | 2 & 3 |
| PROJECT TYPE: | _____ | KA |

PROPOSAL DUE

12:00 NOON
SEPTEMBER 14TH, 2012
CITY OF SAN DIEGO
PUBLIC WORKS DEPARTMENT
1200 THIRD AVENUE, SUITE 200, MS 56P
SAN DIEGO, CA 92101
ATTN: CONTRACT SPECIALIST

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1.0 INTRODUCTION

- 1.1 The City of San Diego (City), Public Works Department is requesting Proposals for Construction Manager At Risk (CMAR) pre-construction services for the **Upas Street Pipeline Replacement Project** (Project).
- 1.2 This Request for Proposals (RFP) is issued pursuant to San Diego Municipal Code (SDMC) Section 22.3803(b) as the second step in the City's public procurement process for the selection of a qualified Construction Manager (CM) for the Project. The City will not reimburse the respondents for costs incurred in the preparation, submittal, and participation in the RFP process.
- 1.3 The Engineer's Estimate of the Project's value including Pre-construction and Construction Services, including the contingencies, is **\$16,000,000**. This estimate is intended only as a conceptual estimate for the purpose of City's planning.
- 1.4 CMAR projects are delivered through two separate contracts pursuant to SDMC Section 22.3808; (1) a Pre-construction Services agreement (PSA) and (2) a Construction Services agreement (CSA). The required CMAR services will be funded in 2 stages.
 - 1.4.1 Stage I includes activities such as pre-construction design assistance, cost estimating, value engineering, certain design and limited early construction services when specified, services necessary to develop and approve the Guaranteed Maximum Price (GMP), and preparation of the Stage II contracting plan and schedule under the Agreement.
 - 1.4.2 Stage II will include construction management, bidding, construction, start-up, and close out services, which will be as described in the RFP. The approval of the Mayor and City Council is necessary prior to proceeding to Stage II.
- 1.5 The selected CM will initially enter into a PSA with the City for the Stage I (i.e., Pre-construction Services). A draft PSA including the terms and conditions is included in this RFP. See Exhibit E of this RFP. The CSA may be formed following the City's acceptance of the GMP for Stage II (i.e., Construction Services).
- 1.6 The City has undertaken the solicitation process for the Project in 2 steps. The first step of the solicitation was the public advertising of Request for Qualifications (RFQ) and receipt of Statements of Qualifications (SOQs) from respondents. The second part of the solicitation process is issuing this RFP to firms shortlisted based on the evaluation of the SOQs received. The City has completed the evaluation process under the first step of the procurement and this RFP is being issued exclusively to the selected firms for the second step of the selection process. These firms in alphabetical order are:
 - J.R. Filanc Construction Company, Inc.
 - Orion – Balboa Construction, Inc., A Joint Venture

- 1.7 Proposals from any other firms will not be considered for this process and will be rejected as unsolicited Proposals. Following receipt of Proposals from the short-listed respondents, the City reserves the right to request additional information or clarifications from or interview any or all CMs. Upon completion of the evaluation of proposals the City will select one respondent to enter into negotiations for Stage I work.
- 1.8 The PSA will be negotiated with the CM following the selection of the apparent winner and executed prior to the City issuing the Notice to Proceed (NTP) to the CM.
- 1.9 The PSA is an hourly contract including reasonably related expenses, in a lump sum amount that may not be exceeded.
- 1.10 The City's Standard Specifications for Public Works including the WHITEBOOK is available on the City's website (<http://www.sandiego.gov/engineering-cip/services/consultcontract/edocref/index.shtml>). The City's standard construction special provisions e.g., Supplementary Special Provisions are available upon request.
- 1.11 The CM shall demonstrate to the City that the CM's required license(s) for this project are valid when the PSA is executed. Failure to comply with this requirement may result in **the rejection of the Proposal**.
- 1.12 This RFP describes the Project, the required scope of work and services during each phase, the CM selection process, and the information that shall be included in the Proposal.
- 1.13 The City's review will include an evaluation of the CM's technical proposal, methodology, design review, prior experience, cost analysis, value engineering ideas, and business terms and conditions.
- 1.14 The respondents to the City's solicitation for Pre-construction Services shall be responsible for becoming familiar with the Project site and available documentation associated with the existing facilities impacted by the proposed work. Requests for site access and available documentation related to the City owned facilities impacted by the proposed work shall be coordinated with the City.
- 1.15 This Project is subject to the State Prevailing Wage Laws. Copies of the prevailing rate of per diem wages may be found at:

<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>

2.0 **PHASED FUNDING**

- 2.1 The PSA may be subject to phased funding as specified in the RFQ. If the PSA is subject to phased funding, the City will send the selected CM, within 10 Working Days from the date of the ranking or notice, the first Phased Funding Schedule Agreement for execution. Failure to execute the first Phased Funding Schedule Agreement within 10 Working Days after receipt may result in the Proposal being rejected as **non-responsive** and the cancelation of the Pre-construction Services Agreement as tendered.

3.0 PRE-CONSTRUCTION SERVICES DURATION

- 3.1 The time for completion of the Pre-construction Services shall be **520 Working Days from the NTP.**

4.0 EQUAL OPPORTUNITY

4.1 General

- 4.1.1 The City strongly encourages the participation of certified Small and/or Emerging Local, Disadvantaged, Minority, Woman, and Disabled Veteran Owned Business Enterprises (SLBE, ELBE, DBE, MBE, WBE, and DVBEs) on this project. In addition, the provision of equal opportunity in employment and strict adherence to the City's Non-Discrimination Ordinance are requirements.
- 4.1.2 The CM's commitment to the City's principles of equal opportunity will be evaluated as referenced in Exhibit B and specified in Exhibit C.
- 4.1.3 The ability of the CM to adhere to its Strategic Plan (see Section 4.3 below) for the duration of PSA and CSA may be evaluated by the City for future SOQs and Proposals. A negative variance between the Strategic Plan and actual performance may negatively affect the CM's competitiveness for future awards. The CM's progress toward achievement of Equal Opportunity requirements shall be routinely reported to the Mayor, City Council and Citizens Equal Opportunity Commission.

4.2 Subcontracting Participation

- 4.2.1 A 20% subcontracting (i.e., SLBE, ELBE, and DVBE) participation goal has been established for each stage of the project i.e., Stage I (Pre-construction Services) and Stage II (Construction Services). All firms must be certified by City approved agencies in order for the CM to receive credit. This goal is based on the total agreement amount. The Proposal for the Pre-Construction Services (Stage I) will be deemed **non-responsive** if it fails to provide a detailed strategic plan described below.
- 4.2.2 The equal opportunity subcontracting participation requirements will be replaced or modified by the requirements of the funding source when the Contract is funded by other agencies e.g., Federal and State. See Exhibit C for the funding agency requirements (when applicable).

4.3 Equal Opportunity Contracting Strategic Plan

- 4.3.1 The CM shall prepare a detailed strategic plan outlining their certified firm participation level commitment and the specific actions they will take to meet their commitment for the Pre-Construction Services. The CM may count 1st tier subcontracts for Construction Services only.
- 4.3.2 The CM's strategic plan shall include, at minimum, the following:

1. Participation level commitment percentage;
2. General categories of subcontracting opportunities anticipated for goal achievement;
3. Mentorship programs for both subcontracting and employment;
4. Veteran business inclusion and employment plan;
5. Apprenticeship utilization plan;
6. Description of how state prevailing wage laws (including subcontractor compliance & employee interviews) will be monitored;
7. Performance outcomes, milestones, and reporting; and
8. The individual responsible for the plan and its performance.

4.3.3 The CM's strategic plan shall also include a section describing the CM's general approach for achieving the subcontracting participation during GMP negotiations.

5.0 CONTRACTOR REGISTRATION

5.1 Prior to the Award of the PSA, the CM and its Subcontractors and Suppliers must register with the City's web-based contract compliance i.e., Prism® portal at: <https://pro.prismcompliance.com/default.aspx>

6.0 PAYROLL RECORDS.

6.1 The CM's attention is directed to the City's Labor Compliance Program, Section IV, and the State of California Labor Code §§1771.5 (b) and 1776. These require, in part, that the CM and Subcontractors maintain and furnish to the City, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

6.2 The CM and Subcontractors shall submit weekly certified payrolls reflecting the wages of all CM's and Subcontractors' employees engaged in the Work online via Prism®.

6.3 The CM and Subcontractors and Suppliers shall submit Monthly Employment Utilization Reporting and Monthly Payment Reporting by the 5th day of the subsequent month via Prism®.

6.4 Incomplete or delinquent reporting may cause payment delays, non-payment of invoice, or both.

7.0 SUMMARY OF SCOPE OF WORK AND SERVICES

7.1 The scope of work and services remain the same as specified in the RFQ except as follows:

7.1.1 Removed from the project:

- Pipeline under MTDB tracks at Pacific Hwy (see sheet C-1 of 30% Plans).

- Proposed 12-inch water main in Jackdaw and W. Walnut Ave.
- No SCADA at Upas & Hawk and Upas & Balboa PRS.

7.1.2 Added to the project:

- Replace 70 linear feet of 4-inch diameter cast iron water main in Brookes Avenue at Park Boulevard.
- SCADA to be installed at Upas & Brant and Upas & Park PRS.

8.0 **PROJECT SCHEDULE**

8.1 The Project milestones are provided for reference only. The City reserves the right to modify the dates presented herein at their sole discretion. The dates beyond the NTP for Stage I services are tentative and will be confirmed at a later date.

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|-----|--|----------------------------|
| 1. | Pre-proposal Meeting | August 21, 2012 |
| 2. | Proposal Due Date | September 14, 2012 |
| 3. | Presentations/Interviews | Week of September 24, 2012 |
| 4. | Selection and Notification | October 23, 2012 |
| 5. | Receipt of Insurance Certifications | November 19, 2012 |
| 6. | Issue NTP for Pre-Construction Services | November 30, 2012 |
| 7. | Begin GMP Negotiations | April 2013 |
| 8. | Complete GMP Negotiations | July 2013 |
| 9. | City Council Approval of CSA | October 2013 |
| 10. | Receipt of Bonds and Insurance Certifications | November 2013 |
| 11. | Issue NTP for Construction Services (Contract) | December 2013 |

9.0 **POLICIES, PROCEDURES, AND GUIDELINES**

9.1 The selection process is based on the policies, procedures and guidelines contained in the City Municipal Code Chapter 2, Article 2, Division 38.

9.2 Ranking Panel (Panel) will be established for this Project and will include 5-7 representatives from the City and others, as required.

9.3 The Panel will review all Proposals received and interview each CM. The Panel will rank the CMs as to qualifications and forward the Panel’s ranked listing of the CMs to the Mayor or designee.

9.4 The Mayor or designee will make the final recommendation to City Council concerning the proposed agreement.

10.0 PRE-PROPOSAL ACTIVITIES

10.1 Questions Concerning RFP

- 10.1.1** All questions and comments related to this RFP shall be directed to the Contract Specialist listed on the cover of this RFP no later than **14 days prior to Proposal due date.**
- 10.1.2** Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda to all registered recipients of this RFP. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. It is the respondent's responsibility to review any addenda that have been issued and to incorporate any addenda into its Proposal as applicable.

10.2 Pre-Proposal Meeting

- 10.2.1** A **mandatory** Pre-Proposal Meeting will be held as shown under Project Schedule above **from 10:00 AM to 11:00 AM**, at 1200 Third Avenue, Suite 200, large conference room, San Diego, CA, 92101. Potential CMs are required to attend. At least 1 member of a CM's team to be present at the Pre-Proposal Meeting. The CM shall receive and apply all information discussed at the Pre-Proposal Meeting.
- 10.2.2** The City may determine a CM is ineligible to submit a Proposal if the CM fails to attend the Pre-Proposal Meeting on time.

10.3 Revision to the RFP

- 10.3.1** The City reserves the right to revise the RFP prior to the date that Proposals are due. Revisions to the RFP will be mailed to all registered RFP holders. The City reserves the right to extend the date by which the Proposals are due.

11.0 SPECIAL CONDITIONS

11.1 Risk Posture

- 11.1.1** The selected CM shall indemnify and hold harmless the City for claims, suits, losses or damages arising out of the negligent acts, errors, or omissions of the CM or Subcontractors as applicable to the CM's scope of work and services attributable to the design effort during Stage I.

11.2 Reservations

- 11.2.1** This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a Proposal pursuant to this RFP, or to procure or contract for Work. The City may reject all Proposals if in the best interests of the City.

11.3 Public Records

11.3.1 In accordance with the California Public Records Act (California Government Code §6250 et seq.) the City may be required to disclose records in the custody of the City unless the information being sought is exempt (see Government Code §§6254 through 6255). Once submitted, all SOQs and Proposals shall become the property of the City and may be subject to public review.

11.3.2 The CM understands and agrees that the PSA and the CSA shall provide for full disclosure to the City of all documents and information by the CM, including but not limited to estimates, schedules, records of direct and indirect costs, field and home office overhead calculations, subcontracts, records of payment, and any other data or document deemed by the City to be relevant to the Project. The Proposal's Executive Summary shall contain the statement required by the RFP relating to assertions of a privilege of nondisclosure.

11.4 Right to Cancel

11.4.1 The City reserves the rights to amend, revise, or change in part or in its entirety, this RFP including but not limited to: selection schedule, submittal date, and submittal requirements. If the City amends, revises, or cancels the RFP, all CMs will be notified in writing by the City.

11.5 Release of Information by the CM

11.5.1 Selection announcements, contract awards, and all data provided by the City shall be protected by the CM from public disclosure. CMs desiring to release information to the public, shall receive prior written approval from the City.

11.6 Changes to Key Personnel and Substitution of Subcontractors

11.6.1 The CM shall not change or substitute any individual that is identified as "key personnel" in its SOQ and Proposal without the written approval from the City.

11.6.2 The CM shall not change or substitute any material, Supplier, or Subcontractor identified in its SOQ and Proposal without written consent of the City.

11.7 Use of Reference Documents and Pre-Design Reports

11.7.1 Pre-design documentation for the Project is available for review by the respondents at the following City website link:

<http://www.sandiego.gov/engineering-cip/projectsprograms/upaspipeline.shtml>

11.7.2 30% plans and specifications are available at the ftp site below:

<ftp://ftp.sannet.gov/OUT/ECP/AEP/Upas%20Street%20Pipeline/30%25%20Plans%20and%20Cost%20Estimate/>

11.7.3 The documents provided are for informational purposes only. The City shall not be responsible for the information contained in the documents unless such are specifically referenced and defined in the PSA or CSA.

11.8 Scheduling and Management Reporting Systems

11.8.1 The CM will be required to use the latest version of the Primavera Project Management and Scheduling Software or approved equal.

11.8.2 The City will require the CM to submit and maintain a task-oriented computerized schedule for completing the Work over the life of the Project.

11.8.3 The CM shall anticipate that the development of this schedule will require at least 3 steps prior to submittal to the City for review and acceptance; (1) development of a work breakdown structure by the CM; (2) development of interface procedures (and software, if necessary) to communicate from the CM's computer networking software to the City's software (i.e., Primavera system), and (3) development of an activity network.

11.8.4 The City will utilize the schedule information supplied by the CM to review progress payments and to monitor the progress of the project against the agreed schedule requirements.

11.9 Additional Special Conditions

11.9.1 The CM shall extend to the City a Proposal validity period of at least **120 days**. The Schedule may be adjusted as mutually agreed upon by the City and the CM. The CM, by submitting a response to this RFP, agrees to provide the Proposal team and services for the terms and conditions noted in this RFP and its attachments, if awarded by the City.

RFP - EXHIBIT A
CM SCOPE OF WORK AND SERVICES
CONSTRUCTION MANAGER AT RISK

RFP - EXHIBIT A

CMAR SCOPE OF WORK AND SERVICES

The following describes the general scope of work for **Stage I (Pre-construction Services)** and **Stage II (Construction Services)** as defined herein.

1. STAGE I – PRE-CONSTRUCTION SERVICES

- 1.1** The City wishes to engage a CM to provide input to the design team during the early stages of design development to maximize opportunities for Value Engineering (VE), constructability review, and to monitor the project's hard construction cost at various design stages to assure that the final design and the results of a competitive bidding process are within the City's budget limitations. The CM will also advise the City and the Consultant regarding the costs of alternative materials and construction methods, which may reduce the Project's cost and schedule without reducing the quality of the work or altering the design intent of the Consultant.
- 1.2** The CM shall review the design documents for clarity, consistency, constructability and coordination among the constructors. The results of the review shall be provided in writing as notations on the documents. The CM shall expedite the City's design reviews by compiling and conveying the City's comments to the Consultant.
- 1.3** The CM shall give the City all data of which it is aware concerning patents or copyrights for inclusion in Contract Documents.
- 1.4** The CM is not responsible for providing, nor does the CM control the Project design and contents of the design documents except for those prepared by the CM.
- 1.5** The CM shall coordinate transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews.
- 1.6** The CM shall analyze and report to the City the cost of various design and construction alternatives, including CM's assumptions in preparing its analysis, a variance analysis between budget and cost estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM in collaboration with the design team and PUD, shall consider costs relating to efficiency, usable life, maintenance, energy, and operation. The CM shall be responsible for engaging necessary consultants for all Special Inspection services, reviewed and approved by the City.
- 1.7** The Project control shall include, but may not be limited to, the following:
 - 1.7.1** Monthly Project status reports
 - 1.7.2** Coordination and interface with the City and its Consultant(s)
 - 1.7.3** Progress meetings including but not limited to workshops every two weeks with the design team in the local office of the Consultant during Stage I and weekly construction team meetings throughout Stage II.
 - 1.7.4** Meetings with other agencies
 - 1.7.5** Suppliers and Subcontractors management
 - 1.7.6** Document control
 - 1.7.7** Bidding, evaluation, and subcontract award
 - 1.7.8** Quality assurance and quality control

- 1.8** The City will require the CM to submit and maintain a task-oriented, cost loaded computerized schedule for completing the Work on the Project within the time provided in the contracts. The schedule and cost tracking shall be in accordance with all City standards and policies.
- 1.9** Provide professional errors and omissions insurance as needed to cover technical services and constructability review directions provided by the CM.
- 1.10** Notify the City in writing during design review whenever the CM determines that any alteration to the Plans or Specifications will cause an increase in construction costs.
- 1.11** Identify all permit requirements and coordinate with the Consultant applications and support documents necessary for obtaining construction related permits and obtaining the permits identified in the Contract Documents.
- 1.12** Provide detailed cost estimates during the Stage I services with high-low range. Provide design adjustment and VE recommendations as necessary to reduce the high range budget to a target of 5% below the City's maximum target GMP value with a contingency target of less than 3.5% of the hard construction cost.
- 1.13** In a format acceptable to the City, provide construction cost estimates during Stage I services to support VE and constructability reviews. Update cost estimates as needed to track changes of greater than 1% in the overall construction cost but not less frequently than every 3 months. Revise these estimates once accepted VE recommendations and other review comments have been incorporated into the Contract Documents. Provide final opinion of probable construction costs prior to submitting the GMP.
- 1.14** Determine and establish the sequence of construction. The respondent shall recognize that the City may approve the establishment of multiple work packages in order to expedite the Project schedule. Respondent may therefore be requested to provide recommendations on the development of work packages that each would receive a GMP, whereby the sum of the individual GMPs constitute the entire scope and cost of the Project as defined by the contracts. The respondent may also be requested to identify separate bid packages to accomplish construction of the Project in compliance with Funding stages, should such funding be applicable to the Project.
- 1.15** Following completion of each cost update, notify the City within 5 Working Days in writing whenever the CM reasonably believes that the cost of the Project is likely to exceed the GMP and include in said notice:
 - 1.15.1** An itemized cost breakdown estimate.
 - 1.15.2** Develop recommended revisions to Project scope, design criteria, and Construction Schedule and provide cost estimates for changes which the CM believes will bring the Project within the GMP.
 - 1.15.3** Assist the City and Consultant in reviewing the itemized cost breakdown and recommend revisions so that the City can revise the scope of the Project so that the GMP is not exceeded.
- 1.16** Develop construction stage material delivery, inventory, and assembly, and waste disposal plans.

- 1.17** During the Stage I services, provide recommendations to the Consultant regarding alternative materials and methods of construction.
- 1.18** Research Air Pollution Control District and noise abatement requirements, along with any hazardous materials management requirements of NFPA, Cal-OSHA, and the City Fire Department. Develop a dewatering plan, an air pollution control plan, a noise abatement plan, and a hazardous materials management plan, if required, as they relate to the execution of the construction work.
- 1.19** Community Outreach
- 1.19.1** Attend community meetings during design and construction.
- 1.19.2** Provide input as to how the construction activities or equipment will affect access to the public facilities and businesses located within or near the Project area.
- 1.19.3** Provide input about construction activities that will produce more than average noise levels.
- 1.19.4** Provide input as to how construction activities may affect residents and business in ways other than listed above (e.g., water outages, staging of equipment, etc.).
- 1.20** Stage I Services - GMP Stage
- 1.20.1** The CM shall prepare one or more Guaranteed Maximum Price (GMP) for the Project's construction phase while the design development phase is being completed.
- 1.20.2** The GMP shall include construction costs of work self-performed by the CM (when authorized), Subcontractors, general conditions performed by the CM or others, selected assistance during the completion of final Plans and Specifications for the Project, and allowances for certain fees, permits, and reimbursable expenses that would be administered by the CM and reimbursed by the City at cost without markup.
- 1.20.3** The GMP Proposals for the Work shall be presented in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the Stage I services.
- 1.20.4** GMP Proposals submitted shall be based on, and consistent with, the current cost estimate at the time of the request, the associated estimates for construction costs, and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 1.20.5** The CM will prepare its GMP based on the most current completed Plans and Specifications that have been prepared by the Consultant and reviewed by the CM at that time. The Plans and Specifications shall become a part of the CSA for Stage II work.
- 1.20.6** An updated Project Schedule shall be included with any GMP Proposal(s) that reflects the GMP related Plans and Specifications.

1.20.7 The GMP shall be comprised of, but not necessarily limited to, the following not-to-exceed cost reimbursable or lump sum amounts, which shall be further defined in the contracts:

1. Cost of the Work
2. General Conditions Costs
3. Construction Fee
4. Reimbursable
5. City's Contingency
6. CMAR Contingency
7. Insurance Costs

1.20.8 The use and control of contingencies for the Project shall be further described in the CSA for Stage II services.

1.20.9 Taxes shall be included in the various GMP components and are deemed to include all sales, use, consumer and other taxes which are legally enacted when the final GMP(s) were established and agreed upon by the CM and the City, whether or not yet effective or merely scheduled to go into effect.

1.20.10 GMP savings resulting from a lower actual project cost than anticipated by the CMAR remaining at the end of the Project will revert to the City as defined in the CSA for Stage II services.

1.20.11 GMP Proposal(s) Review and Approval:

1. The CM will meet with the City to review the GMP Proposal(s) and the written statement of its basis. If the City discovers inconsistencies or inaccuracies in the information presented, the CM will make adjustments as necessary to the GMP Proposal, its basis, or both.
2. The City upon receipt of any GMP Proposal from the CM, may submit the GMP documents including the related Plans and Specifications, to an independent third party for review and verification. The third party will develop an independent estimate of the cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
3. If the CM's GMP Proposal is greater than the independent third party estimate for the Cost of Work, the CM as part of its GMP, or as a separate report, within 5 Working Days of a written request by the City shall identify, explain, and substantiate the differences. The CM may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration to the City. At that time, the City may do one of the following:
 - a) Accept the CM's original or revised GMP Proposal, if within City's budget, without comment.

- b) Accept the CM's original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CM that the Project budget has been increased to fund the differences, or
- c) Reject the CM's original and revised Proposal because it exceeds the City's budget, in which event; the City may reject the GMP or terminate the PSA and not enter into the CSA with the CM for the Stage II services. The City may then elect to undertake the Work based on completion of final Plans and Specifications for the Project and select a contractor using another competitive bidding process.

1.20.12 If during the review and negotiation of the CSA related to Stage II services, there are design changes to the Project, the City will require the Consultant to revise the Plans and Specifications. Such revised Plans and Specifications will be furnished to the CM. The CM will promptly notify the City in writing if any such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications that are a part of the terms and conditions of the CSA for Stage II services.

1.20.13 Except for management and project administration, a CM shall not perform any construction services with its own forces or the forces of any affiliated entity. If the CM desires to self-perform certain portions of the Work, it will request to be one of the approved subcontractor bidders for those specific bid packages. If events warrant, the City, at its sole discretion, may allow the CM to self-perform certain portions of the Work provided that it does not reduce the required subcontracting participation percentages. If the City indicates that Proposals of self-performing part(s) of the Work by CM will be acceptable, for any subsequent RFPs, all trades proposed to be self-performed by the CM shall be obtained pursuant to competitive bidding under subsection (a)(1) of §22.3809 i.e., lowest responsible bid.

1.21 For the purpose of satisfying the subcontracting participation requirements, Subcontractors include only the 1st tier subcontractors who have directly entered into construction services agreements with the CM.

1.22 Unless authorized otherwise by the City, every 1st tier Subcontractor shall perform, with its own organization, work amounting to at least 50% of the Subcontract value.

1.23 The CM shall ensure the Work could be bid so that bidders submit bids to the CM on a proper work breakdown that would facilitate subcontracting opportunities with the certified SLBE-ELBE and DVBE firms.

1.24 The CM shall, as part of the Stage I services and in accordance with the City's standard bid and award process, prepare bidding documents, advertise for, and obtain competitive bids for Subcontracts for proposed construction services agreements and commit in its Proposal for a GMP to award all Subcontracts utilizing best value for price and qualifications as proposed by the CM and agreed to by the City, in accordance with SDMC Section 22.3809(a)(3). The evaluation criteria will be published and the weights established in the CM's bid documents. To learn more about the City's standard bid and award process, contact the Contract Specialist.

1.25 The acceptance of the Contract GMP is contingent upon the CM's compliance with all standards of the City for the competitive solicitation of subcontracted trades and materials and bidding. All bids for subcontracts in any construction services agreement shall be opened and published and provided to the City without reservation or redaction as part of the Proposal and negotiation process for any construction services agreement. The City will observe the public bidding process, may administer bidding itself for any subcontracted work, or direct the bidding procedures to be used by the CM.

1.25.1 Prepare all necessary documents for bidding the Work, not approved by the City for self-performance or negotiated prior to establishing GMP, which shall include at least:

1. Instructions to bidders;
2. General and special conditions;
3. Form of bid;
4. Form of bonds.

1.25.2 Prepare and submit to the City for review, separate bid packages as the CM determines appropriate to enable the construction of the Project to proceed in an efficient and cost effective manner and to encourage ELBE, SLBE, and DVBE participation;

1.25.3 Develop and administer a subcontractor pre-qualification procedure in a manner equivalent to the City's pre-qualification standards for those bid packages for which the CM and City agree a pre-qualification procedure is required.

1.25.4 Develop Subcontractor and Supplier interest, submit the names of a minimum of 3 qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. The CM shall identify the Subcontractors and Suppliers certification status and during the bidding process shall keep the City informed on the progress of meeting the desired subcontracting participation percentages.

1.25.5 If there are not 3 qualified Subcontractors or Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM may request approval by the City to submit less than three 3 names. Without prior written notice to the City, no change in the recommended Subcontractors or Suppliers will be allowed.

1.25.6 Schedule and conduct pre-bid conferences to answer questions posed by bidders; said answers and any other information required to provide clarification to the Construction Documents during the bidding process shall be issued as written addenda and provided to all prospective bidders;

1.25.7 Review bids and information submitted with the bids for compliance with bid, Equal Opportunity Contracting Program (EOCP) requirements.

1.25.8 Prepare bid evaluation tables and deliver contract documents incorporating all addenda. New drawings will not be issued by the Consultant for every bid. Conduct pre-construction conference(s) for the successful bidder(s).

1.25.9 Analyze all bids and award contracts to selected Subcontractor(s) in accordance with procedures included in the PSA and CSA. Provide bid breakdown at a minimum to each trade involved, sufficient for the purpose of progress billing for construction.

1.25.10 The CM shall be responsible for entering into contracts, in the CM's own name and not as an agent of the City. The CM shall be responsible for ensuring that these contracts fully comply with all applicable local, state and federal laws and regulations.

2. STAGE II - CONSTRUCTION SERVICES

2.1 The CM's services in the construction stage shall be as specified in the CSA for Stage II services. In general, the CM will have the traditional role of general contractor during construction of the Project. Following the construction NTP, the CM will assume the risk of delivering the Project based upon the agreed upon cost and schedule. The Project may require multiple GMPs.

2.2 The CM will be responsible for construction means and methods, and will be required to solicit competitive bids from Subcontractors to perform the Work as previously described herein. The CM may also compete to self-perform work as discussed earlier in this RFP.

2.3 Stage II (i.e., Construction Services) provided by the CM may include, but not necessarily be limited to, the following:

2.3.1 Provide all City required bonding and insurance during the construction period.

2.3.2 Provide contract administration, and inspection staff, including specialists, necessary for the functional, safe, on budget, and on-schedule completion of the Project, starting with the issuance of a NTP from the City and extending through Acceptance.

2.3.3 Coordinate with various City departments and other agencies such as utility companies.

2.3.4 Arrange for procurement of materials and equipment.

2.3.5 Schedule and manage Site operations.

2.3.6 Take steps needed to ensure the operational integrity of existing facilities.

2.3.7 Provide services needed to support the deliverables and requirements contained in the Consultant's contract with the City for services during the construction period.

2.3.8 Provide pre-qualifying, bidding, awarding, and managing construction related contracts and subcontracts while meeting the City's procurement policies as required by the PSA and CSA.

2.3.9 Provide a comprehensive quality controls plan and manage all aspects of the plan. The City staff will perform inspection to verify compliance with the Contract Documents. The CM shall ensure construction compliance with applicable local, state, and federal codes, building and environmental permit requirements, and construction mitigation documents and compliance with the Contract Documents.

- 2.3.10** Address City Project related issues and develop processes for communication and information management.
- 2.3.11** Maintain a safe work site for all Project participants.
- 2.3.12** Prepare and present information concerning the Project to elected and appointed officials and the public as deemed needed by the City.
- 2.3.13** Receive, monitor, and review the cost of all Change Orders, and meet with the City to explain and negotiate a resolution.
- 2.3.14** Be responsible for any gaps in the Work excluding unforeseeable events, and be responsible for items not included in Subcontractor's bids.
- 2.3.15** Interface between the City and all Subcontractors.
- 2.3.16** The GMP shall include the CM controlled contingency which may not be used to supplement the general requirements. This CM controlled contingency shall not exceed the specified target percent of the sum of all subcontracted hard construction costs. The CM will establish a schedule of all contingency, holds and allowances which can be monitored monthly and, when the total is greater than the required hold level, the excess can be reallocated to project enhancements or transferred to the City controlled Contingency which is included in the CSA.
- 2.3.17** Take the lead in receiving RFI's, forwarding RFI's to the Consultant(s) and the City for their review, and coordinating responses. The CM shall be proactive in monitoring and tracking all RFI's and shall not simply forward them to the Consultant(s) or the City. Prepare a detailed description of all necessary procedures and methods, including a detailed description of the quality control program, to be utilized by CM in performing its services under Stage II services (Construction Management Plan).
- 2.3.18** Prepare, submit for City review and written approval, and implement a Project Startup and Testing Plan for any mechanical, electrical, instrumentation and controls equipment and systems for the Project.
- 2.3.19** As applicable for the Project identified under this RFP, develop a comprehensive start-up, testing and commissioning plan, direct its completion, monitor all tests, and prepare all documentation required by the provisions of the Contract Documents.
- 2.3.20** As applicable for the Project identified under this RFP, conduct operator training sessions for any operable equipment (e.g., mechanical equipment, control systems, etc.) for the Project.
- 2.3.21** As applicable for the Project identified under this RFP, supervise, manage, and coordinate Project startup and testing activities within the provisions of the Contract Documents.
- 2.3.22** Report to the City all warranty disputes.
- 2.3.23** Proceed to resolve such disputes after having submitted to the City for review and approval the CM's approach for obtaining resolution for the dispute.
- 2.3.24** Coordinate all Working Drawings, Shop Drawings, Submittals and Redlines. Redlines for completed portions of work shall be submitted to the City with monthly billings. The CM shall compile redlines from all of the Subcontractors on one set of D-sized Plans.

RFP - EXHIBIT B

PROPOSAL SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA

CONSTRUCTION MANAGER AT RISK

RFP - EXHIBIT B

PROPOSAL SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA

The respondent's Proposal shall contain all of the following requested information and shall be formatted in conformance to the requirements identified and structured based on the outline presented in Section 2 of this Exhibit. The City will consider the following criteria in evaluating respondents to the RFP.

1.0 EVALUATION

- 1.1** A maximum of 100 points will be awarded based on the City's review and evaluation of the SOQ, Proposal, and the interview as follows:

| | |
|-----------------------------|--------------------------|
| Proposal Evaluation | 85 Points Maximum |
| <u>Interview Evaluation</u> | <u>15 Points Maximum</u> |
| Total | 100 Points |

- 1.2** The breakdown of available Proposal points is identified for each section as presented in Section 3 below.
- 1.3** Proposal sections are either identified as PASS/FAIL or are assigned evaluation points. Proposals that do not receive a passing grade for the PASS/FAIL sections may be deemed **non-responsive** and eliminated from further consideration at the City's sole discretion.
- 1.4** Proposals must contain all of the information required under each section. Incomplete Proposals may be rejected as non-responsive.
- 1.5** The Panel will review all Proposals received and will interview each CM. Based on the CM's score from the Proposal, and interview, the Panel will rank the CMs and forward its ranking results to the Mayor or designee.
- 1.6** The award process will be initiated with the CM entity with the highest total score.

2.0 GENERAL PROPOSAL REQUIREMENTS

- 2.1** The Proposal shall be concise and well organized and shall demonstrate the CM's qualifications and experience as applicable to the Project and its proposed work plan for the Pre-construction Services.
- 2.2** The Proposal shall be limited to no more than 75 one-sided Standard Letter size, 8½" x 11" pages; inclusive of any cover sheets, resumes, graphics, forms, pictures, photographs, dividers, front and back cover and supporting documentation. Double-sided pages are not acceptable. Paper foldouts in sizes other than the Standard Letter size will count as 2 pages against the established Proposal page-count limit. The text pages shall not exceed 500 words per page.
- 2.3** Regarding submitted resumes, if there are no changes from the information in the SOQ, state that. Responders doing so **MUST** provide reference of the page number and location within said page where the information may be found. If there are no

changes from the information in the SOQ, state that. Responders doing so MUST provide reference of the page number and location within said page where the information may be found. Changes to the key personnel composition previously submitted during the RFQ process are governed by RFP Section 11.6, “Changes to Key Personnel and Substitution of Subcontractors.”

- 2.4** The Proposal that exceeds the page number or word count limitation may be rejected at the sole discretion of the City.
- 2.5** The required EOCP documentation shall be in addition to the page limit stated above.
- 2.6** The CMs shall submit one Proposal clearly marked on the cover as the executed original, 8 complete paper copies of the Proposal, and 1 Compact Disk (CD) or Digital Video Disk (DVD) with a complete Portable Document Format (PDF) formatted version of the submitted documents.
- 2.7** The Proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the CM. In the case of a JV or LLC, the Proposal shall be signed by the authorized representatives of each party.
- 2.8** The Proposal and related materials shall be received no later than the time and place specified on the cover of this RFP. Proposals shall be submitted in sealed packages with the following information clearly marked on the outside of each package: One executed original, clearly and conspicuously marked on the cover, and 8 copies and the CD or DVD are to be submitted in a sealed package marked “Proposals” clearly and conspicuously in its face. The following information will be clearly marked on the outside of each package:

Name of CM
Project Title
Package Number (e.g., 1 of __, 2 of __, etc.)
- 2.9** Proposals and modifications thereto received subsequent to the hour and date specified above will render the CM’s submittal invalid and may cause its disqualification from this selection process.
- 2.10** If the respondent fails to comply with any of the requirements of the RFP, the City may disqualify the respondent from further participation in the solicitation at the City’s sole discretion.
- 2.11** The Proposal submittal shall be organized as detailed herein. The contents shall be subject to the page and word count limitations identified above.
- 2.12** The Proposal shall include the prices, fees and costs to be evaluated pursuant to Section 3.11, “Proposed Fee and General Conditions for Construction Services.” This information shall be provided separately as the Price Proposal.
- 2.13** The Price Proposal shall be clearly identified and submitted with the Proposal.
- 2.14** The lowest proposed PSA amount is not a determining factor for award of this PSA. See Exhibit B for criteria from which the proposals will be evaluated.

3.0 PROPOSAL CONTENTS AND FORMAT

3.1 The sections of the Proposal shall be based on the following information and structured in the order presented herein. Proposals that do not contain the required information as specified may be deemed **non-responsive** if determined by the City to be of such a material nature. Proposal elements which may deviate from the RFP shall be highlighted and brought to the City’s attention during the presentation and interview.

3.2 Submitted proposals shall present information in the order of the headings listed in this section.

3.3 Cover Letter and Acknowledgement of Addenda (PASS/FAIL)

3.3.1 A cover letter, signed by the CM shall be submitted with the Proposal. The cover letter shall include a statement acknowledging receipt of all addenda associated with this RFP. The CMs are not required to include copies of the actual addenda in their Proposals. The CM shall confirm the receipt of all addenda issued to this RFP. Failure to acknowledge all addenda issued, may result in the Proposal being considered **non-responsive** and ineligible for further consideration. Except acknowledgment of Addenda, the cover letter shall not contain any information that is a required element of the Proposal unless specified otherwise in the RFP.

3.4 Introductory Statement (PASS/FAIL)

3.4.1 The CM shall identify the legal name of the business entity that is responding to the RFP. The CM shall also list the CM’s current address, telephone number and the individual to contact concerning the Proposal. The CM shall provide the names of the principal individual owners of the firm. In the event the firm is employee owned or publicly held, then the fact shall be stated and the names of the firm’s principals or officers shall be provided.

3.4.2 Joint Venture:

3.4.2.1 If the respondent is a joint venture company (JV) or limited liability corporation (LLC) established for the sole purpose of undertaking the scope of work related to the Project, information on all members of the entity shall be provided along with a description of the key terms of the participants’ relationship in the entity, including information of shareholder percentages.

3.4.2.2 If the CM is a JV or other special purpose company, the CM shall submit with its Proposal a certification signed by authorized officers of each of the parties to the JV. The certification shall name the individual who shall be the authorized agent of the JV or special purpose company who shall sign all documents related to the Project on behalf of the JV or special purpose company, and, if the joint venture or special purpose company is the selected CM, who shall act in all matters relating to and resulting from the PSA and CSA.

3.5 Exceptions to this RFP (PASS/FAIL)

3.5.1 If the CM takes exception(s) to any portion of the RFP and its exhibits, the specific portion of the RFP or exhibit to which exception is taken shall be identified and explained to the City in writing a minimum of 10 Working

Days prior to the date established for submittal of the Proposal. Exceptions taken after the stipulated period to this RFP may be cause for rejection of the Proposal and discontinue the CM's participation to this selection process. The City reserves the right to waive exception(s) as it deems in the best interests of the City.

3.5.2 The "Certification of Exception to the RFP Documents" included in the RFP shall be included in response to this section with one of it sections filled accordingly stating the position of the CM's regarding the exceptions to the RFP. See Exhibit D). Exceptions to the RFP shall include any and all exceptions to ALL documents forming part of this RFP.

3.5.3 The Proposal shall provide written comments on the RFP and its Exhibits to identify any items that:

3.5.3.1 in the opinion of the CM must be changed (CM to provide alternative language),

3.5.3.2 are acceptable to the CM but clarification of specific wording, terms and/or conditions is requested, or

3.5.3.3 in the opinion of the CM contain omissions (CM to provide suggested language).

3.6 Executive Summary (MAXIMUM 5 POINTS)

3.6.1 A maximum 4-page overview of the entire Proposal describing the major elements of the Proposal.

3.6.2 The Executive Summary shall include whether or not the CM's Proposal contains proprietary information that would be exempt from public disclosure pursuant to California Public Records Act, and if so, identify the information and explain why it is exempt. By submitting a Proposal, the CM is assuming responsibility for defending any litigation seeking disclosure of the information, and defending and holding the City harmless from any such litigation.

3.7 Project Challenges and Issues (MAXIMUM 5 POINTS)

3.7.1 The CM shall identify what they believe to be the largest challenges associated with their role on the Project. The Proposal shall describe how the CM overcame these challenges on previous projects that the proposed Project team has participated in.

3.7.2 The CM shall describe its understanding of the design and technical issues involved in the Project, including those related to schedule, site mobilization, constructability, construction sequencing, permit and code compliance, and cost containment.

3.8 Cost Estimate Review & Potential Savings (MAXIMUM 10 POINTS)

3.8.1 The CM shall review the preliminary design and cost estimate that has been prepared by the Consultant when included as Exhibits to this RFP and shall discuss their findings relative to the draft cost estimate's completeness and accuracy.

3.8.2 The CM shall describe how it would work with the Consultant's design team to reduce the construction budget by a target of 5% without downgrading the Project objectives, or design intent. The Proposal shall identify what areas, features, materials, or systems would the CM investigate in order to reduce costs while maintaining quality.

3.9 Project Approach and Schedule (MAXIMUM 15 POINTS)

3.9.1 The CM shall provide a discussion as to their approach to undertaking the work during Stage I and Stage II. The discussion shall include allocation of resources, interface and cooperation with the City and Consultant during both stages of the Project, approach to partnering, design review procedures, cost estimating and scheduling procedures, project control procedures, subcontractor management procedures, construction safety policies and procedures and quality control procedures. The CM shall discuss their approach to phase construction, phase bid packages, the sequence of construction to allow for work to progress with minimum disruptions which may include Moratoriums, community events, permit limitations such as night work or limited hours of operation, Operations coordination such as testing of facilities, coordination with adjacent construction projects, and acquisition of long lead items.

3.9.2 The Proposal shall include a discussion on responding to RFIs, handling project changes including the line of communication with the Consultant, Subcontractors, and City staff.

3.9.3 The Proposal shall include a description of the policies and procedures utilized by the CM for schedule and budget control.

3.9.4 The Proposal shall include a discussion of the Critical Path Schedule from NTP to the GMP date and then for Construction through Acceptance. .

3.9.5 The Proposal shall include a discussion of the design reviews, construction activities, review cycles, procedures that will minimize impacts to existing staff and the community and a general discussion of the CM's ability to meet the ultimate milestone deadline for completion of both stages. The Proposal shall include a discussion of how the CM will minimize the Punchlist to Acceptance.

3.10 Organization and Staffing (MAXIMUM 10 POINTS)

3.10.1 The CM shall provide an updated and expanded organization chart that depicts the CM's staffing for the Project based on the CM's understanding of the requirements of the PSA and CSA.

3.10.2 The CM shall provide a corresponding spreadsheet that identifies each staff member or category, the member's role on the Project, location where each key staff member is now assigned, and when each staff member will be released from other current assignments (Staffing Plan).

3.10.3 The Staffing Plan shall include the leadership of the team, the accountability of the team leader, the lines of authority, and shall be consistent with the Critical Path Schedule. The Proposal shall identify all key staff for Stage I services and Stage II services (consistent with individuals identified in RFQ process). Provide 1 page resumes for each individual identified, including their relevant experience with large diameter water pipeline and tunneling projects. Include experience of the local office and staff who will be assigned to this project.

3.10.4 The CM shall provide a table identifying the approximate number of hours per month or Full Time Equivalent (FTE) range the Project team members will contribute to the Project during the design, bidding, and construction phases. The Proposal shall identify Stage I and Stage II services separately and billing rates or ranges for each staff category.

3.11 Proposed Fee And General Conditions For Construction Services (MAXIMUM 15 POINTS)

3.11.1 In accordance with §22.3808 of the City’s Muni Code, certain business terms for a construction services contract may be conditionally agreed upon in a pre-construction services agreement but shall be limited to costs for contract general conditions, hourly labor rates, overhead, and the CM’s proposed fees and insurance.

3.11.1.1 The CM shall identify its proposed level of effort and GMP for the PSA (Stage I services only).

3.11.1.2 The Proposal shall provide a list of the categories and the cost of general conditions and general requirements that the CM proposes for the CSA (Stage 2 services only). Include hourly labor rates, insurance, profit, and overhead related to the CSA.

3.12 The Equal Opportunity Information (MAXIMUM 25 POINTS)

3.12.1 Failure to submit the required EOCP information may result in Proposal being determined as **non-responsive**. The CM shall provide with its Proposal a listing of Subcontractors for the Pre-Construction Services that are known at the time it submits its Proposal using Form AA36. The Subcontractor Participation List shall indicate the name and address, type of work performed, percent of the total agreement amount, certification status, certifying agency and copy of certification for each proposed Subcontractor.

The CM shall also submit Subcontractor commitment letters on Subcontractor’s letterhead, no more than 1 page each, from all proposed Subcontractors to acknowledge their commitment to the team, scope of work, and percent of participation in the project. Certifications must also be included, if any.

3.12.2 Points will be granted based on the participation level commitment and the thoroughness, innovation, and performance outcomes of the Strategic Plan.

4.0 REVIEW AND EVALUATION OF PROPOSAL

- 4.1** Following the receipt of the Proposal, the City anticipates allotting 1-2 weeks for review of the Proposals.
- 4.2** Subsequent to receipt, the City will provide written notice of the schedule for presentations. This schedule will be on a "random draw" basis and has no bearing on the potential for award of the PSA.
- 4.3 Respondent Interviews (MAXIMUM 15 POINTS).**
 - 4.3.1** The purpose of the interview is for the CM to answer City's questions and for the City to evaluate the key staff that will participate in Stage I and Stage II of the Project, assess the CM's approach to the work under both phases, evaluate methods employed by the CM to save costs and expedite schedule, evaluate policies and procedures that mitigate risk to both the City and CM, assess safety policies and procedures employed by the CM during Stage II work, explore value engineering opportunities, and discuss appropriate working relationships. The City seeks to have an open dialog with the proposed Project team and not to make decisions or negotiate.
 - 4.3.2** The presentations will consist of 30 minutes presentation by the CM and 30 minutes of questions by the Panel. The presentation shall be delivered by the CM's key personnel who will be continuously involved on site or in San Diego, in relative proportion to their level of involvement. Based on the CM's Proposal, responses to questions asked by the City of said presentation and the Project's Evaluation Criteria, the Panel will rank the CM's of its qualifications based on the scores achieved.
- 4.4** The CMs are responsible for bringing any and all equipment and materials that are required for the presentation. The City will not be responsible for providing any equipment or materials for presentations.

RFP - EXHIBIT C

RESERVED

RFP - EXHIBIT D
CERTIFICATION OF EXCEPTION TO RFP DOCUMENTS
CONSTRUCTION MANAGER AT RISK

CERTIFICATION OF EXCEPTIONS TO THE REQUEST FOR PROPOSAL

FOR

UPAS STREET PIPELINE REPLACEMENT PROJECT

The undersigned, a duly authorized representative of _____
(Company Name)

hereby certifies that _____ takes no exceptions to this
(Company Name)

Request for Proposal and its Exhibits, and is willing and able to comply with all the requirements therein.

Authorized Representative Date

Authorized Representative's Title

Company

OR

The undersigned, a duly authorized representative of _____
(Company Name)

hereby certifies that _____
(Company Name)

is willing and able to comply with all the requirements of the Request for Proposals and its Exhibits, with the following exceptions listed in the attached (attach exceptions).

Authorized Representative Date

Authorized Representative's Title

Company

RFP - EXHIBIT E
PRE-CONSTRUCTION SERVICES AGREEMENT (PSA)
CONSTRUCTION MANAGER AT RISK (CMAR)

City of San Diego

CITY CONTACT

Contract Specialist: Claudia Abarca
Address: 1200 Third Avenue, Suite 200, MS 56P
Email: CAbarca@sanidiego.gov
Phone No.: 619-236-6669 Fax No.: 619-236-5904
AG/MM/egz



**PRE-CONSTRUCTION SERVICES
AGREEMENT
FOR THE
UPAS STREET PIPELINE REPLACEMENT PROJECT
CONSTRUCTION MANAGER AT RISK**

BID NO.: _____ K-12-5416-CMAR-3-C
SAP NO. (WBS/IO/CC): _____ S-11022
CLIENT DEPARTMENT: _____ PUD
COUNCIL DISTRICT: _____ 2 & 3
PROJECT TYPE: _____ KA

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**AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND
(CONSTRUCTION MANAGER)
FOR
PRE-CONSTRUCTION SERVICES**

This Agreement (Agreement) is made as of (date), by and between the City of San Diego (City), a municipal corporation and (CM's name), a (state) Corporation having a place of business at (address) (Construction Manager). The City and the Construction Manager (CM) may sometimes be individually referred to as "Party" or collectively as "Parties."

RECITALS

- A. WHEREAS, the City plans to construct the **Upas Street Pipeline Replacement Project** through Construction Manager At Risk (CMAR) process which consists of the replacement of existing cast iron transmission mains with new PVC and CML&C water mains. Replacement of 3 pressure regulating stations (PRS) and installation of 1 new PRS. Installation of new 12-inch distribution mains, appurtenances, water services, fire hydrants, existing water abandonment, resurfacing and curb ramps. ("Project"), as more fully described in the Scope of Services set forth in Exhibit A attached; and
- B. WHEREAS, the City has retained Infrastructure Engineering Corporation, as the Consultant for the Project.
- C. WHEREAS, the City desires to retain the CM to provide pre-construction services in connection with the Project and the CM is willing to perform such services; and
- D. WHEREAS, the City may enter into a contract with the CM for a Guaranteed Maximum Price (GMP) for the construction of the Project if approved by the Mayor and City Council; and

NOW, THEREFORE, for valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

ARTICLE I – PRE-CONSTRUCTION SERVICES

A. SCOPE OF SERVICES

- 1. The Scope of Services shall be as progressively described in the RFQ, RFP, and Exhibit A of this Agreement, and as described in the accepted Proposal Scope of Services. The CM shall perform the Pre-construction Services as described and as determined by the City.

B. AGREEMENT ADMINISTRATOR

- 2. The City's Public Works Department is the administrator for this Agreement. The CM shall provide the Pre-construction Services under the direction of a designated representative of the City (the Engineer). The Engineer will communicate with the CM on all matters related to the administration of this Agreement and the CM's performance of the Pre-construction Services rendered hereunder.

3. When this Agreement refers to communications to or with the City, those communications will be with the Engineer, unless the Engineer or the Agreement specifies otherwise.
4. The CM shall recognize only written directives from the Engineer.
5. Except as defined under Article VI of this Agreement, the City will furnish, at its expense, all legal, accounting and insurance counseling services as may be necessary for the Project to protect the City's interests, including such auditing services as the City may require for verifying the CM's invoices. Services furnished by the City are for the City's exclusive benefit.

C. CITY MODIFICATION OF SCOPE OF SERVICES

1. The City may, without invalidating this Agreement, order changes e.g., altering, adding to or deducting from the Pre-construction Services to be performed. All such changes will be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the CM's cost of, or the time required for, the performance of any of the Pre-construction Services, the CM shall so notify the City in writing. If appropriate, an equitable adjustment to the CM's compensation may be made, provided that any adjustment must be approved by both Parties in writing.
2. If revisions are required by reason of the CM's error or negligent acts and omissions then such revisions will be made by the CM within the time frame directed by the City without the payment by the City of any additional compensation for fees attributable thereto.

D. WRITTEN AUTHORIZATION

1. Prior to performing any Services, the CM shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the CM shall promptly advise the City in writing of any anticipated change in the Scope of Services (see Exhibit A), Compensation and Fee Schedule (see Exhibit C), or Time Schedule (see Exhibit B), and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the CM from its duty to render all Services in accordance with applicable laws and accepted industry standards.

E. CONFIDENTIALITY OF SERVICES

1. All Pre-construction Services performed by the CM, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled pursuant to this Agreement, prepared by the CM or 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.
2. This provision does not apply to information that (a) was publicly known, or otherwise known to the CM, at the time that it was disclosed to the CM by the City, (b) subsequently becomes publicly known through no act or omission by the CM, or (c) otherwise becomes known to the CM other than through disclosure by the City. Except for Subcontractors and Suppliers covered by the Agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

F. COMPETITIVE BIDDING

1. The CM shall review the Contract Documents for the Construction Services and verify that the Contract Documents allow for competitive bidding
2. The CM shall assist the City to verify that the Contract Documents allows for the procurement of services, labor, equipment, or materials from more than one source.

ARTICLE II - DURATION OF AGREEMENT

A. TERM OF AGREEMENT

1. The 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 § 40.
2. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is as set forth in the RFP.
3. Unless otherwise terminated, this Agreement shall be effective until such a time as shown in the RFP or until completion of the last task order hereunder, whichever is first unless terminated earlier in accordance with this Agreement.
4. The Agreement duration may be modified in writing by an amendment to this Agreement.

B. DELAYS

1. The CM shall promptly notify the City in writing of any delay in completion of the Pre-construction Services. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Project, the City may exercise its rights under this Agreement.
2. If delays in the performance of the Pre-construction Services are caused by unforeseen events beyond the control of both Parties, such delay may entitle the CM to a reasonable extension of time, but such delay shall not entitle the CM to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the CM's work; inability to obtain materials, equipment or labor; required additional professional services; or other specific reasons agreed to between the City and the CM; provided, however, that (a) this provision shall not apply and the CM shall not be entitled to an extension of time for a delay caused by the acts or omissions of the CM; and, (b) that a delay caused by the inability to obtain long-lead items shall not entitle the CM to an extension of time unless the CM furnishes the City, in a timely manner, documentary proof, to the City's satisfaction, of the inability to obtain the long-lead items.

C. CITY'S RIGHT TO SUSPEND FOR CONVENIENCE

1. The City may, at its sole option and for its convenience, suspend all or any portion of the CM's performance of the Pre-construction Services, for a reasonable period of time not to exceed 6 months. In accordance with the provisions of this Agreement, the City will give written notice to the CM of such suspension. In the event of such a suspension, in accordance with the provisions of this Agreement, the City shall pay to the CM a sum equivalent to the reasonable value of the Pre-construction Services the CM has performed up to the date of suspension.
2. Thereafter, the City may rescind such suspension by giving written notice of rescission to the CM. The City may then require the CM to resume performance of the Pre-construction Services in compliance with the terms and conditions of this Agreement; provided, however, that the CM shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

D. CITY'S RIGHT TO TERMINATE FOR CONVENIENCE

1. 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 CM. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Pre-construction Services shall be effective upon receipt of the notice by the CM.
2. After termination of this Agreement, the CM shall complete any and all additional work necessary for the orderly filing of documents and closing of the CM's professional services under this Agreement. For services satisfactorily rendered in completing the work, the CM shall be entitled to fair and reasonable compensation for the professional services performed by the CM before the effective date of termination.
3. After filing of documents and completion of performance, the CM shall deliver to the City all documents or records related to both the Project and to the CM's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the CM discharges the City of all of the City's payment obligations and liabilities under this Agreement.

E. CITY'S RIGHT TO TERMINATE FOR DEFAULT

1. If the CM fails to satisfactorily perform any obligation required by this Agreement, the CM's failure constitutes a Default. A Default includes the CM's failure to adhere to the Time Schedule. If the CM fails to satisfactorily cure a Default within 10 Working 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 CM, and any person claiming any rights by or through the CM under this Agreement.
2. 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 CM.

ARTICLE III – COMPENSATION

A. COMPENSATION FOR SERVICES

1. The City will pay the CM for the professional services and expenses related to performance under this agreement in accordance with the Compensation and Fee Schedule (Exhibit C) and in an amount not to exceed \$[TBD] (i.e., Pre-construction Services GMP). The CM shall be entitled to compensation for the professional services under this agreement, whether within the scope of work for any Task or as Additional Services, based on the Compensation and Fee Schedule.
2. For the duration of this Agreement, the CM shall not be entitled to fees and expenses that exceed the GMP for Pre-construction Services which shall be based upon the Scope of Services.
3. The City and the CM acknowledge that this agreement is non-exclusive and that the City may enter agreements with other consultants to perform substantially the same or similar professional services during the life of this agreement.

4. The CM shall submit monthly invoices in a form acceptable to the City in accordance with the Compensation and Fee Schedule. The CM shall include with each invoice a description of completed professional services, reasonably related expenses, if any, and all other information, including but not limited to the progress percentage of the Scope of Services and deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within 30 days of receipt.
5. The CM shall notify the City promptly if it appears that such costs may exceed the Pre-construction Services GMP for the Scope of Services described in Exhibit A of this Agreement. Without the prior written agreement of City, the CM shall not incur staff costs in excess of the Pre-construction Services GMP amount.

B. ADDITIONAL SERVICES

1. The CM shall not be entitled to a change in the compensation unless the City, at its sole discretion, changes the Scope of Services, the Project Schedule, or both.
2. The City shall be entitled to direct the CM to or to perform change in services not covered by the Agreement.
3. If the CM is requested to perform change in services, the CM may present an estimate of costs associated with such work for the City's consideration. Change in services shall not be performed by CM without the prior written approval of the City.
4. The CM shall promptly notify the City when changes to the SOW or a part thereof or when delays caused in whole or in part by the City increase or extend the scope or duration of the CM services. The CM shall be entitled to receive additional compensation and an increase in the duration of this Agreement.
5. The CM shall maintain separate cost records as to all costs and expenses related to changes in services, which accounts and records with supporting documentation shall be available for inspection and audit by the City at all reasonable times.
6. If the City requires additional Pre-construction Services (i.e., Additional Services) beyond the tasks described in Exhibit A – Scope of Services, except for Additional Costs as described in this Agreement, the CM will be paid an additional fee. Additional Services shall be in accordance with the rates provided in Exhibit C – Compensation and Fee Schedule. The City and the CM must agree in writing upon such fee prior to the CM beginning the Additional Services.
7. If additional services are requested, the CM will not provide such additional services until authorized by the City in writing to proceed. The Scope of Services shall be strictly limited. Based upon applications for payment submitted to the City, the City will make progress payments to the CM for work performed. The period covered by each application for payment shall be 1 calendar month ending on the last day of the month.

C. ADDITIONAL COSTS

1. Additional Costs are those costs that can be reasonably determined to be related to the CM's errors or omissions in performing Pre-construction Services, and may include those e.g., overhead incurred by the CM, City, or Subcontractor and related costs.
2. The CM shall not be paid for the Additional Costs. These Additional Costs may be deducted from monies due, or that become due. Whether or not there are any monies due, or becoming due, the CM shall reimburse the City for Additional Costs resulting from the CM's errors or omissions.

D. EIGHTY PERCENT NOTIFICATION

1. The CM shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following:
 1. where anticipated costs to be incurred in the next 60 days, when added to all costs previously incurred, will exceed 80% of the maximum compensation for this Agreement or
 2. where the total cost for performance of the Scope of Services appears that it may be greater or less than the maximum compensation for this Agreement.

ARTICLE IV - CONSTRUCTION MANAGER'S OBLIGATIONS

A. INDUSTRY STANDARDS

1. The CM agrees as an independent contractor that the Pre-construction Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by members of the consulting professions and contracting industry, both public and private, currently practicing in the in the State of California under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action.
2. Where approval by the City is required, it is understood to be general approval only and does not relieve the CM of responsibility for complying with all applicable laws, codes, and good consulting practices.

B. INSURANCE

1. Certificate of Insurance

1. The CM shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth herein; however, the City reserves the right to request, and the CM shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of Subcontractors; and (c) confirmed that all policies contain the specific provisions required by this Agreement. CM's liabilities, including but not limited to CM's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein.
2. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to 30 days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.
3. Maintenance of specified insurance coverage is a material element of this Agreement and CM'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.
4. The CM shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

2. Types of Insurance

1. At all times during the term of this Agreement, the CM shall maintain insurance coverage as follows:

1. **Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1 million** per occurrence and subject to an annual aggregate of **\$2 million**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
2. **Commercial Automobile Liability.** For all of the CM's automobiles including owned, hired and non-owned automobiles, the CM shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$1 million** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
3. **Workers' Compensation.** For all of the CM's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the CM shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of **\$1 million** of employers' liability coverage, and the CM shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
4. **Professional Liability.** For all of the CM's employees who are subject to this Agreement, the CM shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of **\$1 million** per claim and **\$2 million** annual aggregate. The CM shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The CM agrees that for the duration of the services to be provided under this Agreement, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

3. **Deductibles** - All deductibles on any policy shall be the responsibility of the CM and shall be disclosed to the City at the time the evidence of insurance is provided.

4. Acceptability of Insurers

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

5. Required Endorsements

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

a) Commercial General Liability Insurance Endorsements:

1. *Additional Insured* - To the fullest extent allowed by law including but not limited to California Insurance Code § 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 the CM or on the CM's behalf, (b) the CM's products, (c) the CM's work, including but not limited to the CM's completed operations performed by the CM or on the CM's behalf, or (d) premises owned, leased, controlled or used by the CM.
2. *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 CM's insurance and shall not contribute to it.

b) Automobile Liability Insurance Endorsements:

1. *Additional Insured* - To the fullest extent allowed by law including but not limited to California Insurance Code § 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 automobiles owned, leased, hired or borrowed by or on behalf of the CM.

c) Worker's Compensation and Employer's Liability Insurance Endorsements:

1. *Waiver Of Subrogation* - The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

6. Reservation of Rights - The City reserves the right, from time to time, to review the CM's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the CM 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.

7. Additional Insurance - The CM may obtain additional insurance not required by this Agreement.

8. Excess Insurance - All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

C. RIGHT TO AUDIT

1. **Access** - The City retains the right to review and audit, and the reasonable right of access to CM's and all Subcontractor's and Supplier's premises to review and audit the CM's compliance with the provisions of this Agreement (City's Right). The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the CM's premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by City in its sole discretion. This information shall be kept by the City in strictest confidence allowed by law.
2. **Audit** - The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the CM is in compliance with all requirements under this Agreement.
3. **Cost Audit** - If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
4. **Accounting Records** - The CM shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The CM shall make available to the City for review and audit; Project related accounting records and documents, and any other financial data. Upon the City's request, the CM shall submit exact duplicates of originals of all requested records to the City.
5. **City's Right Binding on Subcontractors** - The CM shall include the City's Right, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors and Suppliers.
6. **Compliance Required before Mediation or Litigation** - A condition precedent to proceeding with mandatory mediation and further litigation is the CM's full compliance with the provisions of the Right to Audit section within 60 days of the date on which the City mailed a written request to review and audit compliance.

D. DUTY OF COOPERATION

1. The CM accepts the relationship of trust and confidence established with the City by the Agreement and covenants with the City to furnish the CM's reasonable skill and judgment and to further the interests of the City. The CM shall furnish construction administration and management services and shall perform Pre-construction Services in an expeditious and economical manner consistent with the interests of the City.
2. The City may retain other consultants to provide services for the Project (Consultants). The CM shall cooperate with and coordinate its work with that of the Consultants. Nothing in the Contract shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary duties of the Consultant i.e., practice of professional engineering or other design-related professions regulated under the law of the State of California unless specified otherwise in the RFP.
3. If there is a primary tenant(s) or user(s) involved in the Project, the CM acknowledges that the City may consult with such tenant(s) about the design and construction of the Project. The CM shall anticipate and allow for such consultations when submitting documents for the City's review and approval. If the City's response is time sensitive, the CM shall make the City aware of the date when such response is required and the anticipated consequences of a late response.

E. PROJECT PERSONNEL

1. The CM agrees to furnish a qualified experienced staff for the administration, coordination, and management of the Project. Principals and staff of the CM shall be available and shall participate as needed.
2. All personnel assigned by the CM to the Project shall be required to cooperate with personnel assigned by the City, by the Consultant and by the other consultants to the Project and, in the event the CM's personnel fail to so cooperate or are found to be lacking in competence, they shall be relieved of their duties in connection with the Project at the request of the City.

F. EMPLOYMENT PRACTICES

1. The CM shall comply with all applicable local, state, and federal employment laws and regulations which apply to means and methods employed by the CM in the performance of the Work and with applicable trade or collective bargaining agreements. They shall keep and maintain such records as are required by such laws and regulations.

G. SUBCONTRACTORS

1. The CM's hiring of or retaining any third parties to perform services related to this Agreement is subject to prior approval by the City. The CM shall list on the City provided forms all Subcontractors known to the CM at the time of Bid and when this Agreement is entered.
2. All Subcontracts shall physically contain or by reference the information in the RFP and this Agreement. The CM shall make appropriate copies of the RFP and this Agreement available to all Subcontractors.
3. If at any time after this Agreement is entered into the CM identifies a need for additional Subcontractors, the CM shall give written notice to the City of the need, at least 45 days before entering into a contract for such services. The CM's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontract. The CM may request that the City reduce the 45 day notice period. The City agrees to consider such requests in good faith.
4. For each Subcontractor, the CM shall obtain or require the Subcontractor to obtain all insurance policies described in this Agreement which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement.
5. The CM is obligated to pay the Subcontractor, for CM- and City-approved invoice amounts, out of amounts paid by the City to the CM, not later than 7 Working Days from the CM's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the CM and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.
6. In the case of a deficiency in the performance of Subcontractor Services, the CM shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the CM shall pay the Subcontractor the amount withheld within fourteen working days of the CM's receipt of the City's next payment.

7. In any dispute between the CM and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CM agrees to defend and indemnify the City as described in this Agreement in any dispute between the CM and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.
8. The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in this Agreement.
9. The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.
10. The CM shall submit statistical information to the City as requested using the City provided form i.e., Contract Activity Report. 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 CM shall provide an invoice from each Subcontractor listed in the report. The CM agrees to issue payment to each firm listed in the Report within 14 Working Days of receiving payment from the City for Subcontractor Services.

H. NON-DISCRIMINATION REQUIREMENTS

1. **Compliance with the City's Equal Opportunity Contracting Program** - The CM and Subcontractors shall comply with the City's Equal Opportunity Contracting Program CM Requirements which is attached hereto as Exhibit E and incorporated herein by this reference.

I. SUSTAINABLE BUILDING POLICY

1. The Project design and construction shall comply with City Council Green Building Policy 900-14. All new or significantly remodeled City facilities shall be designed and constructed to achieve at a minimum the Leadership in Energy and Environmental Design (LEED) "Silver" Level Certification. The CM's review of the Contract Documents and construction planning for the Project shall consider the above stated policy and LEED Certification in order to achieve compliance with this requirement.

J. PRODUCT ENDORSEMENT

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

K. CONFLICT OF INTEREST

1. The CM 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 §§ 1090, et. seq. and 81000, et. seq. The City may determine that a conflict of interest code requires the CM to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, the CM shall submit the necessary documentation to the City.
2. By signing this Agreement, the CM acknowledges to the City that it has made full disclosure in writing of any existing conflicts of interest or potential conflict of interest, including personal financial interests, direct or indirect, in property abutting the proposed project and business relationships abutting property owners, The CM further agrees that it will make disclosure in writing of any conflicts of interest which develop subsequent to the signing of this Agreement and prior to final payment under this Agreement.

3. The CM shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.
4. The CM and its Subcontractors having subcontracts amounting to 1% or more of the value of the Pre-construction Services agreed to under this Agreement are precluded from participating in professional services, on behalf of the Consultant without the prior written consent of the City.
5. The CM's personnel providing any services required of the CM under the Agreement shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. In connection with Project activity, the CM shall not recommend or specify any product, supplier, or contractor with whom the CM has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.
6. If the CM violates any of these provisions or the conflict of interest laws, the violation shall be grounds for termination of this Agreement. Further, the violation subjects the CM to liability to the City for attorney fees and all damages sustained as a result of the violation.

L. MANDATORY ASSISTANCE

1. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Pre-construction Services provided under this Agreement, upon the City's request, the CM, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The CM's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.
2. The City will compensate the CM for fees incurred for providing Mandatory Assistance as Additional Services. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the CM, its agents, officers, and employees, the CM shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the CM, its agents, officers, and employees for Mandatory Assistance.
3. In providing the City with dispute or litigation assistance, the CM or its agents, officers, and employees may incur expenses and costs. The CM agrees that any attorney fees it may incur as a result of assistance provided under these provisions are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under "Enforcement Costs" in this Agreement.

ARTICLE V - INDEMNIFICATIONS AND HOLD HARMLESS

A. AGREEMENT

1. 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 CM, or CM's employees, agents, and officers, arising out of any services performed under this Agreement, the CM agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability.
2. 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 CM, its employees, agents or officers, or any third party.

3. The CM's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the established active or sole negligence, or willful misconduct of the City, its officers, or employees.

ARTICLE VI - INTELLECTUAL PROPERTY RIGHTS

A. WORK FOR HIRE

1. 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 foregoing shall not apply to CM’s pre-existing intellectual property.
2. The Contractor, 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.

B. RIGHTS IN DATA

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

C. INTELLECTUAL PROPERTY RIGHTS ASSIGNMENT

1. The CM, 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.

D. MORAL RIGHTS

1. The CM, 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 CM, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to CM, 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.
2. The term “Moral Rights” shall mean any and all rights of paternity or integrity in or to the Deliverable Materials and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. SUBCONTRACTING

1. In the event that CM 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 Subcontract(s) 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.
2. The Subcontracts 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 the Work/Deliverable, including all copyrights and other intellectual property rights. The City shall have the right to review any Subcontractor agreement for compliance with this provision.

F. PUBLICATION

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

G. INTELLECTUAL PROPERTY WARRANTY AND INDEMNIFICATION

1. The CM 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 CM to produce, at CM’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.
2. The CM 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 CM receives payment under this contract, City shall be entitled, upon written notice to CM, to withhold some or all of such payment.

H. ENFORCEMENT COSTS

1. The CM agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article VIII, “INTELLECTUAL PROPERTY RIGHTS” including but not limited to, attorney’s fees.

ARTICLE VII – MISCELLANEOUS

A. HEADINGS

1. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

B. INDEPENDENT CONTRACTORS

1. The CM and any Subcontractors employed by the CM shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the CM concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the CM shall follow the direction of the City concerning the end results of the performance.

C. PRINCIPALS FOR PROFESSIONAL SERVICES

1. This Agreement is for unique Pre-construction Services. Retention of the CM's Pre-construction Services is based on the particular professional expertise of the members of the CM's organization and Subcontractors (Project Team) identified in the Proposal. Accordingly, performance of Pre-construction Services on the Project may not be delegated to other members of the CM's organization or to Subcontractors without the prior written consent of the City.
2. The members of the Project Team are the principal persons responsible for delivery of all Pre-construction Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City may be considered a default of the terms and conditions of this Agreement by the CM. In the event any member of the Project Team becomes unavailable for any reason, the City must approve any replacements.
3. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to the City's Right to Terminate for Default provisions of this Agreement. Further, the City reserves the right, after consultation with the CM, to require any of the CM's employees or agents to be removed from the Project. The City will not unreasonably withhold approval of qualified replacement personnel.

D. COVENANTS AND CONDITIONS

1. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the CM shall be deemed to be both covenants and conditions.

E. COMPLIANCE WITH CONTROLLING LAW

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

F. JURISDICTION AND ATTORNEY FEES

1. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

G. SUCCESSORS IN INTEREST

1. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

H. INTEGRATION

1. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

I. COUNTERPARTS

1. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

J. NO WAIVER

1. No failure of either the City or the CM to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

K. SEVERABILITY

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

L. EMPLOYMENT OF CITY STAFF

1. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the CM employs an individual who, within the last 12 months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the CM.

M. MUNICIPAL POWERS

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

N. DRAFTING AMBIGUITIES

1. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

O. SIGNING AUTHORITY

1. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

P. CONFLICTS BETWEEN TERMS

1. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

Q. CMEVALUATION

1. The City will evaluate CM's performance of Services using the CM Evaluation Form (Exhibit H).

R. EXHIBITS INCORPORATED

1. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

S. SURVIVAL OF OBLIGATIONS

1. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Pre-construction Services and termination or completion of the Agreement.

T. CONTRACTOR ELECTRONIC REPORTING SYSTEM

1. Following NTP, the CM shall use the City's online portal i.e., Prism® for EOCP reporting purposes e.g., the Weekly Certified Payroll, Monthly Employment Utilization, and Monthly Payments. Online tutorials are available at: <https://pro.prismcompliance.com/default.aspx>

U. RIGHTS OF THIRD PARTIES

1. Nothing in the Agreement shall create or give to third parties any claim or right of action against the CM or the City.

M. CITY STANDARD PROVISIONS

The Agreement is subject to the following standard provisions. See The WHITEBOOK for details.

1. The City of San Diego Resolution No. R-277952 adopted on May 20, 1991 for a Drug-Free Workplace.
2. The City of San Diego Resolution No. R-282153 adopted on June 14, 1993 related to the Americans with Disabilities Act.
3. The City of San Diego Municipal Code §22.3224 as amended 11/24/08 by ordinance O-19808 for Pledge of Compliance.
4. The City of San Diego's Labor Compliance Program and the State of California Labor Code §§1771.5(b) and 1776 (Stats. 1978, Ch. 1249).

5. Sections 1777.5, 1777.6, and 1777.7 of the State of California Labor Code concerning the employment of apprentices by contractors and subcontractors performing public works contracts.
6. The City's Equal Benefits Ordinance (EBO), Chapter 2, Article 2, Division 43 of The San Diego Municipal Code (SDMC).
7. The City's Information Security Policy (ISP) as defined in the City's Administrative Regulation 90.63.

ARTICLE VIII - DISPUTE RESOLUTION

- A. Mandatory Non-binding Mediation.** With the exception of City's ability to unilaterally terminate this Agreement as specified in Article II of this Agreement, in the case a dispute arises , and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.
- B. Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
- C. Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
 1. If AAA is selected to coordinate the mediation, within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.
 2. The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.
 3. If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.
 4. Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

5. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.
6. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

D. GOVERNING LAW

1. This Agreement shall be governed and construed in accordance with the substantive law of the State of California excluding conflict of law principles.

E. WAIVER

1. No delay in enforcing any right, remedy, privilege, or recourse accorded to either party or to which either party may be or become entitled to have or exercise under the Agreement shall diminish, suspend, or exhaust any such right, remedy, privilege, or recourse.

F. CONSTRUCTION OF THIS AGREEMENT

1. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting the same or any part of it.
2. Section or paragraph headings in the Agreement are for convenience only and are not to be used in aid of construing the Agreement.

G. NOTICES

1. Any notice or other communication required or permitted to be given under the Agreement shall be in accordance with The GREENBOOK, Section 2-12, “SPECIAL NOTICES.”

H. AGREEMENT AMENDMENT

1. This Agreement represents the entire and integrated agreement between the City and CM with respect to the provisions contained herein and supersedes all prior negotiations, representations or agreements, either written or oral, between them with respect to the Services to be provided hereunder. This Agreement may be modified only by a writing signed by the City and CM.

I. WAIVER OF CONSEQUENTIAL DAMAGES

1. The CM and City waive claims against each other for consequential damages arising out of or relating to the Agreement. This mutual waiver includes without limitation:
 1. damages incurred by the City for rental expenses and for loss of use, income, profit, financing, business, and reputation and loss of management or employee productivity or the services of such persons; and
 2. damages incurred by the CM or any Subcontractor for principal office expenses including compensation of personnel stationed in the principal office, loss of financing, business, and reputation, loss of profit, and loss of management or employee productivity or the services of such persons.

2. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination under the Agreement.

J. PARTIAL INVALIDITY

1. If any term or provision of the Agreement or the application thereof to any person, firm or corporation, or circumstances, shall be invalid or unenforceable, the remainder of the Agreement, or the application or such term or provision to persons, firms or corporation, or circumstances, other than those as to which it is held invalid, shall both be unaffected thereby, and each term or provision of the Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE IX – DEFINITIONS

For the purpose of this Agreement, refer to the definitions in the 2012 editions of the Standard Specifications for Public Works Construction (The GREENBOOK) and the City of San Diego Standard Specifications for Public Works Construction (The WHITEBOOK).

This Agreement is executed by the City of San Diego, acting by and through its Public Works Department Director, pursuant to Resolution No. R-_____, authorizing such execution, and by the CM.

THE CITY OF SAN DIEGO

Dated: _____

By: _____

Print Name: _____

Title: _____

I HEREBY CERTIFY I can legally bind INSERT NAME OF FIRM and that I have read this Agreement and the related documents, this _____ day of _____, 20__.

By: _____

Authorized Representative

Print Name: _____

Title: _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 20__.

JAN I. GOLDSMITH, City Attorney

By: _____

Deputy City Attorney

Print Name: _____

EXHIBITS

| | |
|-----------|---|
| Exhibit A | Scope of Services |
| Exhibit B | Time Schedule |
| Exhibit C | Compensation and Fee Schedule |
| Exhibit D | [Blank] |
| Exhibit E | Equal Opportunity Contracting Program (EOCP) Consultant Requirements (Attachment 1): Subcontractors List |
| Exhibit F | Certification for a Drug-Free Workplace |
| Exhibit G | Disclosure Determination |
| Exhibit H | CM Pre-Construction Services Performance Evaluation |
| Exhibit I | Contractor Standards Pledge of Compliance |

RFP – EXHIBIT E (PSA)

EXHIBIT A

SCOPE OF SERVICES

CONSTRUCTION MANAGER AT RISK

SCOPE OF SERVICES

1. **General.** The Scope of Services shall be as described progressively in the RFQ, RFP, and this Agreement.
 1. The CM shall review the program furnished by the City to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the City.
 2. The CM shall provide a preliminary evaluation of the City's program, schedule, and construction budget requirements, each in terms of the other.
 3. The CM shall expeditiously review design documents during their development and advise on selection of materials, building systems and equipment, and methods of Project delivery relative to the feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation, and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
 4. The CM shall promptly notify the City and the Consultant in writing upon observing any features in the Contract Documents that appear to be ambiguous, confusing, conflicting, or erroneous.
 5. All ambiguous, confusing, conflicting, or erroneous features discovered in the Contract Documents by the CM during the review process shall be deemed to be corrected, and any associated costs shall be included in the GMP unless the CM notifies the City otherwise in writing prior to the advertisement for bids associated with the development of the GMP.
 6. The CM shall consult with the City and Consultant regarding the Contract Documents including design materials and make recommendations regarding design details that adversely affect constructability, cost, or schedules.
 7. The CM shall provide recommendations and information to the City and Consultant regarding the assignment of responsibilities for temporary Project facilities and equipment, materials, and services for common use of the trade contractors. The CM shall verify that such requirements and assignment of responsibilities are included in the applicable proposed Contract Documents.
 8. The CM shall provide recommendations and information to the City regarding the allocation of responsibilities for safety programs among the contractors.
 9. The CM shall advise on the division of the Project into individual contracts for various categories of Work, including the method to be used for selecting contractors and awarding contracts. If multiple contracts are to be awarded, the CM shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

10. Upon request, the CM shall assist the City in selecting, retaining, and coordinating the professional services of e.g., surveyors, special consultants, and testing laboratories required for the Project as needed.
11. The CM shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The CM shall make recommendations for actions designed to minimize adverse effects of labor shortages.
12. The CM shall assist the City in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.
13. The CM shall develop bidders' interest in the Project and establish bidding schedules. The CM, with the assistance of the Consultant, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The CM shall assist the Consultant with regard to questions from bidders and with the issuance of addenda.
14. The CM shall assist the City and the Consultant in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various contractors. The CM shall assist the City and Consultant in connection with the City's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.
15. The CM shall assist the design professionals and the City and the Consultant with the discussions and development of the program for off- and on-site utility infrastructure for the various utility companies. Evaluate related information, e.g., load letters, points of entry, typical construction details, etc., on basis of constructability and VE including cost studies as may be needed to evaluate impact to the Project and alternatives.

2. Budget and Cost Estimates

1. The CM shall create a comprehensive construction cost estimate with trade breakdowns that can be tracked based on unit costs and unit pricing. The CM shall prepare four (4) estimates including the GMP: (1) 100% Schematic Drawings completion; (2) 30% Design Development; (3) at 60% Design Development; and (4) the GMP estimate at 90% complete design. Estimates shall carry multiple alternates to reflect the continuing cost studies as the design develops.
2. The CM shall develop a Project budget independent from any similar cost estimates required of the Design Consultant, which shall be updated (CM Cost Model Update) as needed but at a minimum as identified in this RFP. Prior to the development of the cost model, the CM shall meet with the City and Design Consultant and establish a common cost estimating format so that Project cost estimates prepared by the Design Consultant and CM may be directly compared. Each CM Cost Model Update must identify the total construction costs for the proposed facilities, CM construction management fee, bonds, insurance and contingency.

3. Each CM Cost Model Update will be reviewed by the City for reasonableness and compatibility with the Project budget. Meetings and negotiations between the City, Design Consultant and the CM will be held to resolve questions and differences that may occur between the Design Consultant's Probable Construction Costs and the CM Cost Model Update. The CM shall work with the City and Design Consultant to reach a mutually acceptable Project cost.
4. Based on schematic designs and other design criteria prepared by the Consultant and approved by the City, the CM shall prepare a preliminary cost estimate. The preliminary cost estimate shall be submitted to the City for review and approval. From time to time, as requested by the City, the CM shall provide budgets and cost estimates for changes made by the City's users or primary tenant(s) to the base building scope of work.
5. When Design Development Documents have been completed by the Consultant and approved by the City, the CM shall prepare and submit a detailed estimate with supporting documentation to the City for review and approval.
6. When Construction Documents have been completed by the Consultant to a level of 60%, the CM shall prepare and submit an estimate of the costs to the City for review and approval.
7. If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the CM shall make reasonable recommendations to the City for scope reduction, Value Engineering, or both to bring the estimated cost of construction within the City's budget.
8. The CM shall assist the City in developing cash flow projections.

3. Value Engineering (VE)

1. The CM shall provide VE services during the pre-construction phase. The CM shall submit written VE estimates and recommendations throughout the document development phases. The CM shall provide a sample VE report for the City's approval and shall provide VE services of similar scope and level of effort to that shown in the sample. The CM recognizes that VE is an iterative process and that it may be required to modify its estimates and recommendations in response to review of its reports by the City.

4. Interdisciplinary Check

1. The CM shall provide a thorough interdisciplinary coordination review of the Contract Documents submitted for review to the City. The review shall be performed utilizing a structured and industry accepted process by a qualified firm or personnel. The CM shall review the final documents to see that all comments have been incorporated

5. Project Schedule

1. The CM is aware that the Pre-construction Services shall be completed within a fixed time frame. The CM shall perform its duties in a timely manner consistent with the Project Schedule.

2. The CM shall prepare a master Project schedule in Primavera format (or equal) which identifies milestones for the City's review and e.g., turnover dates to City's user(s), completion date, equipment and material delivery dates, and work necessary to achieve these dates for approval by the City. The Project schedule shall include both design and construction activities. The CM shall coordinate and integrate the Project schedule with the services and activities of the City and the Consultant and the CM. The CM shall obtain the input of the City and the Consultant for those portions of the Project schedule relating to the performance of their services. The Project schedule shall include timelines for work slow-down, stoppage, and phasing.
3. As design proceeds, the Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipts, and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, the City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of completion. If updates to the Project schedule indicate that previously approved schedules may not be met, the CM shall advise the City of the particular activities causing the schedule to be extended and shall recommend a schedule recovery plan to the City.
4. The CM shall analyze the cost and schedule implications of selective use of working outside normal working hours.

6. Advice On Constructability And Logistics

1. The CM shall review design documents and make recommendations on means and methods of construction as well as availability of labor and materials. The CM shall advise the City regarding potential jurisdictional disputes between trades. The CM shall produce a site safety plan that complies with the requirements of all governing bodies having jurisdiction.
2. The CM shall review the design and Contract Documents continuously throughout the Pre-Construction Stage as to constructability. With respect to each such issue identified through the CM's review, the CM shall submit a written report to both the City and the Design Consultant. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the in-depth study/research conducted by the CM; and, (3) written recommendations for addressing the issue.
3. The CM shall establish a sequence of construction with the City and the Consultant with respect to specific site logistics. CM shall provide site logistics plans and sequence diagrams reflective of the various stages of construction progress (i.e., site work, utility infrastructure, commencement of structures, etc.) and as may be required for proposed construction phasing alternatives.

7. Meetings

1. The CM shall schedule and attend regular meetings with the City and the Consultant and shall produce minutes of such meetings when requested by the City and distribute them to all attendees and other concerned parties. The CM has included approximately two (2) meetings per month with the design team and the City. If so requested by the City, the CM shall attend a reasonable number of other meetings with governmental agencies, community groups, the City's primary users or other third parties and shall produce minutes of such meetings for the City's use when requested by the City.

8. Permits And Approvals

1. The City will file, expedite, and pay the fee for the application for the project permit and obtain approval of construction drawings from the City's Development Services Department when applicable. The City will obtain encroachment and site development permits.
2. The CM shall obtain Work permits from the governmental agencies having jurisdiction over the Project if directed by the City. The CM shall pull permits and obtain double permits as required.

9. Guaranteed Maximum Price Proposal For Construction Services

1. The CM shall propose a Guaranteed Maximum Price (GMP) on the City provided form when the Construction Documents are 90% complete or not more than 9 months after NTP. The proposed GMP shall be the sum of the estimated costs e.g., Cost of the Work, General Conditions, insurance, CM's Contingency, taxes, and the CM's Fee.
2. The assumptions and qualifications upon which the GMP is based shall be included as part of the Proposal and shall have priority over all other Contract Documents.
3. Refer to the RFP for the definitions of GMP cost components.

10. Acceptance of The GMP Proposal For Construction Services

1. If the GMP proposal for the Construction Services is accepted by the City, the parties shall execute a separate agreement for construction stage construction management services (Contract) which shall contain mutually acceptable terms and conditions. If negotiations between the City and CM concerning the amount of GMP or terms of the GMP Construction Contracts reach an impasse, the City shall have the right to award a contract for the Construction Services to an entity other than the CM through open bidding i.e., separate procurement based on low bid competition without being liable to the CM for claims for losses e.g., anticipated profits.

11. Long-Lead Items

1. The CM shall identify long-lead items. The CM shall make recommendations with respect to current market trends that may affect procurement and installation so as to minimize potential delays and cost premiums.
2. When directed by the City to purchase long-lead items:
 1. The CM shall pre-qualify several potential Suppliers, for City's approval.
 2. The CM shall submit request for bids including Bid documents prepared by the Consultant for the City's approval before bids are solicited and shall make such modifications thereto as the City deems advisable.
 3. The CM shall analyze bids and make recommendations for award of purchase orders.
 4. The City will prepare written authorization to be executed by the CM to enter into purchase order agreements for the purchase of long-lead items.

RFP – EXHIBIT E (PSA)

EXHIBIT B

CONSTRUCTION MANGER AT RISK

[Not Used]

RFP – EXHIBIT E (PSA)
EXHIBIT C
COMPENSATION AND FEE SCHEDULE

COMPENSATION AND FEE SCHEDULE

HOURLY RATES

| <u>CLASS TITLE</u> | <u>FULLY LOADED RATE</u> |
|-----------------------------|--------------------------|
| Project Manager | \$ |
| Engineer | \$ |
| Cost Estimator | \$ |
| VE Specialist | \$ |
| Construction Superintendent | \$ |
| Project Administrator | \$ |

EXPENSES

| | |
|---|-------|
| Subconsultant mark-up (provide invoices) | 0% |
| Direct expense mark-up (third party billings and Specific expenses such (e.g., copies and printing) | 5% |
| Max per diem rate for overnight accommodation | \$170 |
| Meals for full day is stipulated at | \$60 |

IN-HOUSE PLOTS

| | |
|--------------------|----|
| Bond (per sheet) | \$ |
| Vellum (per sheet) | \$ |

PRE-CONSTRUCTION SERVICES GUARANTEED MAXIMUM PRICE \$

Notes:

1. Add additional categories/lines as needed.
2. See RFP, Exhibit B, Section 3.11 for details and include the required pricing.

RFP – EXHIBIT E (PSA)

EXHIBIT D

BLANK

RFP – EXHIBIT E (PSA)

EXHIBIT E

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
PRE-CONSTRUCTION SERVICES REQUIREMENTS
CONSTRUCTION MANAGER AT RISK**

EOCP CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION SERVICES REQUIREMENTS

References to Consultant as identified herein shall also and equally apply to CMs.

This Agreement is subject to current edition of Chapter 10 in the City of San Diego Standard Specifications for Public Works Construction (The WHITEBOOK) except as follows:

The CM's Equal Opportunity Contracting Strategic Plan shall be approved by the City and incorporated into this agreement.

List of Forms:

Attachment 1 - Subcontractors List

SUBCONTRACTORS LIST

Attachment 1

| NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR | TAX ID NUMBER | CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR | TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES | PERCENT OF SUBCONTRACTOR PARTICIPATION, MATERIAL SOR SUPPLIES | MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, OR SDVOSB ^① | WHERE CERTIFIED ^② | CHECK IF JOINT VENTURE PARTNERSHIP |
|--|---------------|---|---|---|---|------------------------------|------------------------------------|
| Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ | | | | | | | |
| Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ | | | | | | | |
| Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ | | | | | | | |

① As appropriate, Bidder shall identify Subcontractor or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

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

② As appropriate, Bidder shall indicate if Subcontractor or Supplier is certified by:

| | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

The CM will not receive any points for subcontracting participation percentages if the CM fails to submit the required proof of certification.

RFP – EXHIBIT E (PSA)

EXHIBIT F

PRE-CONSTRUCTION SERVICES

CERTIFICATION FOR A DRUG-FREE WORKPLACE

CONSTRUCTION MANAGER AT RISK

**PRE-CONSTRUCTION SERVICES
CERTIFICATION FOR A DRUG-FREE WORKPLACE
CONSTRUCTION MANAGER AT RISK**

PROJECT TITLE: _____

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 in the request for proposals, and that;

(Name under which business is conducted)

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

Signed _____

Printed Name _____

Title _____

RFP – EXHIBIT E (PSA)

EXHIBIT G

DISCLOSURE DETERMINATION FOR CMAR PRE-CONSTRUCTION SERVICES

INSTRUCTION SHEET FOR DISCLOSURE DETERMINATION
FOR CMAR PRE-CONSTRUCTION SERVICES
(Form CC-1671)

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

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

For the purposes of professional service agreements as they pertain to Pre-construction Services for CMAR, the requirements identified for “consultants” as described herein shall pertain.

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

List the department, board, commission or agency requesting the consultant service.

List the consulting company. If known, also list the individual(s) who will be providing the consultant services.

List the mailing address.

List the e-mail address of individual(s) providing the consultant service.

Provide the date the individual(s) will start providing the consultant service.

List all duties/responsibilities the consultant will have. This list will enable you to determine the disclosure requirement for the consultant.

Determine the consultant’s disclosure category. Your consultant should be required to disclose only those economic interests which could potentially create a conflict of interest as he/she performs his/her contractual obligations. For ideas about possible disclosure categories, review those in your department’s, board’s, commission’s or agency’s conflict of interest code, available at:

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

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

DISCLOSURE DETERMINATION FOR CMAR

Must be signed by department director, agency president or other individual authorized by the appropriate conflict of interest code regarding consultants. References to Consultant as identified herein shall also and equally apply to the Construction Managers providing the Pre-Construction Services.

| | | |
|----|---|---|
| 1. | Department/Board/Commission/Agency Name: | |
| 2. | Name of Specific Consultant & Company: | |
| 3. | Address, City, State, ZIP | |
| 4. | E-mail Address: | |
| 5. | Date of Assuming Office: | |
| 6. | Project Title (as shown on 1472, "Request for Council Action"): | |
| 7. | Consultant Duties for Project: | |
| | | |
| | | |
| | | |
| 8. | Disclosure Determination (select applicable disclosure requirement): | |
| | <input type="checkbox"/> | Consultant <u>will not</u> be "making a governmental decision" or "serving in a staff capacity." No disclosure required. - or - |
| | <input type="checkbox"/> | Consultant <u>will</u> be "making a governmental decision" or "serving in a staff capacity." Consultant is required to file a Statement of Economic Interests with the City Clerk of the City of San Diego in a timely manner as required by law. (Select consultant's disclosure category.) |
| | <input type="checkbox"/> | Full: Disclosure is required pursuant to the broadest disclosure category in the appropriate Conflict of Interest Code. - or - |
| | <input type="checkbox"/> | Limited: Disclosure is required to a limited extent. (List the specific economic interests the consultant is required to disclose.) |
| | | |

By:

_____ (Name/Title)*

_____ (Date)

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract. CC-1671 (12/07)

DEFINITION OF “CONSULTANT”

California Code of Regulations defines a “consultant” as an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
1. Approve a rate, rule or regulation;
 2. Adopt or enforce a law;
 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
 5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
 6. Grant City approval to a plan, design, report, study, or similar item;
 7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City’s Conflict of Interest Code.

An individual “serves in a staff capacity” if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a “staff capacity.” The length of the individual’s service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City’s conflict of interest code.

An individual “participates in making a governmental decision” if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

Regulation 18701 (a)(2)
http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm
1/28/200

RFP – EXHIBIT E (PSA)

EXHIBIT H

CM PERFORMANCE EVALUATION

CMAR PRE-CONSTRUCTION SERVICES

CM Pre-Construction Services Performance Evaluation

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

Section I (attach pages to this form and reference sections as required to provide complete data)

| | | | |
|---|--|---|--|
| 1. PROJECT DATA | | 2. CONSTRUCTION MANAGER DATA | |
| 1a. Project title: _____ Location: _____ CIP No.: _____ | | 2a. Name of Construction Manager: _____ Address: _____ | |
| 1b. Brief Description: _____ | | 2b. CM's Project Manager: _____ | |
| 1c. Budgeted Cost: _____ | | Phone: (____) _____ | |
| 3. CITY DEPARTMENT RESPONSIBLE | | | |
| 3a. Department: _____ Division: _____ | | 3b. Name of Project Manager: _____ Address: _____ Phone: (____) _____ | |
| 4. CONTRACT DATA (PRE-CONSTRUCTION SERVICES & CONSTRUCTION SERVICES) | | | |
| Pre-Construction Services | | | |
| 4a. Agreement Date: _____ | | Resolution #: _____ GMP \$ _____ | |
| 4b. Amendments: GMP \$ _____ / # _____ (City initiated) | | GMP \$ _____ / # _____ (CM initiated) | |
| 4c. Total Agreement (4a. & 4b.): GMP \$ _____ | | | |
| 4d. Type of Work (Key Tasks): _____ _____ _____ | 4e. Key GMP Delivery Dates: _____ % _____ % _____ % _____ % _____ % <u>100</u> % Agreement _____ Delivery _____ Acceptance _____ | | |
| 5. Construction Services | | | |
| 5a. Agreement Date: _____ | | Resolution #: _____ GMP \$ _____ | |
| 5b. Amendments: GMP \$ _____ / # _____ (City initiated) | | GMP \$ _____ / # _____ (CM initiated) | |
| 5c. Total Agreement (5a. & 5b.): GMP \$ _____ | | | |
| 5d. CM Construction Superintendent: _____ | | | |
| 5e. Date of Notice to Proceed: _____ | 5g. Number of Contract Working Days: _____ | 5f. Number of Actual Working Days: _____ | |
| 5h. Change Orders: Errors/Omissions _____ % of initial GMP \$ _____ | | Unforeseen Conditions _____ % of initial GMP \$ _____ | |
| | | Changed Scope _____ % of initial GMP \$ _____ | |
| | | Changes Quantities _____ % of initial GMP \$ _____ | |
| | | Total GMP \$ _____ | |

6. OVERALL RATING (Please ensure Section II is completed)

| | Poor | Satisfactory | Excellent |
|--|-------|--------------|-----------|
| 6a. Pre-construction Services | | | |
| Support during development of plans/specifications | _____ | _____ | _____ |
| Accuracy and completeness of GMP | _____ | _____ | _____ |
| Timely submittal of deliverables | _____ | _____ | _____ |
| Pre-construction budget and schedule management | _____ | _____ | _____ |
| Responsiveness to City Staff | _____ | _____ | _____ |
| EOC compliance | _____ | _____ | _____ |
| 6b. Construction Services | | | |
| Construction quality | _____ | _____ | _____ |
| Timely submittal of deliverables | _____ | _____ | _____ |
| Construction budget and schedule management | _____ | _____ | _____ |
| Subcontractor and supplier management | _____ | _____ | _____ |
| Construction safety | _____ | _____ | _____ |
| EOC compliance | _____ | _____ | _____ |
| 6c. Overall Rating | _____ | _____ | _____ |

7. AUTHORIZING SIGNATURES

7a. Project Manager _____ Date: _____

7b. Deputy Director _____ Date: _____

Section II SPECIFIC RATINGS – PRE-CONSTRUCTION SERVICES

| SUPPORT DURING DEVELOPMENT OF PLANS/SPECIFICATIONS | EXCELLENT | SATISFACTORY | POOR | N/A | ACCURACY AND COMPLETENESS OF GMP | EXCELLENT | SATISFACTORY | POOR | N/A |
|--|-----------|--------------|------|-----|--|-----------|--------------|------|-----|
| Review of Plan/Specification clear and precise | | | | | Timely deliverable of GMPs | | | | |
| Plans/Specs Coordination with Consultant | | | | | Adherence to competitive bidding process | | | | |
| Value Engineering & Constructability Support | | | | | Cost data well organized and complete | | | | |
| Proactive problem solving | | | | | Cost loaded schedule is detailed and accurate | | | | |
| Resolution of Field problems | | | | | Reasonable GMP negotiation | | | | |
| TIMELY SUBMITTAL OF DELIVERABLES | EXCELLENT | SATISFACTORY | POOR | N/A | PRE-CONSTRUCTION BUDGET & SCHEDULE MANAGEMENT | EXCELLENT | SATISFACTORY | POOR | N/A |
| Work product delivered on time | | | | | Adherence to fee schedule | | | | |
| Timeliness in notifying City of major problems | | | | | Adherence to project budget | | | | |
| Deliverables complete and accurate | | | | | Proactive in addressing budget & schedule issues | | | | |
| RESPONSIVENESS TO CITY STAFF | EXCELLENT | SATISFACTORY | POOR | N/A | EOC COMPLIANCE | EXCELLENT | SATISFACTORY | POOR | N/A |
| Attitude toward Client and review bodies | | | | | Disadvantaged Business Goals met | | | | |
| Follows direction and chain of responsibility | | | | | ELBE/SLBE Goals met | | | | |
| Professionalism | | | | | Overall EOC Compliance | | | | |

SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

Item _____ : _____

Item _____ : _____

Item _____ : _____

(*Supporting documentation attached yes _____ no _____)

Section III SPECIFIC RATINGS – CONSTRUCTION SERVICES

| CONSTRUCTION QUALITY | EXCELLENT | SATISFACTORY | POOR | N/A | TIMELY SUBMITTAL OF DELIVERABLES | EXCELLENT | SATISFACTORY | POOR | N/A |
|--|-----------|--------------|------|-----|---|-----------|--------------|------|-----|
| Adherence to Contract Documents | | | | | Monthly earned value reports and invoices timely and complete | | | | |
| Quality Control Procedures | | | | | Supporting documentation complete | | | | |
| Site Management | | | | | Field reports timely and complete | | | | |
| Minimize Community Impacts | | | | | Equipment and materials submittals timely and complete | | | | |
| Attention to detail | | | | | RFIs are timely and complete | | | | |
| CONSTRUCTION BUDGET & SCHEDULE MANAGEMENT | EXCELLENT | SATISFACTORY | POOR | N/A | SUBCONTRACTOR & SUPPLIER MANAGEMENT | EXCELLENT | SATISFACTORY | POOR | N/A |
| Budget consistent with cost loaded CPM schedule | | | | | Subcontractor and supplier supervision | | | | |
| Work progress in accordance with construction schedule | | | | | Timely payments to subcontractors and suppliers | | | | |
| Change Orders are handled proactively and minimized | | | | | Coordination of trade work | | | | |
| CONSTRUCTION SAFETY | EXCELLENT | SATISFACTORY | POOR | N/A | EOC COMPLIANCE | EXCELLENT | SATISFACTORY | POOR | N/A |
| Lost time and accident reports minimized | | | | | Disadvantaged Business Goals met | | | | |
| Safety plan is detailed and managed well | | | | | ELBE/SLBE Goals met | | | | |
| Work site is maintained in safe and clean condition | | | | | Overall EOC Compliance | | | | |

SUPPLEMENTAL INFORMATION

Please ensure to attach additional documentation as needed.

Item _____ : _____

Item _____ : _____

Item _____ : _____

(*Supporting documentation attached yes _____ no _____)

RFP – EXHIBIT E (PSA)

EXHIBIT I

CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE

CONSTRUCTION MANAGER AT RISK

CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE

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

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

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

A. PROJECT TITLE:

B. BIDDER/CONTRACTOR INFORMATION:

| | | | |
|-----------------------|-------|-------|-----|
| Legal Name | DBA | | |
| Street Address | City | State | Zip |
| Contact Person, Title | Phone | Fax | |

C. OWNERSHIP AND NAME CHANGES:

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

Yes No

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

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

Yes No

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

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

Corporation Date incorporated: _____

State of incorporation: _____

List corporation’s current officers:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Is your firm a publicly traded corporation? Yes No

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

Limited Liability Company Date formed: _____

State of incorporation: _____

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

Partnership Date formed: _____

State of incorporation: _____

List names of all firm partners:

Sole Proprietorship Date started: _____

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

Joint Venture Date formed: _____

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

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

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

Is your firm in preparation for, in the process of, or in negotiations toward being sold?

Yes No

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

In the past five (5) years, has your firm been denied bonding?

Yes No

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

In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No

If **Yes**, use *Pledge of Compliance Exhibit "I"* to explain specific circumstances.

F. PERFORMANCE HISTORY:

In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes No

If **Yes**, use *Pledge of Compliance Exhibit "I"* to explain specific circumstances.

In the past five (5) years, has a government agency terminated your firm's contract prior to completion?

Yes No

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

G. COMPLIANCE:

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

Yes No

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

In the past five (5) years, has your firm been debarred or determined to be **non-responsible** by a government agency?

Yes No

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

H. BUSINESS INTEGRITY:

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

Yes No

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

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

Yes No

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

I. TYPE OF SUBMISSION:

This document is submitted as:

Initial submission of Contractor Standards Pledge of Compliance.

Update of prior Contractor Standards Pledge of Compliance dated _____.

Complete all questions and sign below. Each *Pledge of Compliance Exhibit "I"* page must be signed.

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

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

To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).

To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).

To provide the Purchasing Agent updated responses to the Contractor Standards Pledge of Compliance within thirty (30) calendar days if a change occurs which would modify any response.

To notify the Purchasing Agent within fifteen (15) days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).

To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

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

| | | |
|------------|-------|-----------|
| Print Name | Title | Signature |
|------------|-------|-----------|

Date: _____

CONTRACTOR STANDARDS

Pledge of Compliance Exhibit "I"

CONSTRUCTION MANAGER AT RISK

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

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

| | | |
|------------|-------|-----------|
| Print Name | Title | Signature |
|------------|-------|-----------|

Date: _____

-END OF AGREEMENT FOR PRE-CONSTRUCTION SERVICES-

RFP - EXHIBIT F
DRAFT CONSTRUCTION SERVICE AGREEMENT (CSA)
TO BE ISSUED VIA ADDENDUM

RFP - EXHIBIT G
PHASED FUNDING SCHEDULE AGREEMENT

PHASED FUNDING SCHEDULE AGREEMENT

Check one:

- First Phased Funding Schedule Agreement
- Final Phased Funding Schedule Agreement

NOTE: THIS IS A SAMPLE PHASE FUNDING SCHEDULE AGREEMENT FORM. Particulars left blank in this sample, the total number of phases, and the amounts assigned to each phase will be filled with funding specific information as the result of the Pre-Award Schedule, and subsequent Schedules, required by these Bid Documents and approved by the City.

BID NUMBER: _____

CONTRACT OR TASK TITLE: _____

CONTRACTOR: _____

| Funding Phase | Phase Description | Phase Start | Phase Finish | Not-to-Exceed Amount |
|----------------------|---|--------------------|---------------------|-----------------------------|
| 1 | | | | \$ |
| | <u>Additional phases to be added</u> | | | |
| | <u>to this form as necessary.</u> | | | |
| | | | | |
| | | | | |
| Total | | | | \$ |

Notes:

- (1) City Supplement 9-3.6, "PHASE FUNDING COMPENSATION" applies.
- (2) The total of all funding phases shall be equal to the TOTAL BID PRICE as shown on BID SCHEDULE 1 - PRICES.
- (3) This PHASE FUNDING SCHEDULE AGREEMENT will be incorporated into the CONTRACT and shall only be revised by a written modification to the CONTRACT.

CITY OF SAN DIEGO

CONTRACTOR

By: _____

By: _____

Name: _____
Project Manager

Name: _____

Department Name: _____

Title: _____

Date: _____

Date: _____

-END OF PHASE FUNDING SCHEDULE-

City of San Diego



CITY CONTACT

Contract Specialist: Claudia Abarca
Address: 1200 Third Avenue, Suite 200, MS 56P
Email: CAbarca@sandiego.gov
Phone No.: 619-236-6669 Fax No.: 619-236-5904
AA/MM/egz

ADDENDUM “1”

REQUEST FOR PROPOSALS (RFP)

PRE-CONSTRUCTION SERVICES FOR THE UPAS STREET PIPELINE REPLACEMENT PROJECT CONSTRUCTION MANAGER AT RISK

BID NO.: _____ K-12-5416-CMAR-3-C
SAP NO. (WBS/IO/CC): _____ S-11022
CLIENT DEPARTMENT: _____ PUD
COUNCIL DISTRICT: _____ 2 & 3
PROJECT TYPE: _____ KA

PROPOSAL DUE

**12:00 NOON
SEPTEMBER 14TH, 2012
CITY OF SAN DIEGO
PUBLIC WORKS DEPARTMENT
1200 THIRD AVENUE, SUITE 200, MS 56P
SAN DIEGO, CA 92101
ATTN: CONTRACT SPECIALIST**

A. CHANGES TO CONTRACT DOCUMENTS

The following changes to the RFP are hereby made effective as though originally issued with the RFP. CMs are reminded that all previous requirements to this solicitation remain in full force and effect.

B. BIDDERS QUESTIONS

The following questions include those received as of this date. The City has included some additional frequently asked questions, as well to clarify the City's requirements.

Q1. Section 4.2.1, Equal Opportunity Contracting Strategic Plan, indicates that the Strategic Plan must be provided as part of the Pre-Construction (Stage I) Proposal.

- a) Please confirm that the Strategic Plan required as part of the proposal is to address Pre-Construction activities only, and not any of the Stage II construction activities.
- b) Is the Strategic Plan to be submitted in addition to the documents required by Exhibit B Section 3.12.1 or should those documents be included as part of the Plan?

A1. Strategic Plan applies to both stages and shall be a separate document to be submitted with the required EOCP documentation at the time of Proposal due date.

Q2. Exhibit B Section 2.3 Resumes.

- a) Does expanding the organization chart relative to the SOQ to include additional roles considered a change?
- b) The instructions are unclear regarding "changes" relative to the SOQ. Section 3.10.3 requests one-page resumes for proposed key staff. Does this mean that new resumes for the proposed team members (changed from those submitted as part of the SOQ) are to be submitted?

A2. Yes to both parts. If the organization chart has changed, then resubmit with the Proposal. Per section 2.3 if the resume has not been changed then reference the page number in the SOQ.

Q3. RFP Section 1.9 (p.4) indicates "the PSA is an hourly contract ... in a lump sum amount that may not be exceeded." Hourly and lump sum are not compatible with each other. It should either be lump sum or time and materials with a not to exceed fee. Please clarify.

A3. The City will pay the CM for actual costs incurred for performance of the Services in accordance with the Compensation and Fee Schedule, in a not-to-exceed amount. This is a guaranteed maximum price, requiring the CM to successfully complete the Services even if its actual costs exceed the maximum compensation allowed by the PSA.

- Q4.** RFP Section 3.0 (p.5) indicates the time for completion of the Pre-Construction Services is 520 working days. Please confirm this duration is for Stage I only. If so, please indicate the desired schedule for Stage II.
- A4.** This is a maximum time for Stage I and not a desired duration. The desired duration is represented in the Project Schedule (Section 8). However; there is uncertainty in the amount of time it will take to obtain permits e.g., encroachment permits from outside agencies. The time of completion for Stage II will be determined in the final CSA. It is desired to complete construction in the Balboa Park area prior to the 2015 Balboa Park Centennial Moratorium.
- Q5.** RFP Section 8.1 (p.7) indicates that GMP negotiations are completed 7 months after NTP for Preconstruction Services. Please clarify relative to Question 4, above.
- A5.** See above.
- Q6.** Page 14, the scope of work, mentions Community Outreach. Will the CM be responsible for doing/managing the outreach (needing a consultant, etc) or supporting the City in its outreach effort?
- A6.** The Project Designer, Infrastructure Engineering Corporation has a team in place for Public Outreach however; during construction the CM will need to provide a community liaison per section 7-16 of the WHITEBOOK that will be under the direction of the City and IEC. There is a Community Outreach Technical Memoranda i.e., TM09 posted on the ftp site:

<ftp://ftp.sannet.gov/OUT/ECP/AEP/Upas%20Street%20Pipeline/30%25%20Plans%20and%20Cost%20Estimate/>.
- Q7.** What, if any, SBE certifications are acceptable to count toward the 20% subcontracting participation goal stipulated in RFP paragraph 4.2.1?
- A7.** None; only SLBE, ELBE, DVBE, and Federally certified Service Disabled Veteran Owned Small Business (SDVOSB) will count.
- For SLBE-ELBE Certification – SLBE-ELBE certification is received from the City of San Diego, to search for certified firms visit: <http://www.sandiego.gov/eoc/boc/slbe.shtml>.
 - For DVBE Certification - DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business. Contact (916) 322-5060 or go to their link at: <http://www.pd.dgs.ca.gov/smbus/default.htm>.
 - For SDVOSB Certification - SDVOSB certification is received from the Small Business Administration (SBA) go to their Dynamic Small Business Search (DSBS) at: http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm and <https://www.sam.gov/portal/public/SAM/>.

- Q8.** Will the CM be acting as the City's agent?
- A8.** No; being a CMAR project, the CM will be acting at its own risk during Stage I and Stage II services.
- Q9.** Will the City consider counting vendor purchase orders or contracts on a 100% basis?
- A9.** No. For subcontractor participation details, see "Subcontractor Participation" in the WHITEBOOK 2012, Chapter 11, Section C. For "Definitions", reference the WHITEBOOK 2012, Chapter 11, Section B.
- Q10.** If a small business carries multiple certifications like minority owned, women owned and small business for example, will the City allow the CM to count the same business in multiple categories simultaneously, similar to small business programs on Federal projects?
- A10.** No; certified firm may only be counted once.
- Q11.** RFP Requirement 3.10.4 - "The CM shall provide a table identifying the approximate number of hours per month or Full Time Equivalent (FTE) range the Project Team members will contribute to the Project during the design, bidding and construction phases. The Proposal shall identify Stage I and Stage II services separately and billing rates or ranges for each staff category". In order to not jeopardize the integrity of the evaluation process, we respectfully request to submit our response to 3.10.4 excluding the billing rates and then provide the full 3.10.4 response including billing rates, as part of the sealed Price Proposal. Please advise as to whether this would be acceptable.
- A11.** Submit the response to 3.10.4 excluding the billing rates and then provide the full 3.10.4 response including billing rates, as part of the sealed Price Proposal.
- Q12.** Please confirm that the only form documents required to be submitted in the response to the RFP are "Certification of Exceptions to RFP Document" and Form AA36 & Workforce Report (If changed from SOQ). All other form documents or Exhibits provided in the draft PSA and CSA are for reference only.
- A12.** Form documents referenced in the PSA and CSA are for the purpose of PSA and CSA. For form documents to be submitted with the Proposal refer to the RFP.
- Q13.** Does the City have a specific format and/or durations for bidders to propose their CSA fee and general conditions?
- A13.** No.
- Q14.** Our assumption is that any changes in staffing from the RFQ submission would be acknowledged by the City in writing in the PSA agreement and approval is not required prior to submission of the RFP response. Please confirm.
- A14.** Authorized changes to the SOQ must be clearly identified and submitted to the City with the Proposal as specified in the RFP.

Q15. Exhibits to the CSA are not being issued. Will these Exhibits be issued in the next Addendum?

A15. Some of the Exhibits are simply place holders for future information as it becomes available. For EXHIBIT F, and insurance coverage during Stage II, you may assume the following tentative values:

- Commercial General Liability Insurance: \$10,000,000
- Workers Compensation Insurance: See California Labor Code

However, limits for this insurance must be not less than the following:

| | |
|---------------------------|---------------------------|
| Bodily Injury by Accident | \$1,000,000 each accident |
| Bodily Injury by Disease | \$1,000,000 each employee |
| Bodily Injury by Disease | \$1,000,000 policy limit |

- Commercial Automobile Liability Insurance: \$5,000,000

The coverage values for the following required insurance will have to be determined at a later date based on the Stage II Scope of Work and as specified by the Railroad in case of Railroad Protective Liability Insurance:

- Contractors Pollution Liability Insurance
- Contractors Hazardous Transporters Pollution Liability Insurance
- Railroad Protective Liability Insurance

Q16. In addition to the AA36 form and relevant certifications requested, do we also need to submit the Work Force Report for our preselected subcontractors at this time?

A16. No; unless the information has changed since the submittal of SOQ.

Q17. Exhibit B, Item 3.10.3: Having already submitted resumes during the RFQ phase of the selection, is there perhaps a less intensive way to present the information the selection committee is looking for?

A17. If there are no changes from the information in the SOQ, state that. Responders doing so MUST provide reference of the page number and location within said page of the SOQ where the information may be found. If there are no changes from the information in the SOQ, state that. Changes to the key personnel composition previously submitted during the RFQ process are governed by RFP Section 11.6, "Changes to Key Personnel and Substitution of Subcontractors."

C. CHANGES TO RFP

1. 7.0 SUMMARY OF SCOPE OF WORK AND SERVICES. ADD the following:

7.1.2 For Stage II services, the CM shall designate a Contract Compliance Officer (CCO). The CCO's role is to assist the CM, Subcontractors, and Suppliers in achieving compliance in labor laws and regulations, such as prevailing wage, certified payroll,

apprenticeship utilization, and subcontracting requirements. The CCO shall be the point of contact with the Engineer and shall be responsible for the monitoring and enforcement of the EOCP requirements throughout the Project duration. The City reserves the right to audit and inspect the CM's compliance within a reasonable notice.

2. **8.1 PROJECT SCHEDULE.** The Presentation/Interview date has been moved to the 1st week in October. Appointments will be sent out.
3. **EXHIBIT A**, Section 1.24. DELETE in its entirety and SUBSTITUTE with the following:

The CM shall, as part of the Stage I services and in accordance with the City's standard bid and award process, prepare bidding documents, advertise for, and obtain competitive bids for Subcontracts for proposed construction services agreements and commit in its Proposal for a GMP to award all Subcontracts utilizing best value for price and qualifications as proposed by the CM and agreed to by the City, in accordance with SDMC Section 22.3809(a)(3). Refer to CSA, Section 2.3.4, "Subcontractor and Supplier Selection" for the details. As an alternate to the best value process, the CMs may select Subcontractors through the City's Limited Competition process under which the Subcontracts may only be bid by the contractors who are on the City's approved SLBE-ELBE Construction Contractors List in accordance with Municipal Code Section 22.3611 & 22.3612. For information regarding the SLBE-ELBE Construction Program and registration visit the City's EOCP web site: <http://www.sandiego.gov/eoc/>.

4. ADD the following EXHIBIT (and their attachments when included) that are enclosed with this Addendum immediately following this page:
 - 4.1 EXHIBIT F, "Construction Services Agreement"

END OF ADDENDUM "1"

Tony Heinrichs, Director - Public Works Department
Dated: *August 23, 2012*, San Diego, California

AG/MM/EZ

**UPAS STREET PIPELINE REPLACEMENT PROJECT
DRAFT CONSTRUCTION SERVICES
AGREEMENT (CSA)**

RFP-EXHIBIT F

CONSTRUCTION MANAGER AT RISK (CMAR)



**UPAS STREET PIPELINE REPLACEMENT PROJECT
CONSTRUCTION SERVICES
AGREEMENT
DRAFT**

CONSTRUCTION MANAGER AT RISK (CMAR)

BID NO.: _____ K-12-5416-CMAR-3-C
SAP NO. (WBS/IO/CC): _____ S-11022
CLIENT DEPARTMENT: _____ PUD
COUNCIL DISTRICT: _____ 2 & 3
PROJECT TYPE: _____ KA

THIS CONTRACT IS SUBJECT TO THE FOLLOWING:

- PREVAILING WAGE RATES: STATE FEDERAL
- MANDATORY USE OF APPRENTICES.

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LIST OF EXHIBITS (TO BE PROVIDED AT A LATER DATE)

| | |
|-----------|--|
| EXHIBIT A | PROJECT DESCRIPTION |
| EXHIBIT B | APPROVED GMP PROPOSAL |
| EXHIBIT C | TECHNICAL SPECIFICATIONS |
| EXHIBIT D | CONSTRUCTION DRAWINGS |
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| EXHIBIT J | EOCP REQUIREMENTS |
| EXHIBIT K | CALIFORNIA STATE REQUIREMENTS |
| EXHIBIT L | DESIGNATION OF AUTHORIZED REPRESENTATIVES |
| EXHIBIT M | PAYMENT/PERFORMANCE BOND FORMS |
| EXHIBIT N | CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE |
| EXHIBIT O | “BLANK” |
| EXHIBIT P | OFFICE SPACE FURNISHINGS |
| EXHIBIT Q | CONTAMINATED SOIL REMOVAL |
| EXHIBIT R | ARCHEOLOGICAL AND PALEONTOLOGICAL MONITORING |

**UPAS STREET PIPELINE REPLACEMENT PROJECT
CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES**

THIS AGREEMENT is made and entered by and between the City of San Diego, a California municipal corporation, hereinafter designated the “City” and [insert name of CM], hereinafter designated the “Construction Manager at Risk” or “CM” for the construction of the **Upas Street Pipeline Replacement Project** (Project).

RECITALS

- A.** The Mayor and City Council on [redacted], in Resolution No. R-[redacted] authorized the award and execution of a construction services agreement with the CM for construction of the Project.
- B.** The City intends to construct the Project as more fully described in Exhibit A to this contract.
- C.** To design and assist in the administration of the Project the City has entered into a contract with Infrastructure Engineering Corporation (IEC), hereinafter referred to as the “Design Professional.”
- D.** The CM has represented to the City the ability to provide construction management services and to construct the Project, and based on this representation the City engages the CM to provide these services and construct the Project.
- E.** On [insert date] a Preconstruction Services Agreement was executed between City and the CM to perform design phase services. This agreement is on file with the City Clerk as document No. RR-[redacted], and is incorporated herein by this reference.
- F.** The CM has provided cost estimating, value engineering, and constructability review for this Project during the design and has thoroughly reviewed the Construction Documents and attests that the project is constructible, and that based upon its review and without assuming design responsibilities, there are no known gaps or inconsistencies in the documents that cannot be accommodated within the Contractor’s Contingency, and that the Project can be constructed for the Guaranteed Maximum Price (GMP) that will not exceed \$ [redacted].
- G.** The CM has observed those items readily observable from a surface site inspection, read the geotechnical reports and the applicable environmental documents for the Project.

NOW THEREFORE, for and in consideration of the recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the City and the CM agree as follows.

AGREEMENT

ARTICLE 1 - DEFINITIONS

“Agreement” and “Contract” mean this written document signed by the City and the CM covering the construction of the Project, all exhibits to this document, and any other documents referenced in or attached to this document and specifically incorporated by reference.

“Change Order” means a type of contract amendment issued after execution of this Agreement or future GMP amendments signed by City and the CM, agreeing to changes to the GMP, the Contract Time, and/or the terms and conditions of this Contract. The Change Order will state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time or other modifications to Contract terms.

“City and “Owner” mean the City of San Diego, a municipal corporation, with whom the CM has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of San Diego Developmental Services, Fire and Planning Departments or any other City Department are not subject to the responsibilities of the City under this Agreement.

“City’s Representative” means the person designated in section 3.2.

“Construction Documents” means plans and details, including plans showing installation of major systems, equipment, fixed furnishings and graphics, the technical specifications and all other technical drawings, schedules, diagrams and specifications, accepted Shop Drawings, Working Drawings, and submittals that are necessary to set forth in detail the requirements for the Project..

“Construction Manager” or “CM” means [insert name of CM].

“CM’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the CM usually for costs that result from project circumstances. The amount of the CM’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM’s Contingency is described in section 5.2.5.

“CM’s Representative” means the person designated in section 2.1.1.

“Contract Documents” means the following items and documents in descending order of precedence executed by the City and the CM ((1) being the highest):

1. MND Report No. [redacted]
2. Permits issued by jurisdictional regulatory agencies

3. Change orders and supplemental agreements, whichever occur last
4. This Agreement
5. The CM's GMP including written qualifications, assumptions, and conditions thereto
6. The exhibits and attachments to this Agreement
7. Approved Shop Drawings, Working Drawings, and submittals
8. Addendum
9. Request for Proposals
10. Request for Qualifications
11. Special Provisions (project manual including Specifications for the Construction of the **Upas Street Pipeline Replacement Project**);
12. Plans
13. Pre-Construction Services Agreement
14. Standard Drawings
15. Standard Specifications
16. Reference Specifications
17. Technical Proposal
18. Statement of Qualifications

“Contract Price” means the total compensation paid to the CM for Final Completion of the Project, determined in accordance with Article 5.

“Construction Fee” means the CM's administrative costs, home office overhead, profit and other costs set forth in section 5.2.6.

“Contract Time” means the Working Days as set forth in section 4.1, including authorized adjustments, allotted in the Contract Documents for Completion and acceptance of the Work in accordance with 6-8, “COMPLETION, ACCEPTANCE, AND WARRANTY” in the WHITEBOOK.

“Consultant” means Design Professional.

“Cost of the Work” means the direct costs necessarily incurred by the CM in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, license fees, materials testing, and related items. The Cost of the Work shall not include the CM's Construction Fee or General Conditions Costs.

“Critical Path” means the sequence of activities from the start of the Work to the Completion of the Project. Any delay in the completion of these activities will extend the Completion date.

“Day(s)” mean calendar days unless otherwise specifically noted in the Contract Documents.

“Design Professional” means Infrastructure Engineering Corporation (IEC), or another qualified firm that may be selected by the City in accordance with section 3.3 of this Contract.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (1) materially differ from the conditions indicated in the Contract Documents and (2) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Engineer” means the City’s Representative.

“Field Order” means a written description of a change in the Work drawing from (or adding to) the Owner’s Contingency, signed by the City and the CM. A Field Order may not change the Contract Time, the GMP, or the terms and conditions of this Contract.

“Acceptance” means the completion of the Work as described in section 4.3.

“Completion” means satisfactory completion of Work required by the Agreement as evidenced by the recorded Notice of Completion with the County of San Diego.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path. Float is for the benefit of the Project. Use of float shall be in accordance with the requirements stipulated in Section 4.5.8 Float in this Agreement.

“General Conditions Costs” includes, but is not limited to the following types of costs for the CM during the construction phase: (1) payroll costs for project manager or the CM for work conducted at the site, (2) payroll costs for the superintendent and full-time general foremen, (3) payroll costs for other management personnel resident and working at the site, (4) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (5) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (6) cost of utilities, fuel, sanitary facilities and telephone services at the site, (7) costs of liability insurance premiums not included in labor burdens for direct labor costs, (8) costs of bond premiums, (9) costs of consultants not in the direct employ of the CM or Subcontractors.

“GREENBOOK” means the 2012 Standard Specifications for Public Works Construction published by BNI Publications, Inc.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, allowances, taxes, and the City’s and the CM’s Contingency as described in the GMP proposal attached as Exhibit B.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based.

“Holiday” means the City-observed holidays as listed below. If the holiday falls on a Saturday, the Saturday and the preceding Friday are both legal holidays. If the holiday falls on a Sunday, both Sunday and the following Monday will be legal holidays:

- New Year’s Day January 1
- Martin Luther King Day 3rd Monday in January
- Presidents Day 3rd Monday in February

- Caesar Chavez Day March 31
- Memorial Day Last Monday in May
- Independence Day July 4
- Labor Day 1st Monday in September
- Veteran’s Day November 11
- Thanksgiving Day 4th Thursday in November
- Christmas Day December 25

“Hazardous Materials or Waste” - For the purpose of provisions related to hazardous materials and waste, refer to the following where applicable:

- Hazardous Substance - A Hazardous Material, hazardous waste, petroleum products, or any chemical product which a manufacturer or producer is required to prepare an MSDS or as defined by HSC 25501(p) and 25281 (h).
- Hazardous Waste - A Hazardous Material that can no longer be used for its intended purpose as defined in HSC 25115, HSC 25117, and HSC 25316 and implemented in HSC Chapter 6.5 and 22 CCR and 40 CFR Part 260 - 299
- Regulated Waste - A waste, that is not considered Hazardous Waste, but due to its chemical or physical properties, petroleum contamination, or other properties, it must be disposed of to a facility with Regional Water Quality Control Board approved Waste Discharge Requirements (WDRs), such as a municipal Class III landfill or other facility with WDRs that allow disposal of the Regulated Waste.
- Non-RCRA Hazardous Waste - A waste that is defined and regulated as Hazardous Waste only within the State of California and defined in California regulation 22 CCR Division 4.5, Chapter 11, Article 3.
- RCRA Hazardous Waste - A waste which is managed as Hazardous Waste within and outside the State of California and is defined in Federal regulation 40 CFR Part 261 and California regulation 22 CCR Division 4.5, Chapter 11, Article 4.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work pertaining to construction means and methods as opposed to design.

“Notice of Completion” or “NOC” is defined as set forth in California Civil Code section 3093.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the CM to commence construction of the Project or parts of the Project. Separate NTP’s will be issued for each phase under the Agreement. A new phase shall not be authorized until funding is secure for that entire phase and an NTP for that phase of work is issued to authorize the CM to begin work on that phase of the Project.

“Owner’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or differing site conditions. The amount of the Owner’s contingency will be set solely by the City and will be included in the GMP. Use and management of the Owner’s contingency is described in section 5.3.

“Performance Period” means the period of time allotted in the Contract Documents to complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP and shown on the Project Schedule as may be adjusted.

“Payment Request” means the City form used by the CM to request progress payments for Work in accordance with Article 7.

“Potential Change Orders” or “PCO’s” means items expected or anticipated that might result in extra work, or additional costs. PCO can result from the City directives, bulletins, clarifications or changes to the original Plans. PCOs are sometimes referred to as cost control numbers (CCN), change estimates, anticipated cost numbers, proposed change orders, and change proposal request.

“Pre-Construction Services Agreement” means the agreement between the City and the CM for Services provided by the CM during the design phase, on file in the Office of the City Clerk as Document No. [REDACTED], and all written amendments thereto.

“Plans” means the drawings, profiles, cross sections, standard plans, Working Drawings, and Shop Drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions, or details of the Work.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM to illustrate materials or equipment for some portion of the Work.

“Project” means the **Upas Street Pipeline Replacement Project**.

“Request for Information” (RFI) means a written request for information made by the CM to City and Design Professional to clarify any parts of the Construction Documents.

“Retention” means the amount withheld by the City from the money due to the CM that is held until Project Completion and is then paid to the CM as part of the final payment.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” mean drawings submitted by the CM showing details of manufactured or assembled products proposed to be incorporated into Work.

“Site” means the land or premises on which the Project is located generally described as area the Work shall be performed.

“Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

“Special Provisions” means additions and revisions to the Standard Specifications e.g., the (GREENBOOK and the WHITEBOOK) setting forth conditions and requirements peculiar to the Work.

“Standard Specifications” means the GREENBOOK and the WHITEBOOK.

“Subcontractor” means an individual or firm having a direct contract with the CM or any other individual or firm having a contract with the aforesaid subcontractors at any tier, who undertakes to perform a part of the Work for which the CM is responsible.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with the CM to furnish materials or equipment to be incorporated in the construction phase Work by the CM.

“Surety” means any individual, firm, or corporation, bound with and for the CM for the acceptable performance, execution, and completion of the Work, and for the satisfaction of all obligations incurred.

“WHITEBOOK” means the 2012 Standard Specifications for Public Works Construction published by the City which amends and supplements the GREENBOOK and specifies the City’s EOCB provisions.

“Work” means the construction or the various separately identifiable parts thereof, required to be furnished during the construction phase to complete the Project. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

“Working Days” means Monday through Friday inclusive, except for Holidays.

“Working Drawings” means the CM submitted drawings showing details of Work not shown on the Plans.

ARTICLE 2 - CM’S SERVICES AND RESPONSIBILITIES

2.1 Scope of Work. The CM shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project. All Work will be performed in a good and workmanlike manner and within the care and skill of a qualified licensed contractor in California. The Work shall be performed pursuant to and in conformity with the Project’s Technical

Specifications (Exhibit C), Construction Drawings (Exhibit D), and all other Contract Documents and subject to the approval of the City, whose approval shall not be unreasonably withheld. It is not required that the services be performed in the sequence in which they are described.

2.1.1 CM's Representative. The CM shall designate a local's Representative, who shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. The CM's Representative shall communicate regularly with City, but no less than once a week, and shall be vested with the authority to act on behalf of the CM. The CM's Representative may be replaced only with the written consent of City.

2.1.2 Public Right-of-Way Work. Work in the public right-of-way shall comply with the GREENBOOK and as modified by the City Supplements in the WHITEBOOK, unless otherwise specified in the Project's Supplementary Special Provisions (SSP), Plans, and this Agreement.

2.1.3 Plans and Specifications. Plans and Specifications are divided into engineering disciplines and sections for the convenience of the City. These divisions are not for the purpose of scheduling or apportioning the Work or responsibility for the Work among Subcontractors and Suppliers. It is the intent of the Specifications and Plans to describe a complete project to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Plans as being required to produce the intended result shall be supplied whether or not it is specifically called for, at no additional cost to the City. Reference to specified software, guides, standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest edition or version in effect on the effective date of this Agreement, except as may be otherwise specifically stated. If referenced documents have been discontinued by the issuing organization, references to those documents shall mean the replacement documents issued or otherwise identified by that organization or, if there are no replacement documents, the last version of the document before it was discontinued.

2.1.4 Subsurface Data. The Plans show conditions as are believed by the City to exist, but it is not to be inferred that all of the conditions as shown thereon actually exist, nor shall the City or any of the City's officers be liable for any loss sustained by the CM as a result of any variance between conditions as shown on the Plans and the actual conditions revealed during the progress of the Work or otherwise. If reports of explorations and tests of Site conditions are referenced in the Contract Documents, the CM is encouraged to inspect the Site, acquire, and review these reports and to take other necessary steps to thoroughly familiarize themselves with the Site conditions. If a review of the documents and Site inspection indicate a conflict, the CM must immediately notify the Engineer. For access and cost information to obtain those reports contact the Engineer, during

the City's regular business hours. The City does not represent that the referenced documents show the conditions that will be encountered in performing the Work. The City represents only that the reports of explorations and tests show the conditions encountered at the particular locations and at the particular times they were obtained. The CM is cautioned that interpretations and conclusions contained in the documents were formulated for design purposes only and were based on work performed in such a way as to expressly provide information required for design.

2.3 Subcontractors and Suppliers. The CM shall be responsible for the Work done by Subcontractors and Suppliers, and any discrepancy or gaps in their scope of works.

2.3.1 Equal Opportunity Contracting. The CM shall comply with the City's "General Equal Opportunity Contracting Program Requirements" found in Chapter 10 of the WHITEBOOK, hereby incorporated into this Contract by reference.

2.3.2 Outreach Consultant. The CM shall hire a third party outreach consultant to increase participation by SLBE, ELBE, DVBE, and SDVOSB firms.

2.3.3 Outreach Documentation. The CM shall document specific efforts to increase subcontractor participation by SLBE, ELBE, DVBE and SDVOSB firms. CM shall explain why any SLBE, ELBE, DVBE and SDVOSB submitting a bid was not selected for this Project if they are not used.

2.3.4 Subcontractor and Supplier Selection. The CM shall select Subcontractors and Suppliers based on the firm offering the best value considering price and qualifications, pursuant to San Diego Municipal Code Section 22.3809(a)(3).

2.3.4.1 The CM shall review the Subcontractors and Suppliers ultimately chosen to verify that that they have not been debarred and are in good standing as a licensed contractor in California.

2.3.4.2 The CM may pre-qualify Subcontractors and Suppliers, in a manner equivalent to the City's pre-qualification standards.

2.3.4.3 All Subcontractors and Suppliers shall be properly licensed in accordance with California law.

2.3.4.4 All subcontract bids shall be opened and provided to the City without reservation or redaction. All records relevant to the award and performance of Subcontractors and Suppliers shall be public and provided to the City upon request and without redaction.

2.3.4.5 Pursuant to Municipal Code section 22.3809(d), the City may administer bidding itself for Subcontractors and Suppliers, or to direct the bidding procedures to be used by the CM. The CM may use its corporate-

generated subcontractor agreement (if any) to retain Subcontractors or Suppliers, provided the subcontractor agreement contains the terms required to be included in subcontracts by this Contract.

2.3.4.6 The CM shall not self perform any Work under the contract unless the City expressly allows such self performance in writing. The Work proposed to be self performed shall first be advertised and bid. The CM shall self perform the Work only if it is the lowest responsible bidder. For Work proposed to be self performed by the CM, the City will administer the bid process.

2.3.5 Subcontractor Listing. The CM shall follow the Subletting and Subcontracting Fair Practices Act (Act), California Public Contracts Code Sections 4100 through 4114. The CM shall provide a written list of all proposed Subcontractors and Suppliers who will perform work costing equal to or greater than one-half of one percent of the total GMP that are selected during the bidding process. The list shall include Subcontractor and Supplier names, value of their subcontract and a description of the scope of work they will be performing. The CM shall not substitute any other person or subcontractor to perform the scope of work listed for each listed Subcontractor or Supplier, except as provided by the Act. The City reserves all remedies under the Act for any unlawful Subcontractor substitution by the CM.

2.3.5.1 Subcontract Work greater than one-half of one percent of the total GMP which is identified after the GMP is submitted to the City shall be awarded pursuant to section 2.3.6.

2.3.6 Subcontract requirements. The CM shall require each Subcontractor and Supplier, to the extent of the Work to be performed by such Subcontractor and Supplier, to assume towards the CM all the obligations and responsibilities which the CM by the Contract Documents assumes towards the City and shall incorporate the terms of this Agreement and the Contract Documents within any subcontract agreement to the extent applicable to the Work to be performed by the Subcontractors.

2.3.7 Disputes. In any dispute between the CM and a Subcontractor or Supplier, the City shall not be made a party to any judicial or administrative proceedings to resolve the dispute unless the CM first complies with claim and dispute resolution process in Article 8. To the extent set forth and in accordance with Article 11 of this Agreement, the CM agrees to defend and indemnify the City in any dispute between the CM and any Subcontractor or Supplier should the City be made a party to any judicial or administrative proceedings to resolve a dispute in violation of this provision.

2.4 Permits and Utilities.

2.4.1 City Permits and Utilities. The City will obtain, at no cost to the CM,

development services permits and pay for permit fees for any City directed changes to the Work. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

2.4.2 Other Permits. The CM shall obtain and pay for all other permits and fees required to construct the Project, including permits necessitated by its operations off-site unless otherwise stated in the Contract Documents. This includes permits for electrical, shoring, OSHA, and any other additional permitting/deferred approval requirements other than requested changes by the City. Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity.

2.4.3 Temporary Utilities. The CM shall provide and pay for all temporary utility services necessary for its own use during the performance of the Work, including the testing, commissioning and landscape maintenance period. This includes electrical, gas, water, telephone, data and internet services, until the City's acceptance of Completion of the Project. Arrangements for construction water and electricity are the CM's responsibility. The CM shall not draw water from fire hydrants (except in a health or life safety emergency), without obtaining permission and a temporary construction water meter from the City's Public Utilities Department. Payment for Temporary Utilities and any cost overrun(s) associated with their use by the CM shall be included in the CM's Contingency.

2.5 Pre-construction Conference. Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference.

2.5.1 Purpose. The purpose of this conference is to establish a working relationship between the CM, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of record project documents required and emergency telephone numbers for all representatives involved in the course of construction.

2.5.2 Notice to Proceed. After the pre-construction conference, a Notice to Proceed letter will be issued by the City confirming the construction start date, and Performance Period. The Notice to Proceed date will be confirmed to all subcontractors by the CM. The CM shall provide City with a current detailed construction schedule on PRIMAVERA software within 10 Working Days after receiving notice to proceed with construction phase.

2.5.2.1 The City will issue the NTP for the first phase of construction no later than [insert date]. If the City does not issue the NTP by [insert date] the CM may be entitled to an extension in Contract Time and additional compensation in accordance with section 6.2 of this Contract.

2.5.3 Subcontractor Participation. At the pre-construction conference, the CM shall provide a statement of proposed SLBE, ELBE, DVBE and SDVOSB utilization identifying the certified entities that will be utilized on the project to meet the required goals. The CM shall also provide copies of all purchase orders and/or contracts with SLBE, ELBE, DVBE and SDVOSB subcontractors used to meet the subcontracting goals for the work on which bids have already been received and accepted by the City.

2.5.4 Schedule of Values. No later than 90 Days after the Notice to Proceed is issued, the CM shall provide, for City approval, a schedule of values (SOV). The CM shall provide with the SOV cost loaded projections based on the categories used in the procurement of the Work. The SOV shall not exceed the approved GMP and shall identify the CM's Contingency. The schedule of values will subdivide all items comprising the Work.

2.5.5 Attendance. Minimum attendance by the CM at the pre-construction conference shall be the CM's Representative, who is authorized to execute and sign documents on behalf of the CM, the job superintendent, the safety officer, preconstruction manager and cost estimator. The City's Representative shall also attend.

2.6 Control of the Work. Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate contractor, the CM shall provide, through itself or Subcontractors, the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit the CM to complete the Work consistent with the Contract Documents.

2.6.1 Standard of Care. The CM shall use the degree of care and skill ordinarily exercised by reputable contractors practicing in the same field of service in the State of California. Where approval or acceptance by the City is required, it is understood to be general approval only and does not relieve the CM of responsibility for complying with all applicable laws and codes pertaining to means and methods as opposed to design.

2.6.2 Coordination of the Work. The CM shall coordinate all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The CM shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction. The CM shall coordinate scheduling of bid packages, submittals, and all RFI's, and the construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. The CM shall monitor and report monthly to the City on actual performance compared to the Construction Schedule.

2.6.2.1 If City performs other Work on the Project or at the Site itself or with separate contractors under City's control, the CM and the City both agree to reasonably cooperate and coordinate respective activities with

the other so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6.3 Superintendent. The CM's Superintendent shall be present at the Site at all times that construction activities are taking place. All elements of the Work shall be under the direct supervision of the CM's Superintendent or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work. In the event of noncompliance with this subsection, the City may require the CM to stop or suspend the Work in whole or in part.

2.6.4 Manufacturer Approval. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM's responsibility to ensure the Subcontractor or Supplier employed for such work is approved by the manufacturer.

2.6.5 Surveying. The CM shall be responsible for coordinating all surveying services required for completion of the Work with the City, including survey monument preservation and staking requests.

2.6.5.1 The CM must notify the Engineer at least 7 Working Days before starting the Work to allow for the preservation of survey monuments, and benchmarks. The City will, at its cost and in accordance with Business and Professions Code Section 8771, file a Corner Record or a Record of Survey referencing survey monuments subject to disturbance in the Office of the County Surveyor. The recording will take place twice i.e., prior to the start of construction and prior to the Completion.

2.6.5.2 The CM must notify the Engineer at least 7 Working Days before starting the Work if controlled points are to be destroyed and they are not tied out. If controlled points are destroyed prior to being tied out, CM will be held responsible.

2.6.5.3 The CM shall provide cut sheets to the Engineer. Restacking will be charged to the CM.

2.6.5.4 The CM must not disturb or permanently cover survey monuments or benchmarks without the consent of the Engineer. The CM must bear the expense of uncovering and replacing any that may be disturbed or covered without permission.

2.6.5.5 When a change is made in the finished elevation of the pavement of any roadway in which a street survey monument is located, the CM shall adjust the monument cover to the new grade within 7 Days of finished paving unless otherwise specified in the Special Provisions. The CM shall notify the Engineer 7 Days of any affected survey monuments prior to paving. If a referenced monument is unable to be reset in its original

location due to improvements, establish the reset monument in a location approved by the Engineer.

2.6.5.6 Replacing and establishing survey monuments and benchmarks must be done only by a Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within the State of California.

2.6.6 Field Measurements. The CM shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be promptly reported to the City.

2.6.8 Removal of Persons from Site. Any person employed by the CM or any Subcontractor or Supplier whom the City reasonably concludes does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Site by CM, Subcontractor or Supplier employing such person, and shall not be employed again in any portion of Work without the written approval of the City.

2.6.9 Responsibility for Subcontractors. The CM assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor of any tier, including but not limited to any third-party beneficiary rights.

2.7 Control of the Work Site. Once the Notice to Proceed is issued, the CM is responsible for the Project Site. Throughout all phases of construction, including suspension of Work, the CM shall keep the Site reasonably free from debris, trash and construction waste to permit the CM to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Completion of the Work, or a portion of the Work, the CM shall remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use. As used in this section, “construction waste” is not intended to mean or be interpreted as Hazardous Materials which are addressed in section 2.24 of this Contract.

2.7.1 Dust. The CM shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the San Diego County Air Pollution Control District’s Rules and Regulations.

2.7.2 ADA Access. The CM shall follow ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) during construction activities once the Project is

occupied. ADA accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. The CM shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

2.7.3 Deliveries. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM.

2.8 Shop Drawings, Working Drawings, Product Data and Samples. The purpose of the submittal of Shop Drawings, Working Drawings, product data, samples and similar submittals is to demonstrate for those portions of the Work for which submittals are required, the way the CM proposes to conform to the information given and the design concept expressed in the Contract Documents.

2.8.1 Submittals. The CM shall review, and electronically submit to the City copies of each Working Drawing, Shop Drawing, product data, sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. By submitting Shop Drawings, Working Drawing, product data, samples and similar submittals, the CM represents that the CM has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals which are not required by the Contract Documents may be returned without action. Submittals shall be included in the Project schedule.

2.8.1.1 The City shall forward copies of the submittals to the Design Professional for review and recommendation. The City shall forward comments and recommendations from the Design Professional to the CM within 10 Working Days after the submittals were originally received by the City from the CM.

2.8.1.2 If more than 10 Working Days are necessary to review any submittals due to their size or complexity, the City shall notify the CM within the 10 Working Days of receiving submittals so that the parties may meet and agree on a schedule for review and approval of the submittals that will not impact the Project schedule.

2.8.1.3 Working Drawings submittals shall be prepared by a Civil or Structural Engineer registered by the State of California when required by law or as specified in the Contract Documents.

- 2.8.2 City Approval Required.** The CM shall perform no portion of the Work requiring submittal and review of Shop Drawings, Working Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals. The CM shall set up the web-based information system that allows the City electronically transfer submittal once no exception to submittal are taken by City.
- 2.8.3 Responsibility for Submittals.** The CM shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Working Drawings, product data, samples or similar submittals unless the CM has specifically informed the City in writing of such deviation at the time of Submittal and the City has given written approval to the specific deviation. The CM shall not be relieved of responsibility for errors or omissions in Shop Drawings, Working Drawings, product data, samples, or similar submittals by the City's approval thereof.
- 2.8.4 Re-Submittals.** If the CM makes any revisions to re-submitted Shop Drawings, Working Drawings, product data, samples, or similar submittals, other than those requested by the City on previous submittals, the CM shall identify such revisions to the City so that the City may review them as well.
- 2.8.5 Informational Submittals.** Informational Submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- 2.8.6 Certifications.** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 2.9 Quality Control, Testing and Inspection.** The CM shall coordinate all testing and inspection, including but not limited to, compaction testing, soils testing, concrete sampling, slurry and asphalt testing, bac-t testing and any pipe materials testing, as required.
- 2.9.1 New Materials.** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.
- 2.9.2 Inspection.** All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, or appliances may be subject to the inspection and approval, or rejection by the City if found not to be in compliance with the Contract Documents. The CM shall notify the City Test Lab and the Engineer 48 hours in advance before noon. After that, a 24 hours (before noon) advance notification is required. Request for work by the Test lab must be identified by WBS number, project name, job location, description of work

requested, time requested, and a point of contact. Any work done without proper inspection will be subject to rejection. The Engineer and any authorized representatives shall at all times have access to the Work during its construction at shops and yards and while in storage, as well as to the Site. The CM shall provide every reasonable facility for ascertaining that the materials and workmanship are in accordance with the Contract Documents. Inspection of the Work shall not relieve the CM of the obligation to fulfill all the requirements of the Contract Documents. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner. Any plan or method of Work suggested to the CM by the City, but not specified or required by the Contract Documents, which is adopted or followed by the CM in whole or in part, shall be done at the CM's sole risk and responsibility.

2.9.2.1 The CM shall notify the City Test Lab and the Engineer 7 Working Days in advance for inspection of plants outside of the Southern California area to ensure scheduling. Costs for inspections outside the boundaries established in the contract shall be borne by the CM. Prior to obtaining compaction tests of subgrade the CM shall call for collection of soil samples to conduct Proctor tests and dry unit weight of the different soil types that are encountered. Also, for slurry seal the CM must provide the Testing Lab with the most recent calibration of the slurry trucks. For concrete pours, the CM must notify the plant dispatcher that the concrete being ordered is for a City of San Diego project.

2.9.2.2 Bac-t testing is a 2 day test. It is performed by the City Tuesday and Wednesday or Wednesday and Thursday. The results of the test are provided the following Monday. Operation is required to notify City Council 5 Working Days prior to any shut down and reconnections. This shall be accounted for in the project schedule prepared by the CM. Water Operation cannot notify City Council or schedule any shutdown/reconnection work until the bac-t is passed. CM shall provide a monthly schedule detailing all work to be performed by Operations,

2.9.2.3 The CM shall employ and pay for the services of a qualified inspection agency to perform any and all special inspection services required by the Contract Documents. Special inspection and testing by the special inspectors shall meet the minimum requirements of the following building codes: 2010 CBC, as amended by the City Charter and the San Diego Municipal Code. Special inspector shall comply with all requirements of the Development Services Department and the building permit. The requirements of the Development Services Department can be found at the website: <http://www.sandiego.gov/development-services/>

2.9.3 Testing Agency. The CM will cooperate with the City and all others responsible for testing and inspecting the work and shall provide them access to the Work at all reasonable times.

- 2.9.3.1 At the option of the City, materials may be approved at the source of supply before delivery is started.
- 2.9.3.2 Code compliance testing (including all Geotechnical requirements) and inspections required by codes or ordinances, or by a plan approval authority, shall be the responsibility of and shall be paid by the CM, unless otherwise provided in the Contract Documents.
- 2.9.3.3 The CM's quality control testing and inspections shall be the sole responsibility of the CM and paid by the CM as part of the Cost of the Work.

2.10 Trade Names and Substitutions. Unless specifically indicated that no substitutions are permitted, Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, shall be interpreted as allowing substitute or alternate items, subject to the following:

2.10.1 Requests for Substitution. The substitution shall be submitted by CM in writing to the City. In accordance with California Public Contract Code section 3400(a), unless specified elsewhere in the Contract Documents, the Contractor shall submit its list of proposed substitutions for "an equal" ("or equal") item within 90 days after award of the Contract. The City may accept substitutions after 90 days if substitution will be beneficial to City or the requested substitution is part of a cost reduction proposal. If an offered substitution by the CM for the trade names specified in the Contract necessitates changes to, or coordination with, other items of the Work, the information submitted shall include details showing such changes. Any savings from a substitution may be considered as a cost reduction item with shared savings available to the Proposer. The CM shall perform these changes as part of the substitution of material or equipment and at no additional cost to the City.

2.10.1.1 The CM shall submit the substitution to the City with supporting documentation showing the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.10.2 Submittal Requirements. The Submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution. The Submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the Submittal shall include any adjustment in the Contract Time created by the substitution. The CM, if requested by the City, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.10.3 Approval. The City will make the final decision and will notify the CM in writing as to whether the substitution has been accepted or rejected. The City can

reject the substitution for any reason including appearance. If the City does not respond in 30 days, the CM shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

2.11 Project Record Documents. During the construction period, the CM shall maintain at the jobsite a set of Plans, Working Drawings, and Shop Drawings for project record document purposes.

2.11.1 Redlines. The CM shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. The CM shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Mark Project Record Drawings sets with red erasable colored pencil. Redlines shall be kept updated and be available to be viewed by City in web-based electronic system. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Invert elevation of the water main.
- Locations and depths of City owned underground utilities.
- Revisions to PRS configuration and piping.
- Revisions to SCADA & electrical circuitry.
- Changes made by Change Order.
- Details not on original Contract Drawings.
- Changes issued by Consultant.
- Answers referenced is RFI's
- Changes to landscaping, curb ramps and paving.
- Materials and Manufacture of the materials.

2.11.2 Drawings. Mark completely and accurately Project Record Drawing prints of Construction Documents, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings and Working Drawings are marked, show cross-reference on the Construction Documents location.

2.11.3 Source Identification. Note RFI Numbers, and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents. City's Representative shall verify record drawings are up to date on a monthly basis prior to approval of the monthly payment invoice.

2.11.4 Final Documents. The CM shall as a condition of Completion, submit Project Record Drawing prints and Shop Drawings and Working Drawings to the City or its representative for review and comment. Upon receipt of the reviewed Project Record Drawing prints and Shop Drawings and Working Drawings from the City, the CM shall correct any deficiencies and/or omissions to the drawings limited by the scope set forth in sections 2.11.1, 2.11.2 and 2.11.3 and prepare the following for submission to the City within thirty (30) Days:

2.11.4.1 For any design services where the CM has discretion on how to incorporate it into the Project, prior to Final Completion, the CM shall prepare and submit one complete set of full sized (24" x 36") original mylar final as-built drawings (CADD plots) prepared in accordance with the City's CADD standards. Each CADD Mylar drawing sheet shall be wet stamped and signed by qualified responsible engineers registered in the State of California, and shall be stamped and wet signed by the architect/engineer of record, as required by law. Other applicable portions of the drawing title blocks shall also be signed by the CM and numbering system shall be coordinate with Design Professional on numbering system of mylars. Drawing mylar shall be 3 mils minimum thickness.

2.11.4.2 The original copy of the Project Record Drawings (redline mark-ups).

2.12 Project Safety. The CM shall be solely responsible for initiating, maintaining and providing all safety precautions and programs related to the performance of the Work.

2.12.1 Purpose. CM recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (1) all individuals at the Site, whether working or visiting, (2) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (3) all other property at the Site or adjacent thereto.

2.12.2 Safety Representative. CM shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

2.12.2.1 The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with the CM's personnel, Subcontractors and others as applicable.

2.12.3 Safety Requirements. The CM and all Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement. The CM shall also comply with any and all insurance carrier-mandated safety requirements and programs that do not violate any Legal Requirement.

2.12.3.1 The CM shall comply fully with the requirements of section 1717 of the Construction Safety Orders, State Department of Industrial Relations, regarding the design of concrete forms, falsework and shoring, and the inspection of same before the placement of concrete.

2.12.4 Accident Reports. The CM will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.12.5 Safety Plan. The CM bears the ultimate responsibility for the health and safety of its employees. These specifications shall not be construed to limit the CM's liability nor to assume that the City, its employees will assume any of the CM's liability associated with Site Safety considerations. The CM shall have a health and safety plan in place prior to commencement of Work. The plan shall meet all OSHA and other applicable requirements. This plan shall be submitted to the City at least one week before any construction activities begin. The City will not assume any role in determining the adequacy of the plan on behalf of the CM.

2.12.6 Indemnity. The CM shall indemnify the City against any fines resulting from citations issued to the City by federal, state or local safety enforcement agencies due to the CM's failure to abide by applicable safety and health standards. The CM's duty to indemnify shall be limited to fines and/or penalties resulting from citations.

2.12.7 Protection and Restoration of New and Existing Improvements. The CM shall be responsible for the protection of public and private property within and adjacent to the Work and shall exercise due caution to avoid damage to such property. The CM shall repair or replace all improvements which are not designated for removal (e.g., curbs, sidewalks, driveways, fences, walls, signs, utility installations, pavement, structures, etc.) which are damaged or removed as a result of its operations. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension.

2.13 Warranty. The CM warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. CM will correct or replace any Work not in conformance with this warranty at its own cost and expense, if notified by the City within one year after the date of Completion, or longer as may be required under the Contract Documents.

2.13.1 Exclusions. The CM's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM, its employees or Subcontractors/Suppliers of any tier.

2.13.2 Response Time. The CM shall take reasonable steps to commence correction of warranty Work, within 7 Days of receipt of written notice from City. This includes the correction, removal or replacement of any nonconforming Work and damage caused to other parts of the Work affected by nonconforming Work. If the CM fails to commence such steps within such 7-day period, the City may, in addition to any other remedies provided under the Contract Documents, commence correction of such warranty Work with its own forces upon written

notice to the CM. If City does perform such corrective Work, CM shall be responsible for all reasonable costs incurred by City in performing such correction.

2.13.3 Manufacturer's Warranty. Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this section or the Contract Documents. The CM will provide City with all manufacturers' warranties upon Completion.

2.13.4 Other Remedies. This section applies only to the CM's obligation to correct warranty Work and is not intended to constitute a period of limitations or waiver of any other rights or remedies City may have regarding the CM's other obligations under the Contract Documents or federal or state law.

2.14 Correction of Defective Work. The CM agrees to correct, or commence correction, of any defective Work discovered prior to Completion that is not in conformance with the Contract Documents. During the Work, the CM shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If the CM fails to commence the necessary steps during the Work, the City may, in addition to any other remedies provided under the Contract Documents, commence correction of such nonconforming Work with its own forces upon written notice to the CM. If City does perform such corrective Work, the CM shall be responsible for all reasonable costs incurred by City in performing such correction.

2.14.1 Effect of Payment or Use. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

2.14.2 Emergencies. The CM will respond and initiate corrective action within twenty-four hours of notice of nonconforming Work that poses an imminent threat to person or property.

2.15 State Prevailing Wages. As required by the California Labor Code, the CM shall ensure that all workers employed on the Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the City, which copies shall be made available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages may also be found at http://www.dir.ca.gov/dlsr/statistics_research.html. The CM shall post a copy of such determination at the Project Site.

2.15.1 Penalties. In accordance with Section 1775 of the California Labor Code, the CM shall forfeit not more than \$50.00 for each calendar day or portion thereof to the City, for each worker paid less than the prevailing rates as determined by the Director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any Subcontractor under him or her.

2.15.2 Inspection of Wage Determinations. A copy of the above General Prevailing Wage Determination is on file and available for inspection at the Public Works Department, 1200 Third Avenue, Suite 200, San Diego, California 92101.

2.15.3 Unlisted Crafts. A craft or classification not shown in the Prevailing Rate Determination may be required to pay the rate of the craft or classification most closely related to it.

2.16 Apprentices on Public Works. The CM shall abide by the requirements of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning the employment of apprentices by a contractor and any subcontractor performing a public works contract.

2.17 Working Hours. The CM shall comply with all applicable provisions of section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The CM shall forfeit \$25.00 to the City for each worker employed in the execution of the Contract by the CM or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1 1/2 times the basic rate of pay.

2.18 Nondiscrimination in Contracting. All City agreements, contracts, and subcontracts are subject to City of San Diego Ordinance No. 0-2000-143 adopted on April 10, 2000. All City contractors and subcontractors should be aware of the provisions of Municipal Code Sections 22.3501-22.3517. The policy applies equally to the CM and all Subcontractors and Suppliers.

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

2.18.1.1 The CM shall ensure that the language of section 2.18.1 is also incorporated in all subcontracts issued in support of the Project.

2.18.2 Disclosure Requirements. Upon the City's request, the CM agrees to provide to the City, within 60 days, a truthful and complete list of the names of all Subcontractors, vendors, and Suppliers that the CM has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the CM for each subcontract or supply contract. The CM further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code Sections 22.3501 - 22.3517). The CM 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.

2.18.3 Bid Requirements. When requested by the City, the CM shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the CM in a legal or administrative proceeding alleging that the CM discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

2.19 Access for Disabled Persons. The CM shall comply with all portions of Title 24 and the ADA. (For specific services and public accommodations, The CM may contact the Office of the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118; phone number (202) 514 0301.) The CM acknowledges and agrees that the CM is aware of and will comply with Council Policy 100-04, incorporated herein by this reference, adopted by Resolution No. R-282153, relating to the federally-mandated ADA. The CM and Subcontractors will be individually responsible for administering their own ADA and Title 24 program.

2.19.1 Certification. As a condition precedent to award of this Contract, the CM shall execute and submit to City the CM Certification for Title 24/ADA Compliance, as shown in Exhibit H.

2.20 Drug Free Workplace. City projects are subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. The CM shall become familiar with the provisions of Council Policy 100-17 which was established by Resolution No. R-277952. The policy applies equally to the CM's Subcontractors and Suppliers. The elements of the policy are:

2.20.1 Definition. Drug-free workplace" means a site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.

2.20.2 City Contractor Requirements. 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 following:

2.20.2.1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

2.20.2.2 Establishing a drug-free awareness program to inform employees about all of the following:

- The dangers of drug abuse in the workplace.
- The person's or organization's policy of maintaining a drug-free workplace.
- Any available drug counseling, rehabilitation, and employee assistance programs.
- The penalties that may be imposed upon employees for drug abuse violations.

2.20.2.3 Posting the statement required by subdivision 2.20.2.1 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 must also be posted at the Site.

2.20.3 Subcontractor Requirements. CM shall include in each subcontract agreement language which indicates the Subcontractor's and Supplier's agreement to abide by the provisions of this section. Subcontractors and Suppliers shall be individually responsible for their own drug-free workplace programs.

2.20.4 Certification. CM will submit the signed form included as Exhibit I certifying compliance with San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace.

2.20.4.1 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.

2.21 San Diego Business Tax Certificate. All contractors, including Subcontractors, not already having a City of San Diego Business Tax Certificate for the Work contemplated shall secure the appropriate certificate from the City Treasurer, City Operations Building, Community Concourse, before the Contract can be executed.

2.22 Contractor Standards – Pledge of Compliance. City contracts, including public works construction projects, are subject to City of San Diego Municipal Code section 22.3004.

2.22.1 Certification. The CM shall complete a Pledge of Compliance as shown in Exhibit N attesting under penalty of perjury that it complies with the requirements of this section. The CM shall also ensure that its Subcontractors complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of this section. Subcontractors may access the Pledge of Compliance at:

http://www.sandiego.gov/purchasing/pdf/contractor_standards_questionnaire.pdf

2.22.2 Subcontracts. CM shall include in each subcontract agreement, language which requires Subcontractors to abide by the provisions of City of San Diego Municipal Code Section 22.3004. A sample provision is as follows:

2.22.2.1 “Compliance with San Diego Municipal Code Section 22.3004: Subcontractor acknowledges that it is familiar with the requirements of San Diego Municipal Code Section 22.3004 (“Contractor Standards”), and agrees to comply with requirements of that section. The Subcontractor further agrees to complete the Pledge of Compliance, incorporated herein by reference.”

2.23 Water Pollution Control. The CM shall comply with the City’s Water Pollution Control provisions in Section 701 of the WHITEBOOK, hereby incorporated by reference. CM shall defend and indemnify the City against any fines or penalties assessed for violations of the Municipal Separate Storm Sewer System (MS4) Permit No. CAS0108758 (and its successor permits) and of the State Construction General (CGP) Permit No. CAS000002 (and its successor), caused by construction of the Project. CM’s duty to indemnify shall be limited to fines and/or penalties resulting from citations for violations of the MS4 Permit No. CAS0108758 (and its successor permits) and of the State Construction General (CGP) Permit No. CAS000002 (and its successor), caused by construction of the Project.

2.24 Hazardous Materials. Unless included in the Work, if the CM encounters onsite material which it reasonably believes to contain Hazardous Materials or Waste, it shall immediately stop work and report the condition to the City. The CM will comply with all applicable environmental documents prepared for the Project, laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

2.24.1 Investigation. The City shall obtain the services of a licensed consultant to verify the presence or absence of the Hazardous Material or Waste reported by the CM that was not included in the Work and, in the event such Hazardous Material or Waste are found to be present, to verify that it has been rendered harmless. When the Hazardous Material or Waste has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and the CM.

2.24.1.1 The CM shall retain the services of an environmental contractor to monitor construction activities for encounters with contaminated soil known to be present at the Site. When encountering, handling and disposing of Hazardous Material or Waste, the CM shall comply with Section 703 of the WHITEBOOK, hereby incorporated into this Contract by reference.

2.24.2 Resuming Work. If the material is found to contain Hazardous Material or Waste that was not included in the Work, the CM shall not resume work in the affected area until the material has been abated or rendered harmless by the City. The CM and the City may agree, in writing, to continue work in non-affected areas of the Site.

2.24.2.1 This section does not preclude the City from requesting a change in the Work and issuing a Change Order in accordance with Article 6 for the CM to remediate and remove Hazardous Material or Waste encountered at the Site.

2.24.3 Contract Adjustments. If Hazardous Material or Waste is encountered at the Site that was not included in the Work, the CM may request an extension of Contract Time and associated costs in accordance with Article 6. Unless it is included in the Work, Hazardous Material or Waste shall be considered a differing Site condition under section 6.3 entitling the CM to Change Order under section 6.6 for associated impacts to the Contract Time and the Cost of the Work, including the reasonable additional costs of shut-down, delay and start-up, if appropriate.

2.24.3.1 In the event the CM encounters on the Site materials believed in good faith to be Hazardous Material or Waste and the CM stops work in the area affected pursuant to section 2.24, the CM shall be entitled to contract adjustment pursuant to this section even if the materials are determined not to be Hazardous Material or Waste.

2.24.4 Indemnity. To the fullest extent permitted by law, the City shall defend, indemnify and hold harmless the CM, its Subcontractors, consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of any Hazardous Material or Waste at the Site, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

2.24.4.1 If the CM is held liable for the cost of remediation of Hazardous Material or Waste solely by reason of performing Work as required by the Contract Documents, the City shall indemnify the CM for all cost and expense thereby incurred.

2.24.5 Hazardous Material in the Work. The CM shall follow these requirements when working with any Hazardous Material or Waste that may be necessary to perform the Work:

2.24.5.1 Notification to employees is required when materials that contain hazardous substances or mixtures are required on the Work. A material safety data sheet shall be requested by the CM from the manufacturer of any hazardous product used.

2.24.5.2 Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all

manufacturer's warnings and application instructions listed on the material safety data sheet and on the product container label.

2.24.5.3 The CM shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site, with copies to the City's Representative.

2.24.5.4 The CM shall notify the City if it considers a specified or required product or its intended usage to be unsafe. This notification must be given to the City prior to the product being ordered, or if provided by some other party, prior to the product being used or incorporated in the Work.

2.24.5.5 The cost to provide safety measures shall be included in the GMP.

2.24.6 Treatment, Storage and Disposal Facilities (TSDF). TSDF shall be a hazardous waste transfer, treatment, storage, or disposal facility that has received, at a minimum, a California Department of Toxic Substances Control permit, grant of interim status, or a variance or is otherwise authorized by California law and regulations to receive specific RCRA and/or non-RCRA Hazardous Wastes for Processing, Recycling, alternative fuel, or Disposal. If the TSDF is located outside the jurisdiction of California, the agency(ies) with regulatory authority over the TSDF shall have the same or higher standards for the processing, recycling, or disposal of hazardous waste as the State of California.

2.24.7 Petroleum Contaminated Soils Disposal and Recycling Facility. Petroleum Contaminated Soils Disposal and Recycling Facility shall be a recycling or disposal facility which has, at a minimum, a valid California Regional Water Quality Control Board permit including Waste Discharge Requirements (DWRs) and air emission permit to receive specific Petroleum Contaminated Soil for processing, bioremediation, recycling, alternative fuel, or disposal. If a facility chosen is located outside the jurisdiction of California or within Indian Tribal lands, the agency(ies) with regulatory authority over the Petroleum Contaminated Soil Disposal and Recycling Facility shall have the same or higher standards for the recycling or disposal of petroleum contaminated soil as the State of California.

2.25 Traffic Control. CM shall not begin any Work in the public right-of-way without an approved traffic control permit. CM shall comply with Section 7-10 of the GREENBOOK as modified and supplemented by the WHITEBOOK, hereby incorporated into this Contract by reference.

2.26 Graffiti Control. The CM shall maintain all Site improvements, including any temporary facilities, equipment or other materials in a graffiti free condition throughout the construction period, until acceptance of the Project by the City. Graffiti encountered on the Site shall be removed by the CM within 24 hours. The payment for graffiti removal shall be included in the GMP.

2.28 City Office Space. The CM shall provide office space and required utilities at the Site adjacent to CM's office space for City and design team members. The office space shall be large enough to accommodate at least 4 City staff members and 3 design staff members and shall conform to the requirements of Class "A" Field Office specified in the WHITEBOOK. The furnishing of the office space shall be provided by the CM as set forth in Exhibit P and included in the GMP. The field office and contents specified in these specifications will become the CM's property upon completion of the Project.

2.28.1 Supplies and Equipment. All supplies for equipment (including paper and printer ink) shall be provided by the CM. The CM shall be responsible for maintenance of all equipment supplied and shall retain ownership of all equipment at the conclusion of Project.

2.28.3 Parking. The CM shall provide 2 parking spaces at the Site for use by the City.

2.29 Native American, Archaeological and Paleontological Discoveries. If a Mitigation, Monitoring, and Reporting Program (MMRP) for historical, and/or paleontological resources has been prepared for the Project, then the MMRP will control in lieu of this section, unless the MMRP is silent to these issues.

2.29.1 Discovery. If discovery is made of items of Native American, archaeological and/or paleontological interest, the CM shall immediately notify the City's Representative and cease any soil disturbing activity in the area of discovery and any nearby area. The CM shall then proceed in accordance with Exhibit R - Archeological and Paleontological Monitoring, attached hereto and incorporated into this Contract by reference. Excavation in the areas of interest shall not resume until authorized by the City's Representative in writing.

2.29.1.1 Discoveries which may be encountered include, but are not limited to, fossil resources, historic or prehistoric human bones or remains, animal bones or remains, stone implements or other artifacts and/or remnants of dwelling sites, and any items created or altered by humans more than 45 years ago, excluding pipes, laterals and appurtenances.

2.29.2 Contract Adjustments. If items of Native American, archaeological and/or paleontological interest are encountered at the Site, the CM may request an extension of Contract Time and associated costs in accordance with Article 6.

2.29.3 Notice. There are severe civil and criminal consequences for failure to treat Native American, archaeological and/or paleontological discoveries in accordance with local, state and federal laws. CM shall notify all its Subcontractors and Suppliers of the requirements of this section. Failure to notify the City's Representative upon discovery of items of Native American, archaeological and/or paleontological interest is considered a default by contractor and may result in termination of contract.

2.29.4 Indemnity. CM shall indemnify and hold the City, its officers and employees,

harmless from any claims asserted or liability established, including penalties from local, state or federal agencies, arising from the mishandling of Native American, archaeological and/or paleontological resources if the CM fails to notify the City's Representative of such discoveries in accordance with this section.

2.30 Equal Benefits. Effective January 1, 2011, any contract entered into, awarded, amended, renewed, or extended is subject to the City's Equal Benefits Ordinance (EBO). In accordance with the EBO, CM must certify it will provide and maintain equal benefits as defined in section 22.4302 of the Municipal Code for the duration of this Contract. Failure to maintain equal benefits is a material breach of the Contract. CM 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.”

The CM must also give the City access to documents and records sufficient for the City to verify CM is providing equal benefits and otherwise complying with the EBO. The full text of the EBO and the rules implementing the EBO 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.

2.31 Community Liaison. The CM shall retain a community liaison in accordance with Section 7-16 in the WHITEBOOK throughout the Contract Time. The CM shall present its community liaison to the Engineer, in writing, within 15 Days of the award of the Contract. The Community Liaison will be under direction from City.

2.32 Underground Facilities. Pursuant to the California Government Code Section 4216, the CM shall contact the appropriate regional notification center (e.g., Underground Service Alert of Southern California) and obtain an inquiry identification number, at least 2 Working Days, but not more than 14 Days prior to commencing any excavation.

2.32.1 Coordination. Pursuant to Section 4216.2, the CM shall coordinate with owners of “high priority subsurface installations” located within 10 feet of the proposed excavation limits prior to excavating. Certain agencies (e.g., Caltrans) are not required to become a member of a regional notification center. The CM shall contact non-member agencies as identified in the Contract Documents for the location of their subsurface installations.

2.32.2 Location. Before starting the Work, the CM shall physically locate all existing utilities encroaching within 24 inches of any side of the proposed excavation. The CM shall field verify the following:

- a) Location
- b) alignment

- c) Depth
- d) Size of utilities
- e) Service connections
- f) Subsurface improvements marked, known, or inferred from surface features (e.g., headwalls, utility boxes, or manholes)

2.32.3 Verification. Verification shall be by potholing or other methods of similar accuracy acceptable to the Engineer. The CM shall locate utilities after the Notice to Proceed and far enough in advance of the Work. The CM shall immediately notify the Engineer, in writing, of physical conflicts or inability to maintain mandated clearances between existing utilities and the Work. The written notification shall include the following:

- a) Date of locating
- b) Method of utility locating
- c) Type
- d) Size
- e) Material of utility or facility
- f) Horizontal location (to the nearest survey station)
- g) Depth from existing pavement or ground surface to the top and bottom of utility
- h) Suspected owner
- i) The date on which any conflict with the utility will impact the Project completion date

2.32.4 Restoration. The CM shall fill potholes on the same day of excavation. If no excavation is performed within 10 Working Days, the Contractor shall fully restore potholes and any damaged surrounding areas to their original condition unless otherwise specified in the Special Provisions or allowed by the Engineer.

2.32.5 Elevation. Unless specified otherwise as previously potholed, elevations shown on the Plans for existing utilities are based on a search of record information available during design only and are solely for the CM's convenience. The Agency does not guarantee the accuracy of the elevations. 2.32.6 The Plans may not indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project site can be inferred from the presence of other visible facilities.

2.32.7 Transmission Lines. The CM shall notify SDG&E at least 10 Working Days prior to excavating within 10' of SDG&E Underground High Voltage Transmission Power Lines (i.e., 69 KV and higher).

2.33 Site Activities by the City or Separate Contractors.

2.33.1 City's Right to Award Separate Contracts. The City reserve the right to perform work or operations outside the scope of Work of the Contract related to the Project with the City Forces, Separate Contractors, or both. If Work to be performed by another party was not noted in the Contract, the City will give written notice to the CM 10 Working Days prior to the start of any work. If the

CM determines that the work being performed by the City or others may interfere with, or cause damages to Work being performed by the CM, the CM shall notify the Engineer in writing within 3 Working Days of the Engineer's written notice.

2.33.2 Integration of the Work with Separate Contractors. When specified in the Contract Documents, prepare a plan in order to integrate the work performed by Separate Contractors, City Forces, or both with the performance of the Work and submit the plan to the Engineer for approval. The plan must be fair and reasonable for the CM and the Separate Contractors. Work with the Separate Contractors to reach agreement on such plan. Arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, and jointed in an acceptable manner to avoid any damage to the Work or to the work of Separate Contractors.

2.33.3 Coordination. Coordinate the CM's activities and the Schedule with the activities and schedules of Separate Contractors and make any revisions to the Schedule deemed necessary to avoid any disruption to the Work or to the work of Separate Contractors.

2.33.4 Use of Site.

2.33.4.1 Afford the City and the Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. Connect and coordinate its Work and operations with the City and the Separate Contractors' operations as required by the Contract Documents.

2.33.4.2 Coordinate traffic control with the Separate Contractors for the other project(s) and minimize the impact to the community. Prior to the start of construction submit the CM's plan for coordination.

2.33.5 Deficiency in Work of Separate Contractors. If part of the CM's work depends on proper execution or results upon construction or operations by the City or a Separate Contractor, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the CM. Use good faith efforts to resolve any such discrepancies or defects or any related disagreements. The CM's failure to report constitutes the CM's acceptance of the work of Separate Contractors as fit, proper, and coordinated with the Work.

ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES

3.1 Duty to Cooperate. City shall, throughout the performance of the Work, cooperate with CM and perform its responsibilities, obligations and services in a timely manner to facilitate CM's timely and efficient performance of the Work and so as not to delay or interfere with CM's performance of its obligations under the Contract Documents.

3.1.1 Plans and Drawings. City shall furnish at the CM's request, at no cost to the CM, an electronic file of the plans and drawings. The CM is responsible for all reproduction and copying services in order to provide bidders and Subcontractors with plans and specifications for the bidding and the performance of the Work.

3.1.2 Partnering. The CM shall request the formation of a partnering relationship by submitting a request in writing to the City's Representative after approval of the Contract. If the CM's request for partnering is approved by the City, scheduling of a partnering workshop, selecting the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both Parties. The establishment of a partnering relationship will not change or modify the terms and conditions of the Contract, it will not relieve either party of the Legal Requirements of the Contract and will not subject the CM to design responsibilities. The goals of partnering shall include:

3.1.2.1 The CM, the City, Design Professional and the Subcontractors actively working together as partners.

3.1.2.2 Avoidance of destructive confrontation and litigation among the parties.

3.1.2.3 Mutual understanding on how the Work is to be conducted.

3.1.2.4 Establishment of mutual key results to facilitate Project success.

3.1.2.5 Establishment of an atmosphere of team work, trust, and open communication.

3.2 City's Representative. The City's Representative has the authority to enforce compliance with the Contract Documents. The CM shall promptly comply with written instructions from the Engineer. This shall be precedent to any payment under the Contract. The City's Representative will endeavor to provide City-supplied information and approvals in a timely manner to permit CM to fulfill its obligations under the Contract Documents.

3.2.1 Observations. City's Representative shall also provide CM with prompt notice if it observes any failure on the part of CM to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

3.2.2 Field Inspectors. The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with a special inspector pursuant to section 2.9.2.1.

- 3.2.2.1 Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.
- 3.2.2.2 The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
- 3.2.2.3 The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as foremen for the CM.
- 3.2.2.4 The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

3.2.3 Authority. The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequenced or procedures or for safety precautions or programs or responsibility for the CM's failure to perform the work in accordance with Contract Documents.

3.3 Design Professional Services. The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM. The CM shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.

3.3.1 Responsibilities. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.

- 3.3.1.1 Will be available appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents.
- 3.3.1.2 Review the CM's submittals such as Shop Drawings, Working Drawings, product data and samples in accordance with section 2.8.
- 3.3.1.3 Advise City's Representative on matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM.
- 3.3.1.4 Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM.

- 3.4 City's Separate Contractors.** City is responsible for all Work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with CM in order to enable CM to timely complete the Work consistent with the Contract Documents. The Contractor shall afford the City and all separate contractors reasonable opportunity for storage of materials and equipment and performance of their work. The CM shall connect and coordinate its Work and operations with the City and all separate contractors' operations as required by the Contract Documents. The City will direct the separate contractors to cooperate with the CM and to avoid actions or omissions which could interfere with or delay the activities of the CM.
- 3.5 Permit Review and Inspections.** If requested by the CM, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
- 3.5.1 Exceptions.** Regulating agencies of the City, such as Developmental Services, Fire and Planning Departments, enforce Legal Requirements and standards. These enforcement activities are not subject to the responsibilities of the City under this Agreement.

ARTICLE 4 - CONTRACT TIME AND PROJECT ACCEPTANCE

- 4.1 Contract Time.** The CM shall reach Completion of the Project within the Contract Time, which is [insert number] Working Days. Contract Time shall start with the Notice to Proceed for Phase 1 of the Project. The Contract Time includes all phased funding phases.
- 4.1.1 Adjustments.** The Contract Time may be subject to adjustment in accordance Article 6 of this Contract.
- 4.1.2 Phase Funding.** This Contract is subject to phase funding. CM must submit a Resource Allocation and Control System (R.A.C.S) cash flow from which the City can establish a phase funding schedule for the Project. The phase funded schedule will detail the number of phases, the Work under each phase and corresponding cost of each phase which together will equal the GMP. The phase funding schedule shall be attached to this Contract as Exhibit G and incorporated by this reference. Prior to commencement of Work on any phase under this contract the CM must first receive a NTP for that phase of Work. With each NTP, the City shall include a copy of a Comptroller's Certificate or other document demonstrating the funds necessary for the phase are, or will be, on deposit in the City Treasury. Work commenced by CM without an NTP shall be at the CM's sole expense and risk.
- 4.2 Completion.** Completion shall be for the entire Project.
- 4.2 Notice of Completion.** Notice of Completion shall be for the entire Project.

4.2.1 Notification. The CM shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

4.2.1.1 Prior to notifying the Engineer, the CM shall inspect the Work and prepare and submit to the Engineer a comprehensive list of items to be completed or corrected (i.e., Punchlist). The CM shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM to complete all Work in accordance with the Contract Documents.

4.2.2 Joint Inspection. Within 5 Working Days of City's receipt of CM's notice, City and CM will jointly inspect such Work to verify that it is complete in accordance with the requirements of the Contract Documents.

4.2.3 Punchlist to NOC. If such Work is substantially complete, the Engineer will prepare and issue a Punchlist that will set forth (1) the remaining items of the Work that have to be completed within 30 Days before Acceptance, (2) provisions (to the extent not already provided in the Contract Documents) establishing the City's and the CM's responsibilities for the Project's security, maintenance, utilities and insurance pending Acceptance and (3) an acknowledgment that warranties begin on the date of Completion.

4.3 Acceptance. Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Engineer and the CM will jointly inspect to verify that the remaining items of Work have been completed as set forth in section 4.2.3. If the Work is complete, the Engineer will issue an Acceptance Letter to the CM and record a Notice of Completion with the County Recorder.

4.4 Liquidated Damages. The CM understands that if Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. The CM agrees that if Completion is not attained within the Contract Time as adjusted, CM shall pay the City [insert amount] as liquidated damages for each Working Day that Completion extends beyond the date determined by the Contract Time as adjusted.

4.4.1 Exclusive Remedy. Liquidated damages set forth in this section is the exclusive remedy of the City for damages due to the CM's failure to reach Completion within the Contract Time. The City may, however, demand that the surety on the performance bond complete the Project if the CM is not diligently pursuing completion of the Work.

4.4.2 Limitation. The liquidated damages that accrue to the City pursuant to this section shall not exceed 50% of the Construction Fee set forth in the CM's GMP proposal.

4.5 Project Schedule. The project schedule approved as part of the GMP shall be updated and maintained throughout the Work by the CM.

4.5.1 Effect on Contract Time. The project schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM of its obligations to complete the Work within the Contract Time, as such time may be adjusted in accordance with the Contract Documents.

4.5.2 Submission of Updates. An updated project schedule shall be submitted monthly to the City as part of each Payment Request, and in the case that an event causes a substantial change in the schedule.

4.5.3 Status Reports. CM shall provide City with a monthly status report with each project schedule detailing the progress of the Work, including: (1) if the Work is proceeding according to schedule, (2) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (3) other items that require resolution so as not to jeopardize ability to complete the Work within the Contract Time. The monthly status report should include a cost update, use of contingency, status of all RFI's, status of all PCO's and CO's, and a safety report.

4.5.4 Schedule Transmittal Letter. With each schedule submittal the CM shall include a transmittal letter including the following:

4.5.4.1 Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.

4.5.4.2 Current and anticipated delays including the cause of the delay, corrective action and schedule adjustments to correct the delay, and known or potential impact of the delay on other activities, milestones, and by the date of Completion. Failure to list a delay on an interim schedule submittal shall not preclude the CM from later providing the information when it becomes available.

4.5.4.3 Changes in construction sequence.

4.5.4.4 Pending items and status thereof including but not limited to time extension requests, outstanding RFI's, outstanding Changer Orders, and potential Change Orders.

4.5.4.5 Completion date status. If ahead of schedule, the number of Days and Working Days ahead. If behind schedule, the number of Days and Working Days behind.

4.5.4.6 Other project or scheduling concerns.

4.5.4.7 Use of CM Contingency.

4.5.4.8 Financial status, percent complete, and graph of progress.

4.5.5 City Review. City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM from compliance with the requirements of the Contract Documents or be construed as relieving the CM of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

4.5.6 Critical Path Method. The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the critical path. The anticipated time for submittals and Shop Drawings and Working Drawings submittal shall also be included in CPM in order to identify the submittal review process timeline and schedule restrictions on design review.

4.5.6.1 The CPM diagram schedule shall be in Working Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

4.5.6.2 The CPM diagram schedule shall indicate all relationships between activities.

4.5.6.3 The activities making up the schedule shall be sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4.5.6.4 The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.

4.5.6.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

4.5.6.6 The schedule shall show milestones, including milestones for City-furnished information, when those activities are interrelated with the CM activities.

4.5.8 Float. Float time shall be as prescribed below.

4.5.8.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.

- 4.5.8.2 The CM shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Float time within the schedule is jointly owned. Therefore, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Completion date.
- 4.5.8.3 Because Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM, etc.). In such an event, the CM shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Completion date is also exceeded.

ARTICLE 5 - GUARANTEED MAXIMUM PRICE

- 5.1 Contract Price.** The City shall pay the CM the Contract Price for Final Completion of the Project. The Contract Price is determined at the time of Final Completion by the sum of the GMP plus any Change Orders, less any unused Owner's Contingency, CM's Contingency, taxes, allowances, and all other remaining unexpended funds and contingencies. The Contract Price does not include the difference, if any, between the actual Cost of the Work and the Cost of the Work used to determine the GMP, meaning that any savings realized in labor, material, equipment, and other expenses identified as part of the Cost of the Work in Section 1.1, are credited to the City as unexpended funds. In no event shall the Contract Price exceed the GMP plus any Change Orders. The Contract is phase funded.
- 5.1.1 Compensation Under Each Phase.** Total compensation to be paid to the CM by the City for all Work performed under each phase of this Contract shall not exceed the amount specified in the Phase Funding Schedule for each phase unless said amount is modified, in writing, by an amendment of this Contract.
- 5.1.2 Work to be Performed Under Each Phase.** The Work to be performed under this Contract shall be performed during the separate and specific phases identified in the Phase Funding Schedule.
- 5.1.3 Work and Compensation for Funding Phases After Funding Phase 1.** It is expressly understood by and between the City and CM that the Work and compensation for the funding phases after Funding Phase 1 identified in the Phase Funding Schedule are subject to funds being appropriated and authorized by the Mayor and San Diego City Council for said construction and compensation. The City's obligations and the CM's obligations under this multi-phase Contract which will be funded by multi-phase funding authorizations are as follows:

- 5.1.3.1 Funds available for performance are described in the Phase Funding Schedule. The amount of funds available at award is not considered sufficient for the performance required for any funding phase other than Funding Phase 1. When additional funds are available for the full requirements of the next funding phase, the City shall, not later than the date specified (unless a later date is agreed to), so notify the CM in writing. The City shall also modify the amount of funds as available for contract performance as described in the Phase Funding Schedule. This procedure shall apply for each successive funding phases.
- 5.1.3.2 The City is not obligated to the CM for any amount over that specified in the Phase Funding Schedule as available for contract performance and authorized by the Mayor and San Diego City Council.
- 5.1.3.3 The CM is not obligated to incur costs for the performance of Work required for any funding phase after Funding Phase 1, unless and until written notification is received from the City of an increase in the availability of funds. If so notified, the CM's obligation shall increase only to the extent the contract performance is required for the additional funding phases for which funds are made available.
- 5.1.3.4 If the Contract is terminated under the "Termination for Convenience" clause, the settlement proposal shall be determined pursuant to procedures established in Article 9. "Work under this Contract," in that clause means the work under specific funding phases for which funds have been made available. If the Contract is terminated for default, the City's rights under this contract shall apply to the entire multi-phase requirements.
- 5.1.3.5 Notification to the CM of an increase or decrease in the funds available for performance of this Contract under another clause (e.g., an "option" or "changes" clause), shall not constitute the notification contemplated in section 5.1.3.1.

5.2 Guaranteed Maximum Price. The Guaranteed Maximum Price is [insert amount] as shown in Exhibit B and composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The GMP shall be supported by a detailed itemized breakdown that shows the expected hard construction costs for each of the major trades and Project components which will include labor, material, expenses, equipment costs and a reasonable contingency. The GMP may be adjusted in accordance with Article 6 of this Contract. The GMP proposal is not intended to include any changes in scope, systems, kinds, qualities, quantities of materials, finishes or equipment from that shown or reasonably inferable from the information stated in the design documents upon which the GMP was based, subject to the qualifications and assumptions to that GMP, all of which, if required would warrant an adjustment to the Contract Price.

5.2.1 Cost of the Work. The Cost of the Work is defined in Article 1, and is a not-to-

exceed reimbursable amount.

5.2.2 General Condition Costs. The General Conditions Costs is defined in Article 1 and determined by a firm fixed lump sum.

5.2.3 Allowances. CM shall be reimbursed with no markup for the actual cost of the following components, which shall be paid for the out of the allowances provided in the GMP including, but not limited to, the following:

5.2.3.1 [list allowance items]

5.2.3.2 Permits per section 2.4, at the amount charged by the permit-issuing agency.

5.2.4 Taxes. Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount. The City is not exempt from sales tax.

5.2.5 CM Contingency. The CM Contingency is defined in Article 1 and may be used at the discretion of the CM only for the purposes set forth in this section. The CM shall submit a written description of the charges and the remaining funds to the City's Representative within 30 days after each time the CM Contingency is used. The CM shall provide a log of contingency use and potential impacts that the CM is aware of.

5.2.5.1 Scope gaps between trade Subcontractors.

5.2.5.2 Contract default by trade Subcontractors.

5.2.5.3 Cost of corrective work not provided for elsewhere in this Contract. The CM Contingency shall not be used for corrective work required due to CM's and/or any Subcontractor's and/or Design Subcontractor's failure to perform in accordance with the terms of this Agreement and/or in compliance with the Technical Specifications or Construction Drawings, or uninsured losses resulting from the gross negligence or willful misconduct of the CM or its Subcontractors and Suppliers.

5.2.5.4 Errors, discrepancies or omissions in the Technical Specifications or the Construction Drawings, except for errors, discrepancies or omissions that the CM should have reasonably discovered performing its obligations under the Pre-Construction Services Agreement and the amendments thereto.

5.2.5.5 Costs associated with resolving bid protests.

5.2.5.6 When the CM utilizes CM Contingency funds, the CM shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM shall deduct the amount of CM's Contingency funds used from the CM's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.

5.2.6 Construction Fee. Except as otherwise expressly provided in this Agreement, CM shall be compensated a fixed fee in the amount as specified in the GMP, as full and complete compensation for performance of all services and obligations under this Agreement. Unless otherwise expressly provided in this Agreement, the fixed fee shall include full compensation for all costs of any type incurred by CM in performing all services and obligations under this Agreement, including but not limited to the following:

5.2.6.2 Estimating, value engineering and construction management.

5.2.6.3 Construction supervision and Project management personnel, including but not limited to superintendents, Project managers, Project secretaries, Project engineers, Project accountants, and all other CM personnel wherever located.

5.2.6.4 All on-site and off-site equipment, supplies and facilities, including but not limited to, computers, estimating, dictating, communication and accounting equipment, offices space, trailers and storage facilities and other general condition costs not considered hard construction costs.

5.2.6.4 All home-office and field overhead costs of any type including document control and retention.

5.2.6.5 All business license costs.

5.2.6.6 All profit CM will earn under this Agreement.

5.2.7 Owner's Contingency. Owner's Contingency is funds in the amount of **\$(insert amount)** to be used at the discretion of the City to cover any increases in Project costs that result from City directed changes, unforeseen site conditions or design omissions which the CM could NOT have reasonably discovered performing its obligations under the Pre-Construction Services Agreement and the amendments thereto.

5.2.7.1 Markups for Construction Fee, bonds, and insurance will be applied by the CM at the time that Owner's Contingency is used. The GMP Proposal shall express the Construction Fee, bonds, and insurance each

as a percentage of the Cost of the Work for purposes of calculating the markup. There shall be no further markup for use of the Owner's Contingency except for Subcontractor and Supplier markup set forth in section 6.7.3.

5.2.7.2 Use of the Owner's Contingency shall be memorialized by a written Field Order determined and processed in accordance with Article 6. Changes to the Contract Time, the GMP, and/or other terms and conditions of this Contract must be processed as Change Orders.

5.2.7.3 Any surplus in the Owner's Contingency fund at the completion of the Project shall revert to the City.

5.3 Final Accounting. As part of its application to the City for final payment and for determination of the Contract Price, the CM shall submit a final accounting of all payments received towards the GMP. Any unused Owner's Contingency, CM's Contingency, taxes, allowances, and all other remaining unexpended funds and contingencies shall be deducted from the GMP and credited to the City.

ARTICLE 6 - CHANGES TO THE CONTRACT PRICE AND TIME

6.1 Price Escalation of Materials. If during the performance of this Contract, the CM's cost to procure materials for the Project significantly increases over the prices used to calculate the GMP through no fault of the CM or its Subcontractors and Suppliers, the CM may request an increase in the Contract Price in accordance with this article. For purposes of this section, the cost to procure materials "significantly increases" if the CM is obligated to increase the price paid for materials under the terms of its subcontracts with Subcontractors or Suppliers.

6.2 Delays to the Work. If CM is delayed in the performance of the Work that will cause a change in the date of Completion due to acts, omissions, conditions, events, or circumstances beyond its reasonable control and due to no fault of its own or Subcontractors or others for whom CM is contractually or legally responsible, the Contract Time for performance shall be extended by Change Order equivalent to the length of delay.

6.2.1 Notice. The CM shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. The CM must provide written notice of the request to the City within 7 Days of the beginning of the event causing the delay. In the case of a continuing delay only one request is necessary. The notice must be accompanied by a critical path analysis showing how the event impacts the date of Completion.

6.2.2 Events Beyond the Control of the CM. By way of example, events that will entitle CM to an extension of the Contract Time include, but are not limited to,

acts or omissions of City or anyone under City's control (including the Design Professional or their representatives and consultants, separate contractors), City directed changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating agencies, wars, floods, abnormal weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions or otherwise affects the area in which the Project is located and/or the CM's labor and/or supply chain, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties or by delay authorized by the Contract Documents, and other acts of God.

6.2.2.1 If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions caused the Work to be stopped, and that weather conditions had an adverse effect on the scheduled Completion.

6.2.3 Delays Caused by CM. The Contract Time shall not be extended for unexcused delays caused by the CM, its Subcontractors or others for which the CM is contractually or legally responsible. Permitting the CM to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.

6.2.4 Compensation. In addition to CM's right to a time extension for those events set forth in this section, CM shall also be entitled to compensation for the actual cost associated with the delay provided, however, that compensation shall not be adjusted for those events set forth in this section that are beyond the control of both CM and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions that cause the Work to be stopped, and other acts of God.

6.2.4.1 Notwithstanding sections 6.2.4 and 6.2.5, the CM is entitled to compensation for the actual cost of delays to the critical path associated with adverse weather conditions that exceed the number of estimated "rain days" included in the CM's approved Project schedule.

6.2.5 Force Majeure. In the event the Work is delayed due to causes which are outside the control of both parties and their agents, and could not be avoided by the exercise of due care, which may include, but is not limited to, delays by regulating agencies, wars, floods, adverse weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions or otherwise affects the area in which the Project is located and/or the CM's labor and/or supply chain, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties, and other acts of God, both parties will be entitled to an extension in time equivalent to the length of delay. Neither

party will be entitled to compensation from the other for *force majeure* events.

6.3 Differing Site Conditions. If the CM encounters a Differing Site Condition, the CM will be entitled to an adjustment in the Cost of the Work and/or Contract Time to the extent CM's cost and/or time of performance are adversely impacted by the Differing Site Condition.

6.3.1 Notice. Upon encountering a Differing Site Condition, the CM shall provide prompt written notice to City of such condition, which notice shall not be later than 7 days after such condition has been encountered. The CM shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.4 Errors, Discrepancies and Omissions. If the CM observes errors, discrepancies or omissions in the Contract Documents, it shall promptly notify the City Representative and request clarification. If the CM proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk.

6.4.1 Corrective Alternatives. The CM shall prepare a cost analysis for each error, discrepancy, or omission to identify the cost of the work around or corrective action and will work cooperatively with the City to determine the cost and schedule impact of all corrective measures before proceeding. The City must approve the selected alternative prior to the CM proceeding with corrective measures.

6.4.2 Risk to CM. The CM shall NOT be entitled to an increase in the Cost of the Work or the GMP, or an extension in Contract Time, for errors, discrepancies or omissions in the Technical Specifications or the Construction Drawings that the CM should have reasonably discovered performing its obligations under the Pre-Construction Services Agreement and the amendments thereto. Discovery of any such errors, discrepancies or omissions shall not relieve the CM of its obligation to complete the Project in accordance with this Contract.

6.5 City Requested Change in Work. The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest. Such alterations and changes shall not invalidate this Agreement nor release the surety, and the CM agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

6.5.1 Design Changes. The CM may provide alterations of a design nature only if authorized in writing, in advance, by the City. In the event of a change of this nature, CM will estimate the cost of the Change/Field Order, assist City in developing drawings and specifications as necessary, solicit a revised bid, negotiate with the Subcontractor, present a recommendation for a Change/Field

Order to City, and implement construction as approved by City.

6.5.2 Request for Proposal. The City will request a proposal for a change in Work from CM, and an adjustment in the Cost of the Work, GMP and/or Contract Time shall be made based on a mutual agreed upon cost and time.

6.6 Change Orders and Field Orders. Except as otherwise provided in this Contract, all changes or alterations to the Work that change the GMP or Contract Time, or change the terms and conditions of this Contract, shall be memorialized by a written Change Order. All other changes may be processed as Field Orders. Compensation included in Change/Field Orders shall include all costs associated with the delay or change in the Work, if any, including all markup, overhead, home and field office overhead, taxes, fees, cumulative effect of Change/Field Orders and all other costs necessary to complete the changed Work.

6.6.1 Negotiation. City and CM shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a delay or change in the Work. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change/Field Order reflecting the terms of the adjustment.

6.6.2 Terms. Unless otherwise indicated in the Change Order, all changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents. All changes in Work authorized by Field Order shall be performed under the conditions of the Contract Documents.

6.6.3 Change/Field Order Plan. The CM shall develop a Project-specific Change/Field Order Administration Plan (CFOA Plan) for review and approval of the City. Upon written approval of the CFOA Plan by the City, the CM shall initiate implementation.

6.6.3.1 The CFOA Plan shall define the required Change/Field Order procedures, including requirements for requesting, developing, approving, recording, and filing.

6.6.3.2 The CFOA Plan shall define the procedure by which the Change/Field Order information is distributed to all affected parties.

6.6.3.3 The CFOA Plan shall identify all individuals and firms assigned to implement the CFOA Plan, and schedules for processing any action occurring under the Plan from first knowledge or notice of change through final execution of the Change/Field Order.

6.6.3.4 The CFOA Plan shall include a flow chart with procedures and duration of each step.

6.7 Contract Price Adjustments. The increase or decrease in the Cost of the Work or its components resulting from a change in the Work shall be determined by one or more of the following methods:

6.7.1 Unit Prices. Unit prices set forth in the Agreement, Subcontractor bids, or as subsequently agreed to between the parties.

6.7.1.1 If unit prices are set forth in the Contract Documents, Subcontractor bids, or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

6.7.2 Lump Sum. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City.

6.7.3 Markups. Except for changes to the GMP or use of the Owner’s Contingency as set forth in section 5.2.7.1, there shall be no markup for the CM for adjustments to the Cost of the Work. The markups for Subcontractors and Suppliers shall not exceed:

| Component | Overhead | Profit |
|-----------|----------|--------|
| Labor | 10% | 10% |
| Material | 10% | 5% |
| Equipment | 10% | 5% |

6.7.3.1 Markup for overhead and profit includes full compensation for superintendence, insurance premiums, taxes, field office expense, extended overhead, home office overhead, and any other items of expenses (e.g., Change/Field Order estimating and preparation cost, claims preparation cost, schedule analysis, project management, and field engineering). Extended overhead shall be any and all costs incurred either in the field or at the home office resulting from changed Work excluding direct costs related to direct hourly labor, equipment, or materials necessary to complete the changed Work.

6.7.3.2 Work paid under allowance bid items is not subject to markup by the CM, but is subject to markup by Subcontractors and Suppliers.

6.7.3.3 When all or any part of the changed Work is performed by a Subcontractor or Supplier, the markup specified herein shall be applied to the labor, materials, and equipment costs of the Subcontractor/Supplier of one tier only. Regardless of the number of hierarchical tiers of Subcontractors or Suppliers, the markup may be

applied one time only to the performing Subcontractor's/Supplier's total cost.

6.7.4 Bonds. To the sum of the costs and markups provided for in this section, 1% of the cost of the Change/Field Order shall be added as compensation for the increase in the Subcontractor's bond premium caused by the changed Work.

6.7.5 Deductive Change/Field Orders. For changed Work that reduces the Cost of the Work, the reduction in compensation shall be determined in accordance with this section, including a Subcontractor markup reduction in overhead and profit.

6.7.6 Disputes. If the parties are unable to agree on the compensation or the extension in Contract Time for changed Work, CM shall proceed to perform the disputed Work, conditioned upon City issuing a written order to CM specifying City's interpretation of the Work that is to be performed and directing the CM to proceed in accordance with either of the following provisions, at the sole discretion of the City:

6.7.6.1 The City will issue a unilateral Change/Field Order (not signed or approved by the CM) identifying the additional or deleted Work, the additional compensation and the extension in Contract Time, if any, that the City reasonably believes is due to the changed Work. The City shall pay the CM in accordance with the unilateral Change/Field Order pending a resolution of the disputed Work in accordance with Article 8.

6.7.6.2 If the disputed Work is not covered by unit prices in the GMP, the City will compensate the CM on a time and materials basis, calculated in accordance with sections 3-3.2 and 3-3.3 of the 2012 edition of *Standard Specifications for Public Works Construction* (GREENBOOK) as amended by the 2012 City Supplements (WHITEBOOK), except that section 6.7.3 of this Contract shall be used to determine markup instead of 3-3.2.3 of the GREENBOOK or WHITEBOOK. Disputes over extensions of Contract Time shall be resolved in accordance with Article 8, but the cost of the disputed Work determined on a time and materials basis shall be final and binding on both parties.

6.8 Emergencies. In any emergency affecting the safety of persons and/or property, CM shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in compensation and/or Contract Time resulting from emergency work shall be determined as provided in this Article.

ARTICLE 7 - PROCEDURE FOR PAYMENT

- 7.1 Compensation.** For and in consideration of the faithful performance of the Work as set forth in the Contract Documents, the City agrees to pay the CM an amount as determined by this Contract, not to exceed the GMP. Payment for the specific Work under this Agreement will be made in accordance with payment provisions detailed below.
- 7.1.1 Schedule of Values.** Within 90 Days after the issuance of the NTP, CM shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM throughout the Work.
- 7.1.2 Updated Project Schedule.** At least 5 Working Days prior to the date established for a Payment Request, the CM shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request.
- 7.1.3 Payment Requests.** Payment Requests shall be made monthly in arrears, commencing thirty (30) Days after the date of the NTP.
- 7.1.3.1 The Payment Request shall constitute CM's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request.
- 7.1.3.2 The CM may include the entire cost of Payment and Performance Bond premiums in the first Payment Request.
- 7.1.3.3 The CM may include up to 50% of the cost of insurance premiums and the entire cost of Subguard Insurance (Subcontractor Default Insurance) premiums in the first Payment Request.
- 7.1.4 Stored Equipment and Materials.** The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved schedule.
- 7.1.4.1 For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.
- 7.1.4.2 For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within San Diego County and be accessible for City's inspection. The CM must protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site. The CM shall also provide time-dated pictures of all material stored outside of the City of San Diego. The City will consider payment of stored material stored

out of County of San Diego if there is a long lead time for material to be delivered so site and all other conditions above are met. See 9-3.3.1, “Payment for Stored Materials” in the WHITEBOOK.

- 7.1.4.3 All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

7.2 Progress Payments. The City shall pay the CM progress payments no later than 30 days after the Payment Request is received by the City, but in each case less the total of payments previously made, and less amounts properly retained pursuant to stop notices or this Contract.

7.2.1 Withholding. If City determines that CM is not entitled to all or part of a Payment Request for the reasons set forth in this paragraph, it will notify CM in writing within 7 Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM must take to address the City’s concerns. CM and City will attempt to resolve City’s concerns. If the parties cannot resolve such concerns, CM may pursue its rights under the Contract Documents, including those under Article 8 hereof. The City may withhold payment in response to a Payment Request because of subsequently discovered evidence which may nullify the whole or a part of a Payment Request previously issued, to such extent as may be necessary in the City’s opinion to protect it from loss for which the CM is responsible, including loss resulting from acts and omissions of the CM or because of any of the following:

- 7.2.1.1 Defective Work not remedied within a reasonable period of time following written notice from the City and provided the amount of such claim, when added to other outstanding claims, exceeds the amount of the retention held by the City.
- 7.2.1.2 Uninsured third-party claims filed, or upon reasonable evidence indicating the probability of such claims being filed, for which the CM is solely responsible pursuant to the Contract Documents and provided the amount of such claims, when added to other outstanding claims, exceed the amount of any retention held by the City.
- 7.2.1.3 Reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP where the extent of the overrun is an amount greater than the amount of any retention held by the City.
- 7.2.1.4 Uninsured damage to the City’s property for which the CM is solely responsible pursuant to the Contract Documents and provided that the amount of such claim, when added to other outstanding claims, exceeds the amount of any retention held by the City.

- 7.2.1.5 Repeated failure to perform the Work in accordance with the Contract Documents.
- 7.2.1.6 Repeated failure of the CM to provide an appropriate Project Schedule or an appropriate Project Schedule update pursuant to this Contract.
- 7.2.1.7 Written demand by the CM's surety.
- 7.2.1.8 Failure of the CM to indemnify the City as required by this Contract.
- 7.2.1.9 Failure of the CM to timely submit Equal Opportunity Contracting Program reports required by section 2.3.5, but only until such reports are submitted and approved by the City.
- 7.2.1.10 As required by California Civil Code section 3186 when stop notices are received by the City, in the amount of 150% of the amount claimed in the stop notices.
- 7.2.1.11 Failure of the CM to abide by any other provision of this Contract, but only when such provision specifically states that withholding of progress payments by the City is permitted.

7.2.2 Retention. City will retain 5% of each progress payment to ensure successful completion of the Work, exclusive of General Conditions and the Construction Fee.

- 7.2.2.1 The CM may elect to receive 100 percent of payments due under the Contract Documents from time to time, without retention of any portion of the payment by the City, by depositing securities of equivalent value with the City in accordance with the provisions of Section 22300 of the Public Contract Code. Such securities, if deposited by the CM, shall be valued by the City, whose decision on valuation of the securities shall be final. Securities eligible for investment under this provision shall be limited to those listed in section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CM and the City.
- 7.2.2.2 Alternatively, upon request by the CM the City shall make payment of retentions earned directly to an escrow agent at the expense of the CM, in accordance with Section 22300 of the Public Contract Code.
- 7.2.2.3 The City shall not withhold retention from payments to the CM for bonds or insurance.

7.3.1 Cessation of Labor. If there has been a cessation of labor for a continuous

period of 60 days due solely to the City's failure to issue a NTP for the subsequent phase of the Work, the CM may submit an application for final payment which the City shall process in accordance with this section.

7.3.2 Final Payment Request. At the time of submission of its final Payment Request, the CM shall provide the following information:

7.3.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests, other than any known outstanding stop notices which the CM shall list.

7.3.2.2 A general release executed by CM waiving, upon receipt of final payment by CM, all claims except those claims previously made in writing to City and remaining unsettled at the time of final payment which the CM shall list with the amount of each claim.

7.3.2.3 Written consent of CM's surety to the City's release of retention and making final payment.

7.4 Prompt Payment. The CM shall pay its Subcontractors and Suppliers within 7 Days of receipt of each progress payment from the City. The CM shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment.

7.4.1 Retention and Withholding. The CM may retain or withhold a proportionate amount of the funds retained or withheld from the CM by the City attributable to the Work provided by the Subcontractors and Suppliers. Any reduction of retention or withholding by the City to the CM shall result in a corresponding reduction to Subcontractors or Suppliers who have performed satisfactorily. CM shall pay Subcontractors or Suppliers the released retention and withholding within 7 Days of receipt of payment from the City pursuant to Public Contract Code section 7107. No contract between CM and its Subcontractors and Suppliers may materially alter the rights of any Subcontractor or Supplier to receive prompt payment and retention reduction as provided herein.

7.4.2 Violations. If the CM fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM agrees that the City may take such actions:

7.4.2.1 Hold the CM in default under this Agreement.

7.4.2.2 Withhold future progress payments including retention until proper payment has been made to Subcontractors or Suppliers in accordance with these provisions.

7.4.2.3 Debarment pursuant to the San Diego Municipal Code.

7.4.2.4 Terminate this Contract pursuant to Article 9.

7.4.3 No Waivers. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this section or of any of the terms or provisions thereof unless expressly waived by the City in writing.

7.4.4 Subcontracts. The CM shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.5 Record Keeping and Finance Controls. The City, its authorized representative, and/or the appropriate state agency, may audit the CM's records to verify the accuracy and appropriateness of all Payment Requests, pricing data, including data used to negotiate the GMP, Contract Documents and any Change Orders, and any other documents related to the Project in accordance with Municipal Code Section 22.3808(d). The CM shall make its records available to the City for inspection and copying during reasonable business hours.

7.5.1 Record Retention. Records of the CM's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and the CM shall be kept on a generally recognized accounting basis and shall be available for four years after Completion of the Project.

7.5.1.1 The CM's attention is directed to the City of San Diego Labor Compliance Program, Section IV, pages 4-7, and the State of California Labor Code Sections 1771.5(b) and 1776. These require, in part, that the CM and Subcontractors maintain and furnish to the City, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

7.5.1.2. The CM and Subcontractors must submit weekly certified payrolls reflecting the wages of all the CM's and Subcontractors' employees engaged in the Work online via Prism® i.e., the City's web-based labor compliance program as specified

7.5.2 Adjustments. The City reserves the right to decrease the Cost of the Work and/or payments made under this Agreement if, upon audit of the CM's records, the audit discloses the CM has provided false, misleading, or inaccurate cost and pricing data. The amount of the decrease shall be equal to the amount of the error. City reserves all rights and remedies available under the law for such false or misleading disclosures.

7.5.3 Subcontracts. The CM shall include a similar provision in all of its agreements with Suppliers and Subcontractors providing Work for the Project to ensure the City, its authorized representative, and/or the appropriate state agency, has access to the Suppliers' and Subcontractors' records to verify the accuracy of cost and pricing data.

ARTICLE 8 - CLAIMS AND DISPUTES

8.1 Claims. The CM shall submit a claim to the City if a dispute occurs between the City's Representative and the CM that arises from or relates to the Contract or the Work. The claim shall be in writing and set forth all relief to which the CM asserts it is entitled as a result of the event(s) giving rise to the dispute.

8.1.1 Exclusive Process. The CM shall process all disputes with the City in accordance with this section. The CM's failure to process a claim in accordance with this section shall constitute a waiver of all relief associated with the dispute. Claims shall be subject to audit by the City in accordance with section 7.5 of this Contract. The CM shall continue to perform the services and the Work and maintain the Schedule during any dispute proceedings and City will continue to make progress payments for undisputed services and Work.

8.1.2 Tolling. The claims process in this section shall toll the CM's statutory obligation to present claims under the California Government Code until the conclusion of mediation pursuant to this Article.

8.1.3 Deadline to Submit Claim. The CM shall promptly, but in no event later than 60 Days after the event(s) giving rise to the claim, deliver the claim to the City. Ongoing discussions or negotiations with the City's Representative shall not extend the deadline to submit a claim unless an extension is granted by the City's Representative in writing.

8.1.4 Claim Certification Requirements. If the claim seeks an increase in compensation, the Contract Time, or both, the CM shall submit with the claim an affidavit certifying that:

8.1.4.1 The claim is made in good faith and covers all costs and delays to which the CM is entitled as a result of the event(s) giving rise to the claim.

8.1.4.2 The amount claimed accurately reflects the adjustments in compensation, the Contract Time, or both to which the CM believes it is entitled.

8.1.4.3 All supporting costs and pricing data are current, complete, and represent the CM's best knowledge and belief available at the time the claim is submitted. The CM shall supplement information required herein as or should additional cost and pricing data become available. The CM shall ensure that the affidavit is executed by an official who has the authority to legally bind the CM.

8.1.5 Initial Determination. An initial determination is the City's written approval or denial of a claim from the CM. Within 30 days of receipt of a claim, the City will deliver an initial determination to the CM. The City will not consider and will return to the CM any claim that does not conform to this section.

8.1.5.1 The CM may request a settlement meeting after it submits a claim to the City. A settlement meeting shall be held within 20 days of receipt of the CM's written request unless otherwise agreed by the parties. This meeting will be an opportunity for the CM to explain its claim to the City. The meeting shall be attended by an officer of the CM and representative of the City of at least Deputy Director level. If a settlement cannot be reached, the City will issue an initial determination. The time for issuing an initial determination shall be tolled by the number of Days between the date a request for a settlement meeting is received by the City and the date the settlement meeting is held.

8.1.6 Final Determination. If the CM disagrees with the initial determination, the CM may request a final determination. The CM's request shall be in writing and shall be delivered to the City within 30 Days from CM's receipt of the initial determination. The City will deliver a final determination to the CM within 30 Days after receipt of the CM's written request. A final determination is the City's final written decision on the CM's claim, signed by a representative of the City of at least Director level, which is binding on the CM unless the CM notifies the City in writing of its objection within 20 Days after receipt of the final determination, and files a "Request for Mediation" pursuant to this Article. Failure to give notice of objection within 20 Days shall be deemed to be a waiver of its right to pursue the claim.

8.2 Mandatory Non-binding Mediation. If the CM disagrees with the City's final determination, the CM may request mediation by notifying the City in writing within 20 Days after receipt of the final determination. The parties will endeavor to settle the claim in an amicable manner, using mandatory non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed to by the parties. Mediation is mandatory before either party may have recourse in a court of law.

8.2.1 Mediation Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

8.2.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the claim. The mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the American Arbitration Association or any other agreed upon mediator.

8.2.3 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the claim, though the City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorney(s), witnesses or expert(s) present. Either party may request a list of witnesses and notification whether attorney(s) will be present.

8.2.4 Mediation Results. Any resultant agreements from mediation shall be documented in writing. Mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

8.3 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Work provided by the CM under this Contract, upon the City's request the CM agrees to assist in resolving the dispute or litigation. The CM's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution, litigation, or both.

8.3.1 Compensation for Mandatory Assistance. The City will reimburse the CM for reasonable fees and expenses incurred by the CM for any required assistance rendered in accordance with this section.

8.3.1.1 If the City reasonably determines that the basis of the dispute or litigation in which these fees and expenses were incurred was the result of the conduct of or failure to act by the CM, Subcontractors, Suppliers or their respective agents, officers, and employees, in part or in whole, the City shall be entitled to be reimbursed a proportionate amount of any payments made for these fees and expenses. Reimbursement may be through any legal means necessary, including the City's withholding of payment.

- 8.3.1.2 Reasonable attorneys' fees incurred in providing the City with dispute or litigation assistance are reimbursable only if the CM is not a party to the same dispute or litigation for which the City requested mandatory assistance, and only to the extent the attorneys' work is reasonably related to the assistance provided to the City.
- 8.3.1.3 Any dispute between the City and the CM over compensation for mandatory assistance shall be submitted to mandatory non-binding mediation in accordance with section 8.2.

ARTICLE 9 – SUSPENSION AND TERMINATION

- 9.1 Suspension of Work.** The City may, at any time and without cause, suspend the Work or any portion thereof for a continuous period of not more than sixty (60) Days by notice in writing to the CM. The CM shall resume the Work on receipt from the City of a notice to resume the Work. If the Work is suspended by the City, the City shall not unreasonably deny a request for a change in the Contract Time or additional compensation, or both, directly attributable to the suspension not resulting from the CM's actions or inactions as provided in section 6.2 of this Contract.
- 9.2 Termination for Convenience.** The City may terminate the CM's performance of Work under this Contract, in whole or, from time to time, in part, only if the Mayor and City Council do not appropriate sufficient monies to fund the Contract. The City will terminate the Contract by delivering a notice of termination in writing to the CM, specifying the extent of termination and the effective date. In the event the City terminates for its convenience, the following provisions will also apply to such termination in addition to any provision of the Contract permitting such termination and shall also survive the termination.
 - 9.2.1 Notice of Termination.** Unless otherwise directed by the City, upon receipt of the notice of termination the CM shall immediately proceed as follows:
 - 9.2.1.1 Stop all Work immediately or as specified in the notice.
 - 9.2.1.2 Immediately cease placing further subcontracts for labor, materials, services, or facilities, except as necessary to complete any authorized portion of the Work.
 - 9.2.1.3 Immediately terminate all subcontracts to the extent they relate to the Work terminated.
 - 9.2.1.4 With approval by the City, settle all outstanding obligations arising from the termination of subcontracts, the approval of which will be final for purposes of this clause.

- 9.2.1.5 Transfer the title and deliver to the City, completed or partially completed drawings, plans, calculations, specifications and any other documents and records that, if the Contract has been completed, would be required to be furnished to the City. The City also, for itself and its successors and assigns, agrees that all rights and title to all work product of the CM for which the CM has not been paid, if any, shall revert to, or remain with, the CM and the City agrees to refrain from using any such work product, bidders and/or Subcontractors and Suppliers in connection with the Project.
- 9.2.1.6 Complete performance of the Work not terminated, if any.
- 9.2.1.7 Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project, including property related to this Contract that is in the possession of the CM and in which the City has or may acquire an interest.

9.2.2 Removal of City Property. The CM may request the City to remove any City's property being stored by CM or enter into an agreement for its storage. Within 60 Days, the City will accept possession of property and remove it or enter into a storage agreement.

9.2.3 Termination Settlement Proposal. After termination, the CM shall submit a final termination settlement proposal to the City's Representative. The CM shall submit the proposal promptly, but not later than 6 months from the effective date of termination, unless extended in writing by the City within this 6-month period. However, if the City determines that the circumstances justify it, a termination settlement proposal may be received and acted on after 6 months or any extension.

9.2.3.1 If the CM fails to submit the proposal within the time allowed, the City may, in good faith, determine, on the basis of information available, the fair and reasonable amount, if any, due the CM as a result of the termination and pay the amount determined.

9.2.3.2 If the CM does not agree that the amount determined by the City is fair and reasonable, the CM must submit a claim and pursue the dispute resolution process in Article 8.

9.2.4 Compensation for Termination. Subject to section 9.2.3, the CM and the City may agree upon the whole or any part of the amount to be paid because of the termination for convenience. However, the agreed amount may not exceed the total amount of phase funding approved by the Mayor and City Council as reduced by the amount of payments previously made and the Cost of the Work not terminated. Compensation for termination may include elements not originally included in the Cost of the Work such as:

- 9.2.4.1 Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination of settlement proposals and supporting data.
- 9.2.4.2 The termination and settlement of subcontracts.
- 9.2.4.3 Storage, transportation, and other costs incurred when reasonably necessary for the preservation, protection, or disposition of property in which the City has or may acquire an interest.
- 9.2.4.4 A reasonable allowance for premature demobilization from the Site.

9.2.5 Failure to Agree on Compensation. If the CM and City fail to agree on the amount to be paid because of the termination for convenience, the City shall pay the CM the fair and reasonable amounts determined in good faith by the City as follows, but without duplication:

- 9.2.5.1 The cost of completed Work accepted by the City and not previously paid for, adjusted for any saving of freight and other charges.
- 9.2.5.2 The costs incurred towards the performance of the Work terminated, including initial costs, and preparatory expense allocable thereto.
- 9.2.5.3 The fair and reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract.

9.2.6 Payment for Property Destroyed, Lost Stolen or Damaged. Except to the extent that the City expressly assumed the risk of loss, the City shall exclude from the amounts payable to the CM the fair value of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the City.

9.2.7 Deductions. In arriving at the amount due the CM for termination for convenience, there shall be deducted:

- 9.2.7.1 All advances or other payments to the CM under the terminated portion of this Contract.
- 9.2.7.2 Any claim which the City has against the CM under this Contract.
- 9.2.7.3 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the CM or sold pursuant to termination and not recovered by or credited to the City.

9.2.8 Records Relating to Termination. Unless otherwise provided, the CM shall maintain all records and documents relating to the terminated portion of this Contract for four (4) years after final settlement. This includes all records bearing on the CM's costs and expenses under this Contract. The CM shall make these

records and documents available to the City, at the CM's office, at all reasonable times, without charge. Photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

9.3 Termination By CM. The CM may terminate this Contract upon fourteen (14) Days written notice to the City under the following circumstances:

9.3.1 Suspension Exceeding Sixty Days. If the Work has been suspended under section 9.1 for more than 60 Days through no fault or negligence of the CM.

9.3.2 Failure to Pay. If the City should fail to pay the CM any uncontested portion of a progress payment within 90 Days after receipt of a Payment Request.

9.3.3 Waiver of Claims. If the CM terminates the Contract pursuant to this section, the CM may not recover any profits or overhead post-termination it may have anticipated had the Contract not been terminated. Nothing herein shall serve to limit claims the CM may have against the City prior to the CM's termination, provided such claims were submitted to the City pursuant to Article 8 prior to termination by the CM. Termination by the CM shall not relieve either party of its obligation to complete the dispute resolution process in accordance with Article 8 of this Contract.

9.4 Termination for Cause. In the event of default by the CM, the City may terminate the Contract for cause.

9.4.1 Notice. The City shall give 14 Days written notice to the CM of the City's intent to terminate the Contract and provide the CM and all Sureties an opportunity to remedy the conditions constituting the default.

9.4.2 Default. It shall be considered a default if the CM does one or more of the following prior to acceptance of the Work, or otherwise commits a material breach as described by other provisions of this Contract and fails to correct the deficiency after having a reasonable opportunity to cure as set forth in Section 9.4.3:

9.4.2.1 Becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due or is otherwise financially unable to complete the Work.

9.4.2.2 Persistently fails to provide materials or workmanship meeting the requirements of the Contract Documents, and fails to correct the defective work as required by section 2.14.

9.4.2.3 Persistently disregards or violates provisions of the Contract Documents or City's reasonable instructions.

- 9.4.2.4 Persistently fails to prosecute the Work according to the approved progress schedule without excusable delays.
- 9.4.2.5 Abandons the Project by persistently failing to report to the Site and diligently prosecute the Work.
- 9.4.2.6 Fails to notify the City's Representative upon discovery of Hazardous Materials or items of Native American, Archaeological, or Paleontological interest.
- 9.4.2.7 Persistently disregards laws or regulations of any public agency having jurisdiction.
- 9.4.2.8 Commits continuous or repeated serious violations of approved or legislated safety requirements.
- 9.4.2.9 Fails to maintain the insurance and bonds set forth in Article 10.

9.4.3 Failure to Cure. If the CM fails to remedy or fails to engage in reasonable actions to cure the conditions constituting default within 14 Days and any extensions that may be granted by the City which shall not be unreasonably withheld, the City may then terminate the Contract for cause by delivering written notice of termination to the CM.

9.4.4 City May Take Possession. In the event the Contract is terminated for cause, the City may take possession of the Project and may complete the Work by whatever method or means the City may select. The cost of completing the Work shall be deducted from the balance which would have been due the CM had the Contract not been terminated and the Work completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the CM shall pay the excess amount reasonably incurred to the City. If such cost is less than the balance which would have been due, the CM shall not have claim to the difference.

9.4.5 Preservation of Rights. Where the CM's services have been terminated for cause by the City, the termination will not affect any rights or remedies of the City against the CM then existing or which may thereafter accrue. Any retention or payment of moneys due the CM by the City will not release the CM from liability.

9.4.6 Effect of Improper Termination. If the City improperly terminates this Contract for cause, the termination shall automatically be converted to a termination for convenience under section 9.2.

ARTICLE 10 - INSURANCE AND BONDS

- 10.1 Insurance Requirements.** The CM shall procure insurance as shown in Exhibit F to protect against claims for loss including injuries to persons or damage to property, which may arise out of or in connection, with the performance of the Work hereunder by the CM, its agents, representatives, officers, employees, Suppliers or Subcontractors. CM shall maintain this insurance for the duration of this Contract and at all times thereafter when the CM is correcting, removing, or replacing Work in accordance with this Contract.
- 10.1.1 Liabilities.** CM's liabilities, including but not limited to CM's indemnity obligations, under this Contract shall not be deemed limited in any way to the insurance coverage required herein.
- 10.1.2 Cost of Insurance.** Payment for insurance shall be included in the GMP, and except as specifically agreed to by the City in writing, CM shall not be entitled to any additional payment nor shall the City be entitled to any credit.
- 10.1.3 Proof of Insurance.** CM shall not begin any Work under this Contract until it has provided, and the City has approved, all required insurance certificates and endorsements.
- 10.1.4 Notice of Cancellation.** Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to 30 Days prior written notice (10 Days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Contract and CM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated as a material breach of contract.
- 10.2 Bonds.** The CM shall furnish performance and payment bonds on forms provided by the City, each in the amount of the funded phases of the GMP less the amount of the Owner's Contingency.
- 10.2.1 Performance Bond.** A performance bond to guarantee faithful performance of the Contract and associated Work, within the time prescribed, and in a manner satisfactory to the City.
- 10.2.2 Payment Bond.** A payment bond to satisfy claims of material suppliers and of mechanics and laborers employed on the Work. The payment bond shall be maintained by the CM in full force and effect until the Work is accepted by the City and until all claims for materials and labor are paid, and shall otherwise comply with all applicable laws.

10.2.3 Licensed Surety. All bonds shall be in the form prescribed by the Contract Documents and by such sureties which are admitted insurers in the State of California and are subject to regulation by the Department of Insurance, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required.

10.2.4 Bankrupt or Insolvent Surety. If the surety on any bond furnished by the CM is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CM shall within 7 Days thereafter substitute another bond and surety meeting the requirements of this section.

10.2.5 Phase Funding. The amount of the performance and payment bonds shall be phased to reflect the phase funding of this Contract.

10.2.5.1 The amount of the performance and payment bonds shall be \$[insert amount] for Phase 1 of the Project.

10.2.5.2 When the City issues the NTP for Phase 2 of the Project, the amount of the performance and payment bonds shall increase by \$[insert amount].

10.2.5.3 The amount of the performance and payment bonds shall also increase as the City authorizes expenditures from the Owner's Contingency, in the amount of the actual increase.

ARTICLE 11 - INDEMNIFICATION AND LIMITATION OF LIABILITY

11.1 General Indemnity. CM agrees to defend, indemnify, protect and hold City, its officers and employees, harmless from and against all claims or judgments asserted, or liability established for damages or injuries to any person or tangible property other than to the Work itself and/or the materials or equipment incorporated therein including to CM's employees, agents or officers, arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of the CM, its agents, officers and employees. The obligation to indemnify shall be effective even if the City, its officers or employees established passive negligence contributes to the loss or claim. The CM's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active or sole negligence, or sole willful misconduct of the City, its agents, officers or employees.

- 11.2 Indemnity for Design Services.** With respect to any design/build services provided by or through the CM under this Contract, except as otherwise provided by Civil Code Section 2782.8, CM shall indemnify and hold harmless the City, its officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the CM, its design professionals, officers or employees.
- 11.3 Limitation of Liability.** Under no theory of recovery, whether based in contract, tort, warranty or otherwise will either the City or the CM be liable to one another for any indirect, incidental or consequential damages arising out of or relating to this Project, except as otherwise covered by insurance under Article 10, liquidated under section 4.4, or compensable under section 9.2 upon the City's termination for convenience.
- 11.4 Survival.** The indemnity provisions in this Article shall survive termination of this Contract and continue so long as a viable claim exists.

ARTICLE 12 – GENERAL PROVISIONS

- 12.1 Contract Interpretation.** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time for the GMP. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.
- 12.1.1 Order of Precedence.** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.
- 12.1.1.1 On the drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings.
- 12.1.1.2 Specifications take precedence over Plans.
- 12.1.2 Headings.** The headings used in this Contract or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.1.3 Integration Clause.** The Contract Documents form the entire agreement between City and CM and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 12.1.3 Joint Venture Contractors.** If the CM is a joint venture, all grants, covenants, provisions and claims, rights, powers, privileges and liabilities of the Contract

will be construed and held to be several as well as joint. Any notice, request or other communication given by the City to any member of the joint venture shall be deemed to have been given to all and shall bind all members of the joint venture. The CM's representative and any alternates shall have the full authority to bind all members of the joint venture.

12.2 Information Security Policy. The Contract is subject to the City's Information Security Policy (ISP) as defined in the City's Administrative Regulation 90.63. By submitting a Bid, the CM agrees to fully comply with the ISP. Full text of the ISP and the Administrative Regulation 90.63 can be requested from the Contract Specialist. The CM's failure to abide by the City's Administrative Regulation 90.63 (ISP) will be a breach of the Contract. The CM must notify employees of their ISP responsibilities and must post a copy of the following statement in an area frequented by employees who access the City's computer systems:

- 12.2.1 Uses of City computer equipment, network services, electronic systems and electronic data, including Email and Internet services, are for City business or work-related purposes. The use of City computer equipment or information technology services for personal use is prohibited.
- 12.2.2 Computer files developed, created or enhanced within the scope and course of City contract employment, or a City third-party contractual relationship, are the property of the City of San Diego, regardless of their physical location or the form in which they are maintained.
- 12.2.3 The City reserves the right to access and disclose all messages and other electronic data sent over its Email systems or stored in computer files on City Computer Equipment. The City-related computer files created, developed or enhanced on remote access personal computers must be provided upon the City's request in City standard formats.
- 12.2.4 Users must be responsible in their use of City computer equipment and network services. Any action that may cause interference with City computer systems exposes the City's computer systems to risk or adversely impacts the work of others in using these computer systems is prohibited.
- 12.2.5 Every end user must have a single unique user ID and a personal password which must be kept confidential. This user ID and password will be required for access to all multi-user computer equipment and network services. User passwords must comply with the Information Security Guidelines and Standards.
- 12.2.6 Users accessing City computer systems are prohibited from gaining unauthorized access to any other computer systems or in any way damaging, altering, or disrupting the operations of these systems. Users are prohibited from capturing or otherwise obtaining passwords, encryption keys, or any other access control mechanism which could permit unauthorized access.

- 12.2.7 The CM must give the Engineer access to documents and records sufficient for the Engineer to verify the CM are complying with ISP requirements.
- 12.3 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.4 Time is of the Essence.** City and CM mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 12.5 Mutual Obligations.** City and CM commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 12.5.1 Cooperation and Further Documentation.** The CM agrees to provide the City such other duly executed documents as shall be reasonably requested by the City to implement the intent of the Contract Documents.
- 12.5.2 Employees.** Neither the City nor the CM may solicit or employ any of the other's employees assigned to provide services in connection with this Project for the duration of the Project and then for a period of one year thereafter.
- 12.6 Assignment.** Neither CM nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.
- 12.7 Successors-In-Interest.** This Contract and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Contract have been succeeded by another entity, and all rights and obligations of the parties signatory to this Contract shall be vested and binding on their successors-in-interest.
- 12.8 Third Party Beneficiaries.** Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM and not for the benefit of any other person.
- 12.9 Governing Law.** The Contract and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court of San Diego County, California, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction of such Court.
- 12.10 Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way, except to the extent that enforcement of this Contract without the invalidated

provision would materially and adversely frustrate either or both parties' essential objectives set forth in this Contract.

12.11 Compliance with Laws. The CM shall perform all Work in accordance with all applicable federal, state and local laws and regulations pertaining to the Work, and shall ensure that all Subcontractors and Suppliers also comply.

12.10.1 Project Design. It is not the CM's responsibility to ascertain that the design of the Project is in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM recognizes that portions of the Project design are at variance therewith, the CM shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

12.12 Independent Contractor. The CM is and shall be an independent contractor. Any provisions in the Contract that may appear to give the City the right to direct the CM as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the CM shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

12.13 No Waivers. The failure of either party to enforce any of the provisions of the Contract or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions unless the waiver is in writing. Prior waivers shall not preclude the right of either party to thereafter enforce each and every provision of this Contract.

12.14 Limitation on Powers. Nothing in this Contract shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

12.15 Conflict of Interest. The CM shall establish and make known to its employees appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Project personnel shall not accept gratuities or any other favors from potential Subcontractors or Suppliers.

12.15.1 Applicable Laws. The Contractor shall be subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, e.g., California Government Code Sections 1090, et. seq., and 81000, et. seq., and the City Ethics Ordinance, codified in the City Municipal Code at Sections 27.3501 to 27.3595.

12.15.2 Statement of Economic Interests. If, in performing the Services and/or Work set forth in this Contract, the CM makes, or participates in, a "governmental decision" in accordance with title 2, Section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in the applicable department's conflict of interest code, the CM shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CM's relevant financial interests.

12.15.2.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The CM shall file a Form 700 (Assuming Office Statement) within 30 Days of the City's written determination that the CM shall be subject to a conflict of interest code. The CM shall file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the CM was subject to a conflict of interest code.

12.15.2.2 If the City requires the CM to file a statement of economic interests as a result of the Services and/or Work performed, the CM shall be considered a "City Official" subject to the provisions of the City Ethics Ordinance, including the prohibition against lobbying the City for one year following the expiration or termination of this contract.

12.15.3 Affiliations. The CM shall not recommend or specify any product, supplier, or contractor with whom the CM has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. This section shall not prohibit CM from utilizing its in-house brokerage staff to secure all insurance required by the Contract Documents.

12.15.4 Violations. If the Contractor violates any conflict of interest laws or any of these conflict of interest provisions, the violation shall be grounds for immediate termination of this Contract for cause. Further, the violation subjects the Contractor to liability to the City for all non-consequential damages sustained as a result of the violation.

12.16 Notice. Unless otherwise provided, any notice, request, instruction or other document to be given under this Contract by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of 3 Working Days after the day mailed by certified mail, as follows:

to CM:

[name]
[firm]
[address]
[Phone]
[Fax]
[email]

to City:

James Nagelvoort - City Engineer
City of San Diego

600 B Street, 8th floor
San Diego, CA 92101
Phone: 619.533.5100
Fax:
jnagelvoort@sandiego.gov

With a Copy to:

City Attorney
San Diego City Attorney's Office
1200 3rd Avenue, Suite 1600
San Diego, CA 92101
Phone: 619.533.5800
Fax: 619.533.5856
cityattorney@sandiego.gov

- 12.16.1 Change of Address.** Either party may change the address where notice should be sent by notifying the other party in writing.
- 12.16.2 Effect of Rejection.** Any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.
- 12.17 Effective Date.** This Contract shall become effective on the date the last party fully executes the Contract.
- 12.18 Product Endorsement.** Any advertisements referring to the City of San Diego as a user of a product or service requires prior written approval of the City pursuant to City Administrative Regulation 95.65.
- 12.19 Incorporation of Exhibits and Recitals.** All exhibits referenced in this Contract and all recitals are incorporated herein by reference.
- 12.20 Counterparts.** This Contract may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

IN WITNESS WHEREOF, this Contract is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to Resolution No. R-_____ authorizing such execution, and by the CM through its duly authorized officer.

[name of CM]

CITY OF SAN DIEGO

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

I HEREBY APPROVE the form and legality of the forgoing agreement this ____ day of _____, 2013.

JAN I. GOLDSMITH, City Attorney

By: _____
Deputy City Attorney

City of San Diego



CITY CONTACT

Contract Specialist: Claudia Abarca
Address: 1200 Third Avenue, Suite 200, MS 56P
Email: CAbarca@sandiego.gov
Phone No.: 619-236-6669 Fax No.: 619-236-5904
AA/MM/egz

ADDENDUM “2”

REQUEST FOR PROPOSALS (RFP)

PRE-CONSTRUCTION SERVICES FOR THE UPAS STREET PIPELINE REPLACEMENT PROJECT CONSTRUCTION MANAGER AT RISK

| | | |
|----------------------|-------|--------------------|
| BID NO.: | _____ | K-12-5416-CMAR-3-C |
| SAP NO. (WBS/IO/CC): | _____ | S-11022 |
| CLIENT DEPARTMENT: | _____ | PUD |
| COUNCIL DISTRICT: | _____ | 2 & 3 |
| PROJECT TYPE: | _____ | KA |

PROPOSAL DUE

**12:00 NOON
SEPTEMBER 14TH, 2012
CITY OF SAN DIEGO
PUBLIC WORKS DEPARTMENT
1200 THIRD AVENUE, SUITE 200, MS 56P
SAN DIEGO, CA 92101
ATTN: CONTRACT SPECIALIST**

A. CHANGES TO CONTRACT DOCUMENTS

The following changes to the RFP are hereby made effective as though originally issued with the RFP. CMs are reminded that all previous requirements to this solicitation remain in full force and effect.

B. BIDDERS QUESTIONS

The following questions include those received as of this date. The City has included some additional frequently asked questions, as well to clarify the City's requirements.

- Q1.** As is typical for the City on pipeline projects, the 30% cost estimate format implies that the project will be bid similar to a unit price contract. In such contracts, some line items have assumed or placeholder quantities to be adjusted during construction when actual amounts are determined. In the case of this project, since a GMP will be negotiated, how will field-discovered variances be handled? Will the GMP be allowed to adjust, or will the CM be at risk for variances, in which case the prices might be inflated to compensate?
- A1.** Differing Site Conditions are paid for from the Owner's Contingency. The amount of the Owner's contingency will be set solely by the City. The GMP includes "Differing Site Conditions" as defined in the Construction Services Agreement (CSA).
- Q2.** Is it important to the City to complete the work affected by the Balboa Park Centennial Celebration prior to December 2014, or is it only important that no work occur during that 62-week moratorium?
- A2.** The City prefers that the work affected by the Balboa Park Centennial Celebration is completed prior to December 2014 so that EPA mandated replacement goals and client department water mile replacement goals are met.
- Q3.** If the work is split into multiple GMPs, will that also require multiple CSA's with City Council approval required for each?
- A3.** No, the City may configure the contract to include a 'not to exceed' amount which will provide for the execution of multiple GMPs without having to get additional approvals.
- Q4.** Please confirm that the City will not approve a GMP Proposal and issue a CSA until after subcontracts associated with that GMP are bid, as part of Stage I, and those prices are included in the GMP Proposal.
- A4.** The City will not approve a GMP Proposal and issue a CSA until after subcontracts associated with that GMP are bid, as part of Stage I, and those prices are included in the GMP Proposal. See [Chap 02 Art 02 Div 38, Construction Manager at Risk Contracts](#) of the Municipal Code for details.
- Q5.** For the purpose of developing a schedule, can we assume that the design is currently on hold until the CM is selected and NTP is issued for Stage I services, thereby enabling input from the CM at this early stage of design development?

- A5.** No; the design is proceeding and is not on hold.
- Q6.** Addendum 1, page 33, Section 2.32.2 states “before starting the work the CM shall physically locate all existing utilities encroaching within 24” within any side of the proposed excavation...” Shouldn’t the potholing take place during the design phase so any necessary plan changes can be addressed to avoid a potential change order from the contractor?
- A6.** Limited preliminary potholing for design purposes does not relieve the CM of its responsibility to locate all underground facilities prior to construction.
- Q7.** Does the City require any additional insurance for Stage II?
- A7.** Yes; the City will require Pollution Liability, Hazardous Transporters Pollution, and Railroad protection.
- Q8.** Addendum 1, page 4, answer No. 15 indicates that we are to assume insurance coverage limits of \$10 million for Commercial General Liability Insurance and \$5 million for Commercial Automobile Liability. RFP Exhibit F, page 13, section 2.3.6 requires the CM to obtain the same coverage from subcontractors. These coverage limits are above those normally used in accordance with The WHITEBOOK (i.e., \$2 million and \$1 million, respectively). The flow-down of these coverage limits to subcontractors, particularly ELBE/SLBE firms, may not be possible, or will be very costly. Is there a reason why these higher limits are being considered?
- A8.** As an alternate to requiring the Subcontractor to provide the specified insurance, the CM may procure the coverage on behalf of its Subcontractor(s).
- Q9.** We have noted some differences between the 30% drawings provided with the RFP and the Technical Memoranda accessible through the link you provided. Do the design changes in the TM supersede the drawings in the RFP (i.e., changing from 24” to 30” pipeline)?
- A9.** The pipeline east of 5th Ave along Upas Street is proposed to be downsized to 24 inch. Both 30% drawings and TMs are draft documents.

C. CHANGES TO RFP

- 1.** To Article 2 - CM’s Services and Responsibilities, ADD the following:
- 2.27 BLANK.**
- 2.** To Article 2 - CM’s Services and Responsibilities, Subsection 2.28 City Office Space, DELETE in its entirety and ADD the following:
- 2.28 BLANK.**

END OF ADDENDUM “2”

Tony Heinrichs, Director - Public Works Department
Dated: August 30, 2012, San Diego, California
AG/MM/EZ

City of San Diego



CITY CONTACT

Contract Specialist: Claudia Abarca
Address: 1200 Third Avenue, Suite 200, MS 56P
Email: CAbarca@sandiego.gov
Phone No.: 619-236-6669 Fax No.: 619-236-5904
AA/MM/egz

ADDENDUM “3”

REQUEST FOR PROPOSALS (RFP)

PRE-CONSTRUCTION SERVICES FOR THE UPAS STREET PIPELINE REPLACEMENT PROJECT CONSTRUCTION MANAGER AT RISK

| | | |
|----------------------|-------|--------------------|
| BID NO.: | _____ | K-12-5416-CMAR-3-C |
| SAP NO. (WBS/IO/CC): | _____ | S-11022 |
| CLIENT DEPARTMENT: | _____ | PUD |
| COUNCIL DISTRICT: | _____ | 2 & 3 |
| PROJECT TYPE: | _____ | KA |

PROPOSAL DUE

**12:00 NOON
SEPTEMBER 14TH, 2012
CITY OF SAN DIEGO
PUBLIC WORKS DEPARTMENT
1200 THIRD AVENUE, SUITE 200, MS 56P
SAN DIEGO, CA 92101
ATTN: CONTRACT SPECIALIST**

A. CHANGES TO CONTRACT DOCUMENTS

The following changes to the RFP are hereby made effective as though originally issued with the RFP. CMs are reminded that all previous requirements to this solicitation remain in full force and effect.

B. BIDDERS QUESTIONS

The following questions include those received as of this date. The City has included some additional frequently asked questions, as well to clarify the City's requirements.

Q1. RFP Exhibit B, paragraph 3.11 asks us to provide proposed fees for both Stage 1 (PSA) and Stage 2 (CSA) services. For Stage 1, para. 3.11.1.1 asks us to identify the proposed amount for the PSA GMP, which we will estimate and provide with our proposal. However, paragraph 3.11.1.2 asks us to identify certain costs related to Phase 2 (CSA) which may be difficult to ascertain at this time since we will not know the direct construction costs until bids are received for the various bid packages, and some of these costs will be based on a percentage of the direct costs. Please clarify the intent of this paragraph. Do you want us to provide a total fixed construction fee as defined in paragraph 5.2.6 of the draft CSA agreement at this time? If so, will this proposed fee be carried over unchanged and used as an element of the CSA GMP? Or, are you just looking for an outline of categories, unit prices, and percentage markups at this time?

A1. The CSA applies to construction services. When the PSA is executed the CM will be required to provide a GMP before the CSA is awarded. The GMP will be the basis for the CSA and cannot be arrived at until such time as the Work required under the proposed PSA is executed. The City's intent when providing a copy of this document is to alert the potential CM of the terms and condition that will apply at the construction phase.

The CM is directed to follow what is outlined in the RFP Exhibit B, paragraph 3.11, subsections 3.11.1.1 and 3.11.1.2 for proposal content submittal requirements.

Q2. The response to RFP Exhibit B, paragraph 3.11 is assigned a maximum of 15 points in the evaluation process. How will these points be awarded? Will the lowest price for the PSA GMP be awarded the full 15 points? Will the second lowest price be awarded 0 points or some portion of the full 15 points? How will points be awarded for the proposed fee on the Stage 2 CSA?

A2. Points for section 3.11, Proposed Fee and General Conditions for Construction Services will be awarded in relation to the information provided by each CM for subsection 3.11.1.1 and 3.11.1.2. The City has not yet determined how points will be awarded for the proposed fee on the Stage 2 CSA.

END OF ADDENDUM "3"

Tony Heinrichs, Director - Public Works Department

Dated: *September 6, 2012*, San Diego, California

AG/MM/EZ



UPAS STREET PIPELINE REPLACEMENT PROJECT
PRE-CONSTRUCTION SERVICES
AGREEMENT
CONSTRUCTION MANAGER AT RISK (CMAR)

| | |
|----------------------|--------------------|
| BID NO.: | K-12-5416-CMAR-3-C |
| SAP NO. (WBS/IO/CC): | S-11022 |
| CLIENT DEPARTMENT: | PUD |
| COUNCIL DISTRICT: | 2&3 |
| PROJECT TYPE: | KA |

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List of Exhibits

Exhibit A - Scope of Services

Exhibit B - Compensation and Fee Schedule

Exhibit C - Time Schedule

Exhibit D - City's Equal Opportunity Contracting Program

Attachment 1 Subcontractors List

Exhibit E - CM Certification for a Drug-Free Workplace

Exhibit F - Contractor Standards Pledge of Compliance

Exhibit G - Conflict of Interest Determination Form

Exhibit H - Equal Benefits Ordinance Certification of Compliance

Exhibit I - Regarding Information Requested under the California Public Records Act

Exhibit J - American with Disabilities Act (ADA) Compliance Certification

Exhibit K - Organization and Staffing

Exhibit L - Subcontracting Commitment Level

**PRE-CONSTRUCTION SERVICES AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND J.R. FILANC CONSTRUCTION COMPANY, INC FOR THE
UPAS STREET PIPELINE REPLACEMENT PROJECT**

This Agreement is made and entered into between the City of San Diego, a municipal corporation (City), and J.R. Filanc Construction Company, Inc. (CM) for the CM to provide construction manager at risk Pre-Construction Services to the City for the Upas Street Pipeline Replacement Project (Project).

RECITALS

- A. The City plans to construct the Upas Street Pipeline Replacement Project. The City desires to hire a licensed contractor to perform tasks during the Project design phase, including design review, value engineering (VE), cost estimation, solicitation of subcontracted trades and materials, bidding, and preparation of a guaranteed maximum price (GMP) proposed for construction services.
- B. To design and assist in the administration of the Project the City has entered into a contract with Infrastructure Engineering Corporation, hereinafter referred to as the "Design Professional."
- C. The Mayor and City Council authorized the award and execution of a Pre-Construction Services agreement with the CM for the Project pursuant to and San Diego Municipal Code (SDMC) Section 22.3808.
- D. The CM has the expertise, experience and personnel necessary to work with the Design Professional and provide Pre-Construction Services for the Project.

NOW THEREFORE, for and in consideration of the recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the City and the CM agree as follows:

AGREEMENT

ARTICLE I - SCOPE OF SERVICES

- 1.1. Scope of Services.** The CM shall perform the Pre-Construction Services (Services) as described in the following documents (Contract Documents):
 - 1.1.1.** This Agreement.
 - 1.1.2.** The Scope of Services attached as Exhibit A.

- 1.1.3. RFP under Bid No. K-12-5416-CMAR-3-C and related addenda.
- 1.1.4. RFQ under Bid No. K-12-5416-CMAR-3-C (RFQ) and related addenda.
- 1.1.5. CM's Proposal submitted in response to the Request for Proposals (RFP) under Bid No. K-12-5416-CMAR-3-C.
- 1.1.6. CM's Statement of Qualifications submitted in response to Request for Qualifications (RFQ) under Bid No. K-12-5416-CMAR-3-C.
- 1.1.7. CM's Organization and Staffing (Exhibit K).

In the event of a conflict among the Contract Documents, the document higher on the list shall have precedence (e.g., the Scope of Services takes precedence over conflicting provisions in the RFP). Provisions addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control.

- 1.2. **Contract Administrator.** The Public Works Department is the contract administrator for this Agreement. The CM shall provide the Services under the direction of a designated representative of the Public Works Department. The City's designated representative will communicate with the CM on all matters related to the administration of this Agreement and the CM's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless this Agreement specifies otherwise. The CM shall bring any direction received from any other City employee to the City's designated representative for confirmation.
- 1.3. **City Modification of Scope of Services.** The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the CM's cost of, or the time required for, the performance of any of the Professional Services, the CM shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the CM's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 1.4 of this Agreement.
- 1.4. **Written Authorization.** Prior to performing any Services, the CM shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the CM shall immediately advise the City in writing of any anticipated change in the Scope of Services, Compensation and Fee Schedule (Exhibit B), or Time Schedule (Exhibit C), and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the CM from its duty to render all Services in accordance with applicable laws and accepted industry standards.

- 1.5. Confidentiality of Services.** All Services performed by the CM, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the CM, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the CM, at the time that it was disclosed to the CM by the City, (b) subsequently becomes publicly known through no act or omission of the CM, or (c) otherwise becomes known to the CM other than through disclosure by the City. Except for subcontractors, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.
- 1.6. Competitive Bidding.** The CM shall confirm that the plans and specifications for the Project are prepared to allow for competitive bidding. The CM shall provide advice and recommendations such that procurement of services, labor or materials are not available from only one source, or developed around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The CM shall submit this written justification to the City prior to incorporating such a recommendation into the GMP. Whenever the CM recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
- 1.7. Industry Standards.** Services performed by the CM under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent licensed contractor and construction management firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the CM of responsibility for complying with all applicable laws, codes, and good consulting practices.
- 1.8. Subcontractors.** The CM's hiring or retaining of any third parties (Subcontractors) to perform Services (Subcontractor Services) is subject to prior approval by the City. The CM shall list on the Subcontractor List (Exhibit D Attachment 1) all Subcontractors known to the CM at the time this Agreement is executed. If at any time after this Agreement is entered into the CM identifies a need for additional Subcontractor Services, the CM shall give written notice to the City of the need, at least 45 Days before entering into a contract for such Subcontractor Services. The CM's notice shall include a justification, a description of the Scope of Services, and an estimate of all costs for the Subcontractor Services. The CM may request that the City reduce the 45 Day notice period. The City agrees to consider such requests in good faith.

- 1.8.1. Disputes.** In any dispute between the CM and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CM agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the CM and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this provision.
- 1.8.2. Withholding.** In the case of a deficiency in the performance of Subcontractor Services, the CM shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld.
- 1.9. Subcontracts.** All contracts entered into between the CM and any Subcontractor shall provide as follows:
- 1.9.1. Insurance.** The CM shall require the Subcontractor to obtain insurance policies, as described in Article IV, and those policies shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Furthermore, Subcontractor policy limits, and required endorsements shall be determined by the CM proportionate to the services performed by the Subcontractor.
- 1.9.2. Prompt Payment.** The CM is obligated to pay the Subcontractor, for CM and City-approved invoice amounts, out of amounts paid by the City to the CM, not later than 7 Days from the CM's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the CM and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves. If payment is withheld due to deficient work provided by a Subcontractor, once the Subcontractor corrects the deficiency, the CM shall pay the Subcontractor the amount withheld within 7 Days of the CM's receipt of the City's next payment.
- 1.9.3. Equal Opportunity Contracting.** The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article V, Section 5.1.1 and Exhibit D of this Agreement.
- 1.9.4. Intended Beneficiaries.** The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.
- 1.10. Contract Activity Report.** The CM shall submit statistical information to the City as requested in the City's Contract Activity Report through the City's web-based contract compliance i.e., Prism® portal at:

<https://pro.prismcompliance.com/default.aspx>.

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 CM shall provide an invoice from each Subcontractor listed in the report.

- 1.11. CM and Subcontractor Principals.** It is understood that this Agreement is for unique Professional Services. Retention of the CM is based on the particular professional expertise of the following members of the CM's organization: See Exhibit K, Organization and Staffing (Project Team). Accordingly, performance of Professional Services on the Project may not be delegated to other members of the CM's organization or to Subcontractors without the prior written consent of the City. The members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team without notice and approval by the City is a default of the terms and conditions of this Agreement by the CM. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to Section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the CM, to require any of the CM's employees or agents to be removed from the Project.

ARTICLE II - DURATION OF AGREEMENT

- 2.1. Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or October 31, 2017, whichever is the earliest but not to exceed 5 years unless approved by City ordinance.
- 2.2. Time of Essence.** Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services is set forth in the Time Schedule (Exhibit C).
- 2.3. Notification of Delay.** The CM shall immediately notify the City in writing if the CM experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.
- 2.4. Force Majeure.** If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the CM to a reasonable extension of time, but such delay shall not entitle the CM to damages or additional compensation. Any such extension of time must be approved in writing by

the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the CM's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the CM; provided, however, that: (a) this provision shall not apply to, and the CM shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the CM; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the CM to an extension of time unless the CM furnishes the City, in a timely manner, documentary proof satisfactory to City of the CM's inability to obtain materials, equipment, or labor.

- 2.5 City's Right to Suspend for Convenience.** The City may, at its sole option and for its convenience, suspend all or any portion of the CM's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the CM of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the CM a sum equivalent to the reasonable value of the Services the CM has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the CM. The City may then require the CM to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the CM shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.
- 2.6 City's Right to Terminate for Convenience.** The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving 30 Days written notice of such termination to the CM. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective 30 Days after receipt of the notice by the CM. Upon notice of termination from the City, the CM shall complete any and all additional work necessary for the orderly filing of documents and closing of the CM's Services under this Agreement. For services satisfactorily rendered in completing the work, the CM shall be entitled to fair and reasonable compensation for the Services performed by the CM before the effective date of termination. After filing of documents and completion of performance, the CM shall deliver to the City all documents or records related to the CM's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the CM discharges the City of all of the City's payment obligations and liabilities under this Agreement.
- 2.7 City's Right to Terminate for Default.** If the CM fails to satisfactorily perform any obligation required by this Agreement, the CM's failure constitutes a Default. A Default includes the CM's failure to adhere to the Time Schedule. If the CM fails to satisfactorily cure a Default within 10 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 CM, and any

person claiming any rights by or through the CM 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 CM.

ARTICLE III - COMPENSATION

- 3.1 Amount of Compensation.** The City shall pay the CM for actual costs incurred for performance of the Services in accordance with the Compensation and Fee Schedule. The compensation for the Scope of Services shall not exceed \$195,000, which is a guaranteed maximum price, requiring the CM to successfully complete the Services even if its actual costs exceed \$195,000. The compensation for Additional Services (described in Section 3.2), if any, shall not exceed [\$55,000]. The total compensation paid to CM under this Agreement shall not exceed [\$250,000].
- 3.1.1 Project Fees.** Notwithstanding section 3.1, if the City directs the CM to obtain any permits or licenses for the Project prior to the execution of a Construction Services Agreement (CSA), the cost of such permits, licenses and related fees shall be paid directly by the City to the permitting or licensing agency and shall not be counted towards the maximum compensation set forth in section 3.1.
- 3.2 Additional Services.** The City may require that the CM perform additional Services (Additional Services) beyond those described in the Scope of Services. Prior to the CM's performance of Additional Services, the City and the CM must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule. The City will pay the CM for actual costs incurred for the performance of Additional Services in accordance with Section 3.3.
- 3.3 Manner of Payment.** The City shall pay the CM in accordance with the Compensation and Fee Schedule. For the duration of this Agreement, the CM shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The CM shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The CM shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within 30 Days of receipt.
- 3.4 Additional Costs.** The CM shall not be paid for any Services required due to the CM's errors or omissions, and the CM shall be responsible for any additional costs it incurs as a result of such errors or omissions.

ARTICLE IV - INSURANCE

- 4.1 Insurance.** The CM shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth herein; however, the City reserves the right to request, and the CM shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required in Section 4.4 of this Agreement; and (c) confirmed that all policies contain the specific provisions required in Section 4.5 of this Agreement. CM's liabilities, including but not limited to CM's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to 30 Days prior written notice (10 Days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and CM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City. Further, the CM shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.
- 4.2 Types of Insurance.** At all times during the term of this Agreement, the CM shall maintain insurance coverage as follows:
- 4.2.1 Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- 4.2.2 Commercial Automobile Liability.** For all of the CM's automobiles including owned, hired and non-owned automobiles, the CM shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- 4.2.3 Workers' Compensation.** For all of the CM's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the CM shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the CM shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.2.4 Professional Liability. For all of the CM's employees who are subject to this Agreement, the CM shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. The CM shall ensure both that: (a) the policy retroactive date is on or before the date of commencement of the Project; and (b) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The CM agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

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

4.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Line Insurers (LASLI List). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

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

4.5.1 Commercial General Liability Insurance Endorsements.

4.5.1.1 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.

4.5.1.2 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 CM's insurance and shall not contribute to it.

4.5.2 Commercial Automobile Liability Insurance Endorsements.

4.5.2.1 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 CM.

4.5.3 Worker's Compensation Endorsements.

4.5.3.1 Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

- 4.6 Reservation of Rights.** The City reserves the right, from time to time, to review the CM's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the CM 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.
- 4.7 Additional Insurance.** The CM may obtain additional insurance not required by this Agreement.
- 4.8 Excess Insurance.** All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

ARTICLE V - MANDATORY CONTRACT CLAUSES

5.1 Non-Discrimination Requirements. All City agreements, contracts, and subcontracts are subject to the City's Nondiscrimination in Contracting Ordinance No. O-2000-143 adopted on April 10, 2000. All City contractors and subcontractors should be aware of the provisions of Municipal Code Sections 22.3501 - 22.3517. The policy applies equally to the CM and all Subcontractors and Suppliers.

5.1.1 Compliance with the City's Equal Opportunity Contracting Program. The CM shall comply with the City's Equal Opportunity Contracting Program CM Requirements [Exhibit D]. The CM shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The CM shall provide equal opportunity in all employment practices. The CM shall ensure that its Subcontractors comply with the City's Equal Opportunity

Contracting Program CM Requirements. Nothing in this Section shall be interpreted to hold the CM liable for any discriminatory practice of its Subcontractors.

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

5.1.3 Compliance Investigations. Upon the City's request, the CM agrees to provide to the City, within 60 Days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the CM has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the CM for each subcontract or supply contract. The CM further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance. The CM 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 CM up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The CM further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

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

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

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

5.2.2.1 The dangers of drug abuse in the work place.

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

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

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

5.2.3 Posting the Statement. In addition to Section 5.2.2 above, the CM shall post the drug-free policy in a prominent place.

5.2.4 Subcontractor's Agreements. The CM further certifies that each contract for Subcontractor Services for this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Article V, Section 5.2 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. CMs and Subcontractors shall be individually responsible for their own drug-free work place program.

5.3 Product Endorsement. The CM acknowledges and agrees to comply with the provisions of City Council Policy 000-41, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

5.4 Equal Benefits. Effective January 1, 2011, any contract entered into, awarded, amended, renewed, or extended is subject to the City's Equal Benefits Ordinance (EBO). In accordance with the EBO, the CM must certify it will provide and maintain equal benefits as defined in Section 22.4302 of the Municipal Code for the duration of this Agreement. Failure to maintain equal benefits is a material breach of this Agreement (see Exhibit H). The CM 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."

The CM must also give the City access to documents and records sufficient for the City to verify CM is providing equal benefits and otherwise complying with the EBO. The full text of the EBO and the rules implementing the EBO 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.

5.5 ADA Certification. Pursuant to City Council Policy 100-04, the CM shall comply with all portions of Title 24 and the ADA. The CM shall ensure that language requiring compliance with City Council Policy 100-04 is incorporated into all its contracts with firms working on the Project. The CM and its Subcontractors will be individually responsible for administering their own ADA and Title 24 program. The

CM shall execute and submit to the City the Certification for Title 24/ADA Compliance, as shown in Exhibit J.

- 5.6 San Diego Business Tax Certificate.** The CM and all Subcontractors not already having a City of San Diego Business Tax Certificate for the work contemplated shall secure the appropriate certificate from the City Treasurer, City Operations Building, Community Concourse, before performing any work on the Project.
- 5.7 Contractor Standards.** This Agreement is subject to the Contractor Standards clause of San Diego Municipal Code Section 22.3004. The CM is required to complete the Contractor Standards Pledge of Compliance included herein as Exhibit F.

ARTICLE VI - INDEMNIFICATION AND LIMITATION OF LIABILITY

- 6.1 Indemnification and Hold Harmless Agreement.** CM agrees to defend, indemnify, protect and hold City, its agents, officers and employees, harmless from and against all claims or judgments asserted, or liability established for damages or injuries to any person or property including to CM's employees, agents or officers, arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, are caused or claimed to be caused by the acts or omissions of the CM, its agents, officers and employees. The obligation to indemnify shall be effective even if the City, its agents, officers or employees established passive negligence contributes to the loss or claim. The CM's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active or sole negligence, or willful misconduct of the City, its agents, officers or employees.
- 6.2 Limitation of Liability.** Under no theory of recovery, whether based in contract, tort, warranty or otherwise will either the City or the CM be liable to one another for any indirect, incidental or consequential damages arising out of or relating to this Project, except as otherwise covered by insurance under Article IV or compensable under section 2.6 upon the City's termination for convenience
- 6.3 Survival Clause.** The CM's obligations under Section 6.1 shall survive the termination or expiration of the Agreement and continue so long as a viable claim exists.

ARTICLE VII - GENERAL PROVISIONS

- 7.1 Mandatory Mediation.** If a dispute arises out of or relates to this Agreement that cannot be resolved through normal contract negotiations, the CM and the City must first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon by the parties before having recourse in a court of law.
- 7.1.1 Selection of Mediator.** A single mediator that is acceptable to both parties

shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by AAA or any other agreed upon mediator.

7.1.2 Mediation Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All joint expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

7.1.3 Conduct of Mediation. Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code Sections 1115 - 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though the City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

7.1.4 Mediation Results. Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

7.2 Conflict of Interest. The CM shall establish and make known to its employees appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Project personnel shall not accept gratuities or any other favors from potential Subcontractors or suppliers.

7.2.1 Applicable Laws. The CM shall be subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, e.g., California Government Code Sections 1090, et. seq., and 81000, et. seq., and the City Ethics Ordinance, codified in the City Municipal Code at Section 27.3501 to 27.3595.

7.2.2 Statement of Economic Interests. If, in performing the Services and/or Work set forth in this Agreement, the CM makes, or participates in, a "governmental decision" in accordance with title 2, Section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in the applicable department's conflict of interest code, the CM shall be subject to a conflict of interest code requiring the completion of

one or more statements of economic interests disclosing the CM's relevant financial interests.

7.2.2.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The CM shall file a Form 700 (Assuming Office Statement) within 30 Days of the City's written determination that the CM shall be subject to a conflict of interest code. The CM shall file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the CM was subject to a conflict of interest code.

7.2.2.2 If the City requires the CM to file a statement of economic interests as a result of the Services and/or Work performed, the CM shall be considered a "City Official" subject to the provisions of the City Ethics Ordinance, including the prohibition against lobbying the City for one year following the expiration or termination of this contract.

7.2.3 Affiliations. The CM shall not recommend or specify any product, supplier, or contractor with whom the CM has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. This section shall not prohibit CM from utilizing its in-house brokerage staff to secure all insurance required by the Contract Documents.

7.2.4 Violations. If the CM violates any conflict of interest laws or any of these conflict of interest provisions, the violation shall be grounds for immediate termination of this Agreement for cause. Further, the violation subjects the CM to liability to the City for all non-consequential damages sustained as a result of the violation.

7.3 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the City's request, the CM, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The CM's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

7.3.1 Compensation for Mandatory Assistance. The City will compensate the CM for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.2 of this Agreement. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the CM, its agents, officers, and employees, the CM shall reimburse the City an amount proportionate to the CM's fault. The City is then entitled to reimbursement of the same proportionate amount of all fees paid to the CM, its agents, officers, and employees for Mandatory Assistance.

- 7.3.2 Attorney Fees related to Mandatory Assistance.** Attorney fees the CM or the City may incur as a result of assistance provided under Section 7.3 are not reimbursable.
- 7.4 Right to Audit.** The City may examine any and all books, records, documents and any other evidence of procedures and practices in the possession of the CM or its Subcontractors that the City determines are necessary to discover and verify that the CM or Subcontractor is in compliance with all requirements under this Agreement.
- 7.4.1 Access.** The CM grants the City the right to review and audit, and the reasonable right of access to CM's and any Subcontractor's premises to review and audit the CM's or Subcontractor's compliance with the provisions of this Agreement (City's Right) during normal business hours. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the CM's premises, of any and all records related to the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.
- 7.4.2 Cost Audit.** If the CM submits a request for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 7.4.3 Accounting Records.** The CM and all subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The CM and Subcontractors shall make available to the City for review and audit, all Service related accounting records and documents, and any other financial data. Upon the City's request, the CM and Subcontractors shall submit exact duplicates of originals of all requested records to the City.
- 7.4.4 City's Right Binding on Subcontractors.** The CM shall include the City's Right as described in Section 7.4, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.
- 7.4.5 Compliance Required before Mediation or Litigation.** A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the CM's and Subcontractors full compliance with the provisions of this Section 7.4 within 60 Days of the date on which the City mailed a written request to review and audit compliance.

7.5 Notices. All notices required to be given under this Agreement must be in writing and either served personally, sent by facsimile transmission, or mailed by express or certified mail with delivery confirmation. Notices shall be effective upon receipt. Notices shall be mailed to:

To CM:
Arnold Wingler, Construction Manager
J.R. Filanc Construction Company, Inc.
740 North Andreasen Drive
Escondido, CA 92029

To City:
Public Works Director
City of San Diego
202 "C" Street, 9th Floor
San Diego, CA 92101

- 7.6 Assignment.** The CM shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.
- 7.7 Independent Contractors.** The CM and any Subcontractors employed by the CM shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the CM concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the CM shall follow the direction of the City concerning the end results of the performance.
- 7.8 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the CM, shall be deemed to be both covenants and conditions.
- 7.9 Compliance with Controlling Law.** The CM shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the CM shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 7.10 Contract Interpretation.** This Agreement is intended to permit the parties to complete the Project according to the Project Schedule. This Agreement, its exhibits, and any documents identified in Section 1.1 are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

- 7.10.1 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and its exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 7.10.2 Ambiguities.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 7.11 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 7.12 No Waiver.** No failure of either the City or the CM to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.
- 7.13 Severability.** Should any provision of this Agreement be held invalid or illegal by a court or administrative agency of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either or both parties' essential objectives set forth in this Agreement.
- 7.14 Additional Consultants or Contractors.** The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide the Services.

- 7.15 Employment of City Staff.** This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the CM employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Mayor or City Council in connection with the selection of the CM.
- 7.16 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 7.17 Public Records.** This contract is public document subject to the California Public Records Act, and as such may be subject to public review per Exhibit I (Regarding Information Requested under the California Public Records Act).
- 7.18 Survival.** Any obligation that accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
- 7.19 Third Party Beneficiaries.** Nothing in this Agreement shall grant rights or benefits to anyone other than the City and the CM, and any alleged third party beneficiaries are hereby expressly disclaimed. The parties understand and agree, however, that to the extent permitted by law, the City is an intended third party beneficiary of the CM's agreements with its Subcontractors performing work on the Project.
- 7.20 Mutual Cooperation.** The City and the CM commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under this Agreement.
- 7.21 Incorporation of Exhibits.** All exhibits referenced in this Agreement and the documents referenced in Section 1.1 are hereby incorporated into and made a part of this Agreement by reference. References to "consultant" or "contractor" in Exhibits D through J shall be interpreted as applying to the CM.
- 7.22 Integration Clause.** The City and the CM represent, warrant and agree that no oral promise or agreement not expressed herein has been made to them, that this Agreement contains the entire agreement between the parties, that this Agreement supersedes any and all prior oral agreements or understandings between the parties unless otherwise provided herein, and that in executing this Agreement, neither party is relying on any statement or representation made by the other party concerning the subject matter, basis or effect of this Agreement other than as set forth herein, and that each party is relying solely on its own judgment and knowledge. This Agreement may not be amended except by an instrument in writing signed by both parties.
- 7.23 Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor pursuant to San Diego Municipal Code Section 22.3102, authorizing such execution, and the CM acting by and through its authorized officer.

J.R. Filanc Construction Company, Inc.

THE CITY OF SAN DIEGO

By: Catherine B. Final
Catherine B. Final
Secretary

By: Paul D. Chopin
Name: Paul D. Chopin
Principal Contract Specialist

Date: 4/2/13

Name: Catherine B Final

I HEREBY APPROVE the form and legality of the foregoing agreement this 2nd day of April, 2012.

Date: 12/28/2012

JAN I. GOLDSMITH, City Attorney

By: [Signature]
Deputy City Attorney

EXHIBIT A SCOPE OF SERVICES

1. General.

- 1.1** The CM shall review the Contract Documents furnished by the City to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the City.
- 1.2** The CM shall become familiar with Upas Street Pipeline distribution mains, transmission main and pressure regulating station operations and operational systems that must remain active during construction. The CM shall provide recommendations and information on how to reduce construction impacts on the project stakeholder, minimize the overall project schedule and minimize permit requirements while meeting the industry standards.
- 1.3** Services required of the CM under the PSA include tasks performed during the Project design stage (Pre-Construction Services) in advance of or in staged coordination with construction services (Construction Services), including constructability review, Value Engineering, cost estimation, solicitation of subcontracted trades and materials, bidding, limited design services, and preparation of a final GMP proposal for Construction Services.
- 1.4** The CM shall provide all management, supervision, labor, services, temporary facility, equipment, tools, supplies, and any other item of every kind and description required for the completion of the requirements under the PSA.

Note: The Construction Services shall be as specified in the Contract for Construction Services (CSA). In general, the CM will have the traditional role of general contractor during construction of the Project. Following the construction Notice-to-Proceed, the CM will assume the risk of delivering the Project based upon the agreed upon cost and schedule. The Project may require multiple GMPs.

- 1.5** The CM shall provide a preliminary evaluation of the City's program including design concepts, basic requirements and schedule and construction budget requirements.
- 1.6** Upon request, the CM shall assist the City in selecting, retaining, and coordinating the Professional Services required for the Project as needed.
- 1.7** The CM shall develop a comprehensive construction management program including items such as procedures for development of a GMP and Project schedule, which shall be submitted to the City for review and approval in accordance with the provisions of the City's standards.

- 1.8 The CM shall familiarize itself with all Federal, State, and local laws, ordinances, rules, regulations, and codes affecting the performance of the Work including the timeline and cost of permits and licenses required for the Work.
- 1.9 The CM shall determine the character, quality, and quantities of the Work to be performed and the materials and equipment to be provided; and correlate the CM's observations, investigations, and determinations with the requirements of the Contract and those of the Subcontracts.
- 1.10 The CM shall be responsible for engaging necessary consultants for all special inspection services, reviewed and approved by the City.

2. Meetings

- 2.1 The CM shall schedule and attend regular meetings with the City and the Design Professional and shall produce minutes of such meetings when requested by the City and distribute them to all attendees and other concerned parties. The CM has included approximately 2 meetings per month with the design team and the City. If so requested by the City, the CM shall attend a reasonable number of other meetings with governmental agencies, community groups, the City's primary users or other third parties and shall produce minutes of such meetings for the City's use when requested by the City.

3. Project Control

- 3.1 The CM is aware that the Pre-Construction Services shall be completed in no more than five (5) years from notice to proceed and for a not-to-exceed amount as specified in this Agreement. The CM shall perform its duties in a timely manner consistent with the Project schedule and budget.
- 3.2 The CM shall monitor the project's construction cost at various design stages to assure that the final design and the results of a competitive bidding process are within the City's budget limitations.
- 3.3 The CM shall prepare a master Project schedule in Primavera format (or equal) which identifies milestones for the City's review (e.g., turnover dates to City's user(s), completion date, equipment and material delivery dates, and work necessary to achieve these dates for approval by the City). The Project schedule shall include both design and construction activities. The CM shall coordinate and integrate the Project schedule with the services and activities of the City and the Design Professional and the CM. The CM shall obtain the input of the City and the Design Professional for those portions of the Project schedule relating to the performance of their services. The Project schedule shall include timelines for work slow-down, stoppage, and phasing.

- 3.4 As design proceeds, the Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipts, and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, the City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of completion. If updates to the Project schedule indicate that previously approved schedules may not be met, the CM shall advise the City of the particular activities causing the schedule to be extended and shall recommend a schedule recovery plan to the City.
- 3.5 The CM shall analyze the cost and schedule implications of selective use of working outside normal working hours.
- 3.6 The project control to be used by the CM shall include, but may not be limited to, the following:
 - 3.6.1 Monthly Project status reports
 - 3.6.2 Coordination and interface with the City and its Design Professional(s)
 - 3.6.3 Progress meetings
 - 3.6.4 Meetings with other agencies
 - 3.6.5 Suppliers and Subcontractors management
 - 3.6.6 Document control
 - 3.6.7 Bidding, evaluation, and subcontract award
 - 3.6.8 Quality assurance and quality control

4. Cost Estimation and Budget

- 4.1 The CM shall create a comprehensive construction cost estimate with trade breakdowns that can be tracked based on unit costs and unit pricing. The CM shall prepare four (4) estimates including the GMP: (1) 100% Schematic Drawings completion; (2) 30% Design Development; (3) at 60% Design Development; and (4) the GMP estimate at 90% complete design. Estimates shall carry multiple alternates to reflect the continuing cost studies as the design develops. The cost estimates shall address the impact of design changes.
- 4.2 The CM shall develop a Project budget independent from any similar cost estimates required of the Design Professional, which shall be updated (CM Cost Model Update) as needed but at a minimum of every 3 months. Prior to the development of the cost model, the CM shall meet with the City and Design Professional and establish a common cost estimating format so that Project cost estimates prepared by the Design Professional and CM may be directly compared. Each CM Cost Model Update must identify the total construction costs for the proposed facilities, CM construction management fee, bonds, insurance and contingency.

- 4.3** In a format acceptable to the City, provide construction cost estimates to support VE and constructability reviews. Update cost estimates as needed to track changes of greater than 1% in the overall construction cost but not less frequently than every 3 months. Revise these estimates once accepted VE recommendations and other review comments have been incorporated into the Contract Documents. Provide final opinion of probable construction costs prior to submitting the GMP.
- 4.4** Determine and establish the sequence of construction. The CM shall recognize that the City may approve the establishment of multiple work packages in order to expedite the Project schedule. The CM may therefore be requested to provide recommendations on the development of work packages that each would receive a GMP, whereby the sum of the individual GMPs constitute the entire scope and cost of the Project as defined by the contracts. The CM may also be requested to identify separate bid packages to accomplish construction of the Project in compliance with funding phases, should such funding be applicable to the Project.
- 4.5** Following completion of each cost update, notify the City within 5 Working Days in writing whenever the CM reasonably believes that the cost of the Project is likely to exceed the GMP and include in said notice:
- 4.5.1** An itemized cost breakdown estimate.
 - 4.5.2** Develop recommended revisions to Project scope, design criteria, and Construction Schedule and provide cost estimates for changes which the CM believes will bring the Project within the GMP.
 - 4.5.3** Assist the City and Design Professional in reviewing the itemized cost breakdown and recommend revisions so that City can revise the scope of the Project so that the GMP is not exceeded.
- 4.6** Each CM Cost Model Update will be reviewed by the City for reasonableness and compatibility with the Project budget. Meetings and negotiations between the City, Design Professional and the CM will be held to resolve questions and differences that may occur between the Design Professional's probable construction costs and the CM Cost Model Update. The CM shall work with the City and Design Professional to reach a mutually acceptable Project cost.
- 4.7** Based on schematic designs and other design criteria prepared by the Design Professional and approved by the City, the CM shall prepare a preliminary cost estimate. The preliminary cost estimate shall be submitted to the City for review and approval. From time to time, as requested by the City, the CM shall provide budgets and cost estimates for changes made to the scope of work.

- 4.8 When design development documents have been completed by the Design Professional and approved by the City, the CM shall prepare and submit a detailed estimate with supporting documentation to the City for review and approval.
- 4.9 If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the CM shall make reasonable recommendations to the City for scope reduction, VE, or both to bring the estimated cost of construction within the City's budget.
- 4.10 The CM shall assist the City in developing cash flow projections.
- 4.11 Provide construction cost control estimates during Pre-Construction Services to support VE and constructability reviews. If the VE recommendation is accepted, the CM shall revise these cost control estimates.
- 4.12 Following completion of each cost update, notify the City within 5 working days in writing whenever the CM reasonably believes that the cost of the Project is likely to exceed the City's budget and include in said notice:
 - 4.12.1 An itemized cost breakdown estimate.
 - 4.12.2 Develop recommended revisions to Project scope, design criteria, and Construction Schedule and provide cost estimates for changes which the CM believes will bring the Project within the City's budget.
 - 4.12.3 Assist the City in reviewing the itemized cost breakdown and recommend revisions so that City can revise the scope of the Project so that the City's budget is not exceeded.

5. Design Reviews

- 5.1 The CM shall provide a thorough interdisciplinary coordination review of the Contract Documents submitted for review to the City. The review shall be performed utilizing a structured and industry accepted process by a qualified firm or personnel. The CM shall review the final documents to see that all comments have been incorporated and Plans have been coordinated with each other and for the purpose of various trades involved in the construction.
- 5.2 The CM shall review the design documents for clarity, consistency, constructability and coordination among the constructors. The results of the review shall be provided in writing as notations on the documents. The CM shall expedite the City's design reviews by compiling and conveying the City's comments to the Design Professional.
- 5.3 The CM shall promptly notify the City and the Design Professional in writing upon observing any features in the Contract Documents that appear to be ambiguous, confusing, conflicting, or erroneous.

- 5.4** The CM shall promptly notify the City in writing during design review whenever the CM determines that any alteration to the Plans or Specifications will cause an increase in construction costs.
- 5.5** All ambiguous, confusing, conflicting, or erroneous features discovered in the Contract Documents by the CM during the review process shall be resolved in coordination with the City, and any associated costs shall be included in the GMP unless the CM notifies the City otherwise in writing prior to the advertisement for bids associated with the development of the GMP.
- 5.6** The CM shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The CM shall make recommendations for actions designed to minimize adverse effects of labor shortages.
- 5.7** The CM shall consult with the City and Design Professional regarding the Contract Documents including design materials and make recommendations regarding design details that adversely affect constructability, cost, or schedules.
- 5.8** The CM shall provide recommendations and information to the City and Design Professional regarding the assignment of responsibilities for temporary Project facilities and equipment, materials, and services for common use of the Subcontractors (as defined in the Agreement). The CM shall verify that such requirements and assignment of responsibilities are included in the applicable proposed Subcontracts.
- 5.9** The CM shall provide recommendations and information regarding the allocation of responsibilities for safety programs among the Subcontractors.
- 5.10** The CM shall advise on the division of the Project into individual contracts for various categories of Work, including the method to be used for selecting contractors and awarding contracts. If multiple contracts are to be awarded, the CM shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.
- 5.11** During the Pre-Construction Services, the CM shall provide recommendations to the Design Professional regarding materials of construction.
- 5.12** The CM shall advise the City and the Design Professional regarding the costs of alternative materials and construction methods, which may reduce the Project's cost and schedule without reducing the quality of the work or altering the design intent of the Design Professional.
- 5.13** The CM shall give the City all data of which it is aware concerning patents or copyrights for inclusion in Contract Documents.

- 5.14 The CM is not responsible for providing, nor does the CM control the Project design and contents of the design documents except for those prepared by the CM for which the CM shall provide professional errors and omissions insurance.
- 5.15 The CM shall coordinate transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews.
- 5.16 The CM shall analyze and report to the City the cost of various design and construction alternatives, including CM's assumptions in preparing its analysis, a variance analysis between budget and cost estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM in collaboration with the design team and Public Utilities Department shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.
- 5.17 The CM shall develop construction stage material delivery, inventory, and assembly, and waste disposal plans.
- 5.18 The CM shall provide recommendations to the Design Professional regarding alternative materials and methods of construction.
- 5.19 The CM shall assist the Design Professional and the City with the discussions and development of the program for off- and on-site utility infrastructure for the various utility companies. Evaluate related information, e.g., load letters, points of entry, typical construction details, etc., on basis of constructability and VE including cost studies as may be needed to evaluate impact to the Project and alternatives.
- 5.20 As needed, attend meetings with City, Design Professional and utility companies to provide input on design alternatives to reduce cost and schedule impacts.
- 5.21 Implement a web based information system for information transfer and storage of information.

6. Advice On Constructability And Logistics

- 6.1 The CM shall expeditiously review design documents during their development and advise on selection of materials, building systems and equipment, and methods of Project delivery relative to the feasibility of construction methods, availability of materials and labor, time requirements for permitting, procurement, installation, and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
- 6.2 The CM shall review design documents and make recommendations on means and methods of construction as well as availability of labor and materials. The CM shall advise the City regarding potential jurisdictional disputes between trades. The CM shall produce a site safety plan that complies with the requirements of all governing bodies having jurisdiction.

6.3 The CM shall review the design and Contract Documents continuously throughout the Pre-Construction Stage as to constructability. With respect to each such issue identified through the CM's review, the CM shall submit a written report to both the City and the Design Professional. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the in-depth study/research conducted by the CM; and, (3) written recommendations for addressing the issue.

6.4 The CM shall establish a sequence of construction with the City and the Design Professional with respect to specific site logistics. CM shall provide site logistics plans and sequence diagrams reflective of the various stages of construction progress (i.e., site work, utility infrastructure, commencement of structures, etc.) and as may be required for proposed construction phasing alternatives.

7. Value Engineering (VE)

7.1 The CM shall provide VE services during the pre-construction phase. The CM shall submit written VE estimates and recommendations throughout the document development phases. The CM shall provide a sample VE report for the City's approval and shall provide VE services of similar scope and level of effort to that shown in the sample. The CM recognizes that VE is an iterative process and that it may be required to modify its estimates and recommendations in response to review of its reports by the City.

7.2 Provide detailed cost estimates with high-low range. Provide design adjustment and VE recommendations as necessary to reduce the high range budget to a target of 5% below the City's maximum target GMP value with a contingency target of less than 3.5% of the hard construction cost.

7.3 In a format acceptable to the City, provide construction cost estimates during Pre-Construction Services to support VE and constructability reviews. Revise these estimates once accepted VE recommendations and other review comments have been incorporated into the Contract Documents. Provide final opinion of probable construction costs prior to advertising for trade work needed to develop the GMP.

8. Long-Lead Items

8.1 The CM shall identify long-lead items. The CM shall make recommendations with respect to current market trends that may affect procurement and installation so as to minimize potential delays and cost premiums.

9. Community Outreach

9.1 Attend community meetings during design and construction.

- 9.2 Provide input as to how the construction activities or equipment will affect access to the public facilities and businesses located within or near the Project area.
- 9.3 Provide input about construction activities that will produce more than average noise levels.
- 9.4 Provide input as to how construction activities may affect residents and business in ways other than listed above (e.g., water outages, staging of equipment).

10. Permits And Approvals

- 10.1 The City and the Design Professional will file, expedite, and pay the fee for CEQA, site development, and encroachment permits.
- 10.2 The CM shall assist the City and the Design Professional in obtaining permits, except for permits required to be obtained directly by the various Subcontractors for which the CM shall identify all permit requirements and prepare applications and support documents necessary for obtaining construction related permits and the permits identified in the Contract Documents.
- 10.3 The CM shall assist the City and Design Professional with the filing of documents required for the approvals of governmental authorities having jurisdiction over the Project.
- 10.4 The CM shall obtain work permits from the governmental agencies having jurisdiction over the Project if directed by the City.
- 10.5 Obtain and pay for, as a reimbursable cost, plan check fees, DSD and all ancillary permits and licenses, if applicable.
- 10.6 Research Air Pollution Control District and noise abatement requirements, along with any hazardous materials management requirements. Develop an air pollution control plan, a noise abatement plan, and a hazardous materials management plan, if required, as they relate to the execution of the construction work.

11. SLBE Requirements

- 11.1 The CM shall satisfy the subcontracting participation stated commitment levels in the CM's Proposal for each Phase 1 and 2 (see Exhibit L). Subcontractors include only the 1st tier subcontractors who have directly entered into construction services agreements with the CM and 2nd tier subcontractors who have directly entered into construction services agreements with the 1st tier subcontractors.

- 11.2 Unless otherwise authorized by the City, in developing the GMP the CM shall require every 1st tier Subcontractor to perform, with its own organization, work amounting to at least 50% of the Subcontract value.
- 11.3 The CM shall ensure the Work could be bid so that bidders submit bids to the CM on a proper work breakdown that would facilitate subcontracting opportunities with the certified SLBE-ELBE and DVBE firms.
- 11.4 The CM shall identify a Contract Compliance Officer (CCO). The CCO's role is to assist the CM, Subcontractors, and Suppliers in achieving compliance in labor laws and regulations, such as prevailing wage, certified payroll, apprenticeship utilization, and subcontracting requirements. The CCO shall be the point of contact with the Engineer and shall be responsible for the monitoring and enforcement of the EOCP requirements throughout the Project duration. The City reserves the right to audit and inspect the CM's compliance within a reasonable notice.

12. Subcontracting and Self-Performance

- 12.1 For all trades that the CM does not intend to self-perform, the CM shall, as part of the Pre-Construction Services, prepare bidding documents, advertise for, and obtain bids for Subcontracts for proposed construction services agreements and commit in its proposal for a GMP to award all Subcontracts according to the best value for price and qualifications as proposed by the CM and agreed to by the City. The evaluation criteria shall be published and the weights established in the CM's bid documents.
- 12.2 Except for management and project administration, a CM shall not prepare the GMP in anticipation of performing any construction services with its own forces or the forces of any affiliated entity. If events warrant and pursuant to §22.3809 of the Municipal Code, the City at its sole discretion, may allow the CM to self-perform certain portions of the Work provided that it does not reduce the required subcontracting participation percentages. If the CM desires to self-perform certain portions of the Work, it will request to be one of the approved subcontractor bidders for those specific bid packages and competitively win those bids as the lowest responsible bidder.
- 1.1 The CM shall assist the City in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.
- 1.2 The CM shall develop bidders' interest in the Project and establish bidding schedules. The CM, with the assistance of the Design Professional, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The CM shall assist the Design Professional with regard to questions from bidders and with the issuance of addenda.
- 1.3 The CM may identify any construction components that will result in a lower total cost of design and construction if performed as a design-build

Subcontract to the CM. If accepted by the City, the design and construction work shall be completed under the CSA.

- 1.4** All bids for subcontracts in any construction services agreement shall be open and published and provided to the City without reservation or redaction as part of the proposal and negotiation process for any construction services agreement. The City may observe the bidding process, may administer bidding itself for any subcontracted work, or direct the bidding procedures to be used by the CM.
- 1.5** The CM shall prepare all necessary documents for bidding the Work, not approved by the City for self-performance or negotiated prior to establishing GMP, which shall include at least:
 - 1.5.1** Instructions to bidders;
 - 1.5.2** General and special conditions;
 - 1.5.3** Form of bid; and
 - 1.5.4** Form of bonds.
- 1.6** Prepare and submit to the City for review, separate bid packages as the CM determines appropriate to enable the construction of the Project to proceed in an efficient and cost effective manner and to encourage ELBE, SLBE, and DVBE participation.
- 1.7** Develop and administer a subcontractor pre-qualification procedure in a manner at least as stringent as the City's pre-qualification standards for those bid packages for which the CM and City agree a pre-qualification procedure is required.
- 1.8** Fully and satisfactorily document to City the subcontractor and employment outreach efforts to all subcontractors in the required disciplines of the Project prior to the award of the Contract. The CM shall identify the Subcontractors and Suppliers certification status and during the bidding process shall keep the City informed on the progress of meeting the desired subcontracting participation percentages.
- 1.9** Schedule and conduct pre-bid conferences to answer questions posed by bidders; said answers and any other information required to provide clarification to the Construction Documents during the bidding process shall be issued as written addenda and provided to all prospective bidders;
- 1.10** Review bids and information submitted with the bids for compliance with the RFP's Equal Opportunity Contracting Program (EOCP) requirements.
- 1.11** Prepare bid evaluation tables and deliver award level drawings incorporating all addenda. Conduct pre-construction conference(s) for the successful bidder(s).

- 1.12 All bids for subcontracts in any construction services agreement shall be opened and published and provided to the City without reservation or redaction as part of the Proposal and negotiation process for any construction services agreement. The City will observe the public bidding process, may administer bidding itself for any subcontracted work, or direct the bidding procedures to be used by the CM.
- 1.13 Develop Subcontractor and Supplier interest, submit the names of a minimum of 3 qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. The CM shall identify the Subcontractors and Suppliers certification status and during the bidding process shall keep the City informed on the progress of meeting the desired subcontracting participation percentages.
- 1.14 If there are not 3 qualified Subcontractors or Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM may request approval by the City to submit less than three 3 names. Without prior written notice to the City, no change in the recommended Subcontractors or Suppliers will be allowed.
- 1.15 Analyze all bids and award contracts to selected Subcontractor(s) in accordance with procedures included in the PSA. Provide bid breakdown for each trade involved, sufficient for the purpose of progress billing for construction.
- 1.16 The CM shall be responsible for entering into contracts, in the CM's own name, with the winning bidders. The CM shall be responsible for ensuring that these contracts fully comply with all applicable local, state and federal laws and regulations.

2. Guaranteed Maximum Price (GMP) Proposal For Construction Services

- 2.1 The CM shall propose a Guaranteed Maximum Price (GMP) on the City provided form when the Construction Documents are 90% complete or not more than 9 months after NTP, whichever occurs first. The proposed GMP shall be the sum of the estimated costs e.g., Cost of the Work, General Conditions, insurance, CM's Contingency, taxes, and the CM's Fee.
- 2.2 The assumptions and qualifications upon which the GMP is based shall be included as part of the GMP Proposal. The City and the CM shall meet to determine how any assumptions and qualifications can be incorporated into the Construction Services Agreement (CSA).
- 2.3 The CM shall determine and establish the sequence of construction. The CM shall recognize that the City may approve the establishment of multiple work packages in order to expedite the Project schedule. The CM may therefore be requested to provide recommendations on the development of work packages that each would receive a GMP, whereby the sum of the individual GMPs constitute the entire scope and cost of the project as defined by the Contract

Documents. The CM may also be requested to identify separate bid packages to accomplish construction of the Project in compliance with funding phases, should such funding be applicable to the Project.

- 2.4 Refer to the RFP for the definitions of GMP cost components.
- 2.5 The CM shall prepare one or more (as required) Guaranteed Maximum Price (GMP) for the Project's construction phase while the design development phase is being completed.
- 2.6 The GMP shall include construction costs of work self-performed by the CM (when authorized), Subcontractors, general conditions performed by the CM or others, selected assistance during the completion of final Plans and Specifications for the Project, and allowances for certain fees, permits, and reimbursable expenses that would be administered by the CM and reimbursed by the City at cost without markup.
- 2.7 The GMP Proposals for the Work shall be presented in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project.
- 2.8 GMP Proposals submitted shall be based on, and consistent with, the current cost estimate at the time of the request, the associated estimates for construction costs, and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.9 The CM will prepare its GMP based on the most current completed Plans and Specifications that have been prepared by the Design Professional and reviewed by the CM at that time.
- 2.10 An updated Project Schedule shall be included with any GMP Proposal(s) that reflects the GMP related Plans and Specifications.
- 2.11 The GMP shall be comprised of, but not necessarily limited to, the following not-to-exceed cost reimbursable or lump sum amounts, which shall be further defined in the contracts:
 - 2.11.1 Cost of the Work
 - 2.11.2 General Conditions Costs
 - 2.11.3 Construction Fee
 - 2.11.4 Allowances
 - 2.11.5 City's Contingency
 - 2.11.6 CMAR Contingency
 - 2.11.7 Insurance Costs
- 2.12 The use and control of contingencies for the Project shall be further described in the CSA

- 2.13** Taxes shall be included in the various GMP components and are deemed to include all sales, use, consumer and other taxes which are legally enacted when the final GMP(s) were established and agreed upon by the CM and the City, whether or not yet effective or merely scheduled to go into effect.
- 2.14** The CM may include design-build services for components (such as fire sprinklers) and shall provide Shop Drawings and Working Drawings based on approved Plans and Specifications prepared by the Design Professional for which the CM would have final design responsibility. The GMP shall include all costs associated with the design and construction of these portions of the Work.
- 2.15** GMP savings resulting from a lower actual project cost than anticipated by the CM remaining at the end of the Project will revert to the City as defined in the CSA.
- 2.16** The CM shall meet with the City to review the GMP Proposal(s) and the written statement of its basis. If the City discovers inconsistencies or inaccuracies in the information presented, the CM will make adjustments as necessary to the GMP Proposal, its basis, or both.
- 2.17** The City upon receipt of any GMP Proposal from the CM, may submit the GMP documents including the related Plans and Specifications, to an independent third party for review and verification. The third party will develop an independent estimate of the cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- 2.18** If the CM's GMP Proposal is greater than the independent third party estimate for the Cost of Work, the CM as part of its GMP, or as a separate report, within 5 Working Days of a written request by the City shall identify, explain, and substantiate the differences. The CM may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration to the City. At that time, the City may do one of the following:
- 2.18.1** Accept the CM's original or revised GMP Proposal, if within City's budget, without comment.
 - 2.18.2** Accept the CM's original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CM that the Project budget has been increased to fund the differences, or
 - 2.18.3** Reject the CM's original and revised Proposal because it exceeds the City's budget.
- 2.19** If during the review and negotiation of the CSA, there are design changes to the Project, the City will require the Design Professional to revise the Plans and Specifications. Such revised Plans and Specifications will be furnished to the CM. The CM will promptly notify the City in writing if any such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications that are a part of the terms and conditions of the CSA.

- 2.20** The GMP shall include construction costs of work self-performed by the CM, subcontractors, general conditions performed by the CM or others, selected assistance during the completion of final Plans and Specifications for the Project, and allowances for certain fees, permits, and reimbursable expenses that would be administered by the CM and reimbursed by the City at cost without markup.
- 2.21** The GMP proposals for the Work shall be presented in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the Pre-Construction Services.
- 2.22** GMP Proposals submitted shall be based on, and consistent with, the current cost estimate at the time of the request, the associated estimates for construction costs, and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.23** If the GMP proposal for the Construction Services is approved by the City, the GMP proposal will be incorporated into the CSA.

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

HOURLY RATES

| <u>CLASS TITLE</u> | <u>FULLY LOADED RATE</u> |
|-----------------------------|--------------------------|
| Project Manager | \$ 115 |
| Project Engineer | \$ 50 |
| Design Engineer | \$ 110 |
| Pre-Construction Manager | \$ 100 |
| Estimator | \$ 100 |
| VE Specialist | \$ 150 |
| Contract Compliance Officer | \$ 135 |
| Community Outreach Liaison | \$ 150 |
| Construction Superintendent | \$ 90 |
| Safety Engineer | \$ 70 |
| Project Administrator | \$ 35 |

EXPENSES

| | |
|---|-------|
| Subconsultant mark-up (provide invoices) | 5% |
| Direct expense mark-up (third party billings and Specific expenses such (e.g., copies and printing) | 5% |
| Max per diem rate for overnight accommodation | \$170 |
| Meals for full day is stipulated at | \$60 |

IN-HOUSE PLOTS

| | |
|------------------------|---------|
| Bond B&W (per sheet) | \$2.25 |
| Bond Color (per sheet) | \$9.00 |
| Mylar (per sheet) | \$31.00 |

PRE-CONSTRUCTION SERVICES GUARANTEED MAXIMUM PRICE \$195,000.00

Notes:

1. Add additional categories/lines as needed.
2. See RFP, Exhibit B, Section 3.11 and the PSA, Section 3.1 for details and include the required pricing.

EXHIBIT C

TIME SCHEDULE

EXHIBIT D

CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

EOCP CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES REQUIREMENTS

1. References to Consultant as identified herein shall also and equally apply to CMs.
2. This Agreement is subject to current edition of Chapter 10 in the City of San Diego Standard Specifications for Public Works Construction (The WHITEBOOK) except as follows:
 1. The CM's Equal Opportunity Contracting Strategic Plan shall be approved by the City and incorporated into this agreement.
3. List of Forms:
 1. Attachment 1 - Subcontractors List
 2. Attachment 2 - Filanc Construction EOCP Goals

ATTACHMENT 1

| SUBCONTRACTORS LIST NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR | TAX ID NUMBER | CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR | TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES | DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION, MATERIALS OR SUPPLIES | MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, W _o SB, OR SDVOSB ^① | WHERE CERTIFIED ② | CHECK IF JOINT VENTURE PARTNERSHIP |
|---|------------------|--|--|--|--|-------------------------|---|
| Name: <u>Arrieta Construction</u> Address: <u>1215 N. Marshall Avenue</u> City: <u>El Cajon</u> State: <u>CA</u> Zip: <u>92020</u> Phone: <u>619.448.7683</u> | 95- 2596768 | Contractor | Pipeline Const. Engineering, Estimating | \$30,576 | SLBE, SB | CITY, CA | |
| Name: <u>Valley Construction Management</u> Address: <u>3525 Del Mar Heights Rd. #192</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92130</u> Phone: <u>866.966.2720</u> | 20- 8309093 | Vendor | Value Eng. Const Mgmt. QA/QC | \$20,520 | ELBE | CITY | |
| Name: <u>Peterson Scheduling</u> Address: <u>32605 Womsi Rd /PO Box 829</u> City: <u>Pauma Valley</u> State: <u>CA</u> Zip: <u>92061</u> Phone: <u>760.413.8793</u> | 45- 2694487 | Designer | Scheduling | \$15,000 | ELBE | CITY | |

① As appropriate, The Design-Builder shall identify Subcontractor as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

| | | | |
|---|--------|--|---------|
| Certified Minority Business Enterprise | MBE | Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE | Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE | Certified Emerging Local Business Enterprise | ELBE |
| Certified Small Local Business Enterprise | SLBE | Small Disadvantaged Business | SDB |
| Woman-Owned Small Business | WoSB | HUBZone Business | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB | | |

② As appropriate, The Design-Builder shall indicate if Subcontractor is certified by:

| | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

ATTACHMENT 1

| SUBCONTRACTORS LIST NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR | TAX ID NUMBER | CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR | TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES | DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION, MATERIALS OR SUPPLIES | MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, OR SDVOSB [ⓐ] | WHERE CERTIFIED [ⓑ] | CHECK IF JOINT VENTURE PARTNERSHIP |
|---|------------------|--|--|--|---|---------------------------------|---|
| Name: <u>Humanability Communications</u> Address: <u>1025 Birch Avenue</u> City: <u>Escondido</u> State: <u>CA</u> Zip: <u>92027</u> Phone: <u>760-580.4630</u> | 90- 0769007 | Vendor | Community Outreach | \$9,000 | SLBE | CITY | |
| Name: <u>Advanced Telemetry Systems (ASTI)</u> Address: <u>1951 Don Lee Place</u> City: <u>Escondido</u> State: <u>CA</u> Zip: <u>92029</u> Phone: <u>760.738.6804</u> | 33- 0454232 | Contractor | SCADA | \$3,200 | SDVOSB | SBA | |
| Name: <u>Vadnais Corporation</u> Address: <u>2130 La Mirada Drive</u> City: <u>Vista</u> State: <u>CA</u> Zip: <u>92081</u> Phone: <u>858.550.1460</u> | 95- 2383867 | Contractor | VE, Risk Eval, Constructability | \$3,200 | OBE | N/A | |

ⓐ As appropriate, The Design-Builder shall identify Subcontractor as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

| | | | |
|---|--------|--|---------|
| Certified Minority Business Enterprise | MBE | Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE | Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE | Certified Emerging Local Business Enterprise | ELBE |
| Certified Small Local Business Enterprise | SLBE | Small Disadvantaged Business | SDB |
| Woman-Owned Small Business | WoSB | HUBZone Business | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB | | |

ⓑ As appropriate, The Design-Builder shall indicate if Subcontractor is certified by:

| | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

12.28.2012

Ms. Alice Altes, PE
Project Manager
City of San Diego
600 B St., Suite 800
M.S. 908A
San Diego CA, 92101

**RE: Upas Street Pipeline Replacement Project, Bid No. K-12-5416-CMAR-3-C
Equal Opportunity Contracting Goals**

Dear Ms. Altes,

Filanc Construction Company has committed to exceed the City of San Diego's Equal Opportunity contracting goals for the Upas Street Pipeline Replacement Project. Referencing Appendix C of Filanc's proposal, dated 9/14/2012, Filanc has established Equal Opportunity subcontracting goals as follows:

Stage 1: Pre-Construction Services

First tier subcontracting participation goal of not less than 40% of total contract value.

Stage 2: Construction Services

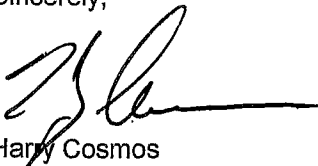
First tier subcontracting participation goal of not less than 30% of total contract value.

Filanc stands behind these goals, and as such confirms that the commitment levels for Stage 1 and Stage 2 shall be incorporated into the contract as a Contractual Requirement, superseding the City's goal of 20% for each phase of the CMAR contract.

A copy of this letter has been included with the Pre-Construction Services Agreement, Exhibit D, City's Equal Opportunity Contracting Program, as attachment 2.

Please let me know if there are questions or if additional information is required.

Sincerely,



Harry Cosmos
President

J.R. Filanc Construction Company, Inc.

EXHIBIT E

CM CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: UPAS STREET PIPELINE REPLACEMENT PROJECT

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

J.R. FILANC CONSTRUCTION COMPANY INC.
Name under which business is conducted

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

Signed Catherine B. Final

Printed Name CATHERINE B FINAL

Title SECRETARY

Date 1/3/13

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

The intent of the Contractor Standards clause of San Diego Municipal Code Section 22.3004 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of Section 22.3004(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

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

A. PROJECT TITLE:

UPAS STREET PIPELINE REPLACEMENT PROJECT

B. BIDDER/CONTRACTOR INFORMATION:

J.R. FILANC CONSTRUCTION COMPANY

| | | | |
|--|----------------|-------|-----|
| Legal Name | DBA | | |
| 740 NORTH ANDREASEN DRIVE ESCONDIDO CA 92029 | | | |
| Street Address | City | State | Zip |
| CATHERINE FINAL, SECRETARY (760)941-7130 | (760) 941-3969 | | |
| Contact Person, Title | Phone | Fax | |

C. OWNERSHIP AND NAME CHANGES:

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

Yes No

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

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

Yes No

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

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

Corporation Date incorporated: 10 / 1 / 1952 State of incorporation: CA

List corporation's current officers: President: HARRY COSMOS
Vice President: VINCE DIAZ
Secretary: CATHERINE B FINAL
Treasurer: CATHERINE B FINAL

Is your firm a publicly traded corporation? Yes No

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

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

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

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

List names of all firm partners:

Sole Proprietorship Date started: ___/___/___

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

Sole Proprietorship Date formed: ___/___/___

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

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

E. FINANCIAL RESOURCES AND RESPONSIBILITY:

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?

Yes No

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

2. In the past five (5) years, has your firm been denied bonding?

Yes No

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes No

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

F. PERFORMANCE HISTORY:

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes No

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

2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?

Yes No

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

G. COMPLIANCE:

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

Yes No

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

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

Yes No

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

H. BUSINESS INTEGRITY:

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

Yes No

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

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

Yes No

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

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

- Initial submission of *Contractor Standards Pledge of Compliance*.
- Update of prior *Contractor Standards Pledge of Compliance* date ____/____/____

Complete all questions and sign below. Each *Pledge of Compliance Attachment "A"* page must be signed.

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Pledge of Compliance* and that I am responsible for completeness and accuracy of responses and all information provided is true to the best of my knowledge and belief. I further certify my agreement to the following provisions of San Diego Municipal Code Section 22.3004:

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

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

CATHERINE B FINAL, SECRETARY

Print Name, Title

Catherine B. Final

Signature

11/3/13

Date

**City of San Diego CONTRACTOR
STANDARDS *Pledge of Compliance*
*Attachment "A"***

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

N/A

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

CATHERINE B FINAL, SECRETARY

Print Name, Title

Catherine B Final

Signature

1/3/13

Date

**EXHIBIT G INSTRUCTION
SHEET FOR**

**DISCLOSURE DETERMINATION FOR CONSULTANTS
(Form CC-1671)**

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

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

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

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

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

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

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

DISCLOSURE DETERMINATION FOR CONSULTANT

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

1. Department / Board / Commission / Agency

Name: _____

2. Name of Specific Consultant & Company: J.R. FILANC CONSTRUCTION CO INC.

3. Address, City, State, ZIP 740 NORTH ANDREASEN DRIVE ESCONDIDO CA 92029

4. Project Title (as shown on 1472, "Request for Council Action") UPAS STREET PIPELINE REPLACEMENT

5. Consultant Duties for Project: CMAR PRE-CONSTRUCTION SERVICES

6. Disclosure Determination [select applicable disclosure requirement].

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

- or -

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

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

- or -

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

By: Catherine B. Final 1/3/13
[Name/Title]* [Date]
Catherine B. Final, Secretary

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract.

DEFINITION OF "CONSULTANT"

California Code of Regulations defines a "Consultant" as an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
1. Approve a rate, rule or regulation;
 2. Adopt or enforce a law;
 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
 5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
 6. Grant City approval to a plan, design, report, study, or similar item;
 7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

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

EXHIBIT H

Equal Benefits Ordinance

Certification of Compliance

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



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

COMPANY INFORMATION

| | |
|---|----------------------------------|
| Company Name: J.R.FILANC CONSTRUCTION COMPANY INC. | Contact Name: CATHY FINAL |
| Company Address: 740 NORTH ANDREASEN DRIVE ESCONDIDO CA 92029 | Contact Phone: (760) 941-7130 |
| | Contact Email: CFINAL@FILANC.COM |

CONTRACT INFORMATION

| | |
|--|----------------------|
| Contract Title: UPAS Street Pipeline Replacement Project | Start Date: 12/28/12 |
| Contract Number (if no number, state location): Bid No. K-12-5416-CMAR-3-C | End Date: 10/31/2017 |

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 Section 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 Section 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.

| | | |
|-------------------------------|---------------------------|---------|
| Catherine B. Final, Secretary | <i>Catherine B. Final</i> | 11/3/13 |
| 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: |
|---------------|--------------|-----------------------------------|---|

EXHIBIT I
REGARDING INFORMATION REQUESTED UNDER THE
CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information clearly marked confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the responsibility of the Contractor to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the Contractor will hold the City harmless for release of this information.

It will be the Contractor's obligation to defend, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall indemnify the City and hold it harmless for any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

J.R. FILANC CONSTRUCTION COMPANY INC.

Name of Firm

Catherine B. Final

Signature of Authorized Representative

CATHERINE B. FINAL

Printed/Typed Name

1/3/13

Date

**EXHIBIT J
CM CERTIFICATION**

AMERICAN WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: UPAS Street Pipeline Replacement

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

J.R. FILANC CONSTRUCTION COMPANY INC.

(Name under which business is conducted)

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

Signed Catherine B. Final

Printed Name Catherine B Final

Title Secretary

UPAS STREET PIPELINE REPLACEMENT

Exhibit "A" Scope of Services

| Section | Subsection | Title | Deliverable | 60% | 90% | 100% |
|----------|------------|--|--|-----|-----|------|
| 1 | | General | | | | |
| | 1.1 | Review Contract Documents | | X | X | X |
| | 1.2 | Review Operations and Operational Function | General Construction Phase Plan. | X | X | X |
| | 1.3 | Services - | | | | |
| | 1.4 | CM to Provide | | | | |
| | 1.5 | Preliminary Evaluation of City's Program | Preliminary Program Report | X | | |
| | 1.6 | Assist in selecting professional services | | X | X | X |
| | 1.7 | Comprehensive construction management program | CM's Construction Management Plan | X | X | X |
| | 1.8 | Familiarize and incorporate laws and ordinances | Schedule and Costs of permits and licenses - Permit Report | X | X | |
| | 1.9 | Character, quality, and quantity of work | | X | X | X |
| | 1.10 | Special Inspections services as needed | | X | X | X |
| 2 | | Meetings | | | | |
| | 2.1 | CM to attend meetings and distribute minutes | Attend meetings, prepare and distribut minutes | X | X | X |
| 3 | | Project Control | | | | |
| | 3.1 | Duration of Pre-Construction Services <5 years | | | | |
| | 3.2 | Monitor costs to maintain budget during design phase | | X | X | X |
| | 3.3 | Master Project Schedule in Primavera format | Master Project Schedule (phased?) | X | X | X |
| | 3.4 | Schedule updates with design phases | Schedule Updates | X | X | X |
| | 3.5 | Analyze cost and schedule impacts of work hours | Cost and Time impact report for alternative working hours | X | X | X |
| | 3.6 | Scope of Project Control | | | | |
| 4 | | Cost Estimation and Budget | | | | |
| | 4.1 | Comprehensive Cost Estimate at 4 phases | Phased cost estimates and evaluations | X | X | X |
| | 4.2 | CM Cost Model | CM Project Budget and master Cost Model | X | X | X |
| | 4.3 | VE and Constructability cost estimates | Cost estimates for design phase VE and Constructability review | X | X | X |
| | 4.4 | Construction Phasing and Phased Estimates | Estimates for various construction sequences | X | X | X |
| | 4.5 | Cost Update and Noticing | | | | |
| | 4.5.1 | Itemized cost estimate | Itemized cost estimate | X | X | X |
| | 4.5.2 | Cost recovery recommendations | VE/Constructability recommendation estimates | X | X | X |
| | 4.5.3 | Assist with scope revision | Scope Estimates | X | X | X |
| | 4.6 | Cost review and acceptance | Negotited and accepted cost estimate | X | X | X |
| | 4.7 | Preliminary cost estimating | Estimates based on preliminary concepts | X | X | X |
| | 4.8 | Detailed cost estimates | Final design phase estimates | | X | X |
| | 4.9 | Value engineering and scope - budget control | VE and Scope estimates | X | X | X |
| | 4.10 | Cash Flow Projections | Project phase cash flow projection | X | X | X |
| | 4.11 | VE cost estimates | VE cost estimates | X | X | X |
| | 4.12 | Duplicate with 4.5? | | | | |

| Section | Subsection | Title | Deliverable | 60% | 90% | 100% |
|----------|------------|---|---|-----|-----|------|
| | 4.12.1 | | | | | |
| | 4.12.2 | | | | | |
| | 4.12.3 | | | | | |
| 5 | | Design Reviews | | | | |
| | 5.1 | Design Coordination Review | Design Review Report | X | X | X |
| | 5.2 | Design document issue review | Design document review report | X | X | X |
| | 5.3 | Notify City and Design Professional of design issues | Design Review Report | X | X | X |
| | 5.4 | Notify City of Cost Impacts during design review | Design Review Report | X | X | X |
| | 5.5 | Resolve design issues and cover costs in GMP | Design Review Report | X | X | X |
| | 5.6 | Labor analysis | Labor impact review report | | X | |
| | 5.7 | Review and advise on materials & details - cost impacts | Design Review Report, see 5.1 | X | X | |
| | 5.8 | Temporary Project Facilities | Site Logistics Plan | X | X | X |
| | 5.9 | Subcontractor Safety Program Coordination | Overall Project Safety Program | X | X | X |
| | 5.10 | Develop work phase contract documents | Bid document packages | | X | |
| | 5.11 | Construction materials review and recommendations | Design Review Report | X | X | |
| | 5.12 | Provide estimates and scheduling for material options | Design Review Report | X | X | |
| | 5.13 | Provide patent or copyright data | | | X | X |
| | 5.14 | CM not responsible for Design, E&O if responsible | E&O insurance if design responsibility exists | | | X |
| | 5.15 | CM to coordinate transmittal of documents for review | | X | X | X |
| | 5.16 | CM to provide cost models for design alternatives | Design Alternative Cost Estimates | X | X | X |
| | 5.17 | CM to develop staging, material delivery, inventory, and waste disposal plans | Staging, Delivery, Inventory, and Waste Disposal Plan | X | X | X |
| | 5.18 | Provide alternate materials & methods recommendations | | X | X | |
| | 5.19 | Review utility infrastructure information | | X | X | |
| | 5.20 | Attend meetings with utility companies, cost & time impacts | | X | X | X |
| | 5.21 | Implement a web based information system for data transfer | Web based data system | X | | |
| 6 | | Advice on Constructability and Logistics | | | | |
| | 6.1 | Review Design Documents for Constructability | Design Review Report | X | X | |
| | 6.2 | Review Design Documents for Means and Methods, provide safety plan | Design Review Report | X | X | |
| | 6.3 | Identify and Provide written recommendations on constructability issues | Design Review Report | X | X | |
| | 6.4 | Establish sequence of construction and evaluate phasing. | Site Logistics Plan | X | X | |
| 7 | | Value Engineering | | | | |
| | 7.1 | Provide VE services during pre-construction phase | Design VE Report | X | X | |
| | 7.2 | Provide detailed cost estimates and VE recommendations (GMP .95 Budget) | Design VE Report Cost Estimates | X | X | |
| | 7.3 | Revise estimates as needed to support and incorporate VE | | X | X | |
| 8 | | Long Lead Items | | | | |
| | 8.1 | Identify long lead items | Long lead materials analysis | X | X | X |
| 9 | | Community Outreach | | | | |
| | 9.1 | Attend community meetings during design and construction | | X | X | X |
| | 9.2 | Provide input on access to facilities, residence, and business | Community Impact Report | X | X | X |



Proposal
Bid No.: K-12-5416-CMAR-3-C

**Pre-Construction Services
for the Upas Street
Pipeline Replacement
Project Construction
Manager at Risk**

FILANC[®]



**City of San Diego
Public Works Department
9.14.2012**

September 14, 2012

Ms. Claudia Abarca
City of San Diego
Public Works Department
1200 Third Avenue, Suite 200, MS 56P
San Diego, CA 92101

Subject: **Proposal for Pre-Construction Services for the
Upas Street Pipeline Replacement Project
Construction Manager at Risk, Bid No. K-12-5416-CMAR-3-C**

Dear Ms. Abarca:

J.R. Filanc Construction Company, Inc. (Filanc) is pleased to present the City of San Diego (City) our proposal for Pre-Construction Services for the Upas Street Pipeline Replacement Project. Filanc is a local firm with a national reputation as a leader in alternative delivery of water and wastewater infrastructure and has directly relevant CMAR experience.

- ***Filanc is committed to providing the City a seamless and efficient construction experience.*** As an experienced CMAR and design-builder, we have unmatched experience in collaborating with designers to create best value solutions.
- ***Our Pre-Construction Team has decades of high-level experience in every technical aspect of the project.*** Our contributions to the design will demonstrate the value of the CMAR project delivery method.
- ***We are committed to exceeding the City's Equal Opportunity contracting goals.*** In our Equal Opportunity Contracting Strategic Plan, **we commit to doubling the City's goal for Stage I and exceeding it by at least 50 percent in Stage II.**

We acknowledge Addendum Nos. 1 (August 23, 2012), 2 (August 30, 2012) and 3 (September 6, 2012). Filanc is ready to begin work as soon as you give the go ahead. If you wish to discuss any aspect of this proposal, please contact me at (760) 941-7130 or hcosmos@filanc.com.

Sincerely,
J.R. FILANC CONSTRUCTION COMPANY, INC.


Harry Cosmos
President

1. Table of Contents

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Appendices

- A: Certification of Exception to RFP
- B: Resumes
- C: Equal Opportunity Strategic Plan

Sealed Price Proposal: Under Separate Cover

2. Introductory Statement

FILANC will serve as the Construction Manager for the Upas Street Pipeline Replacement Project, Construction Manager at Risk (CMAR). Filanc is an award-winning design builder of water and wastewater pipelines and related infrastructure based in Escondido. The company has focused on water and wastewater since its founding and consequently, has developed unmatched expertise in the installation of pipelines of every size, material and application in the industry. Filanc has been performing

water, wastewater and storm water pipeline and associated appurtenance and facilities construction for nearly 60 years.



REQUIRED INFORMATION

Legal name and address of the company:

J.R. Filanc Construction Company, Inc.
 740 N. Andreasen Drive
 Escondido, CA 92029
 (760) 941-7130

Individual to contact regarding this proposal:

Harry Cosmos, President
 (760) 466-0501 office
 (619) 843-1500 mobile

Principal Owners of the Firm:

| | |
|--------------|-------------|
| Jack Filanc | Mark Filanc |
| Harry Cosmos | Vince Diaz |
| Cathy Final | David Kiess |

3. Exceptions to this RFQ

Filanc takes no exception to the information presented in the RFQ or its Exhibits. A completed "Certification of Exception to RFP Documents" form is provided in Appendix A.

4. Executive Summary

FILANC is pleased to provide the City of San Diego Public Works Contracting Group our proposal for Stage I Pre-Construction Services for the for the Upas Street Pipeline Rehabilitation Project Construction Manager at Risk (CMAR), Bid No. K-12-5416-CMAR-3-C. This proposal does not contain proprietary information that would be exempt from public disclosure pursuant to the California Public Records Act.

This proposal demonstrates that we offer the City:

- ✓ A local company with a proven record on complex projects delivered by CMAR
- ✓ A team that has worked with the City on water and wastewater projects of every kind and contract type
- ✓ A Project Manager with CMAR and extensive large project experience
- ✓ A Pre-Construction Services Team that includes experts for every technical aspect
- ✓ A binding commitment to significantly exceed the City's equal opportunity contracting goals

FILANC BACKGROUND

J.R. Filanc Construction Company, Inc. is an award-winning, general engineering contractor, design-build builder and construction manager that constructs, renovates, and expands water and wastewater conveyance, treatment and storage facilities. Filanc is locally headquartered in Escondido.

Since our founding in 1952, we have completed more than 400 projects for the public, private

and federal sectors. Our projects range from emergency repair work to \$100+ million dollar facility construction and expansion.



FILANC is consistently ranked among America's Top Utility Contractors

Our principals have over 200 years of combined experience in the construction of water and wastewater infrastructure. Filanc is an industry leader in alternative project delivery including CMAR and design-build. We typically perform construction management on over \$100 million in projects each year.

Over the past ten years, we have delivered over \$90 million of construction in water utilities by CMAR

Filanc has been working in San Diego for over 50 years providing construction management of water and wastewater facilities. By keeping our focus on what we do, Filanc is recognized both locally and nationally as one of the most qualified contractors in our industry.

Our collaborative approach to construction has led to our success as a design-builder and Construction Manager at Risk.

Filanc will develop a strong partnership with the City and Infrastructure Engineering Corporation (IEC) to deliver a seamless, efficient and cost-effective construction experience.

AN EXPERT PRE-CONSTRUCTION TEAM

The greatest benefit to Owners of the CMAR contracting method is the participation of a qualified contractor during the design development, or Pre-Construction Phase. Those benefits can only be realized if the Pre-Construction Team consists of truly experienced, hands-on construction professionals with expert skills. That is where our team excels. Here are the highlights:

- ✓ **Construction Manager Arnold Wingler** has managed a number of large and complex projects and is one of the few in California with CMAR experience in water utility construction. Arnie's experience and reputation for excellent delivery and collaboration are unmatched.
- ✓ **Pre-Construction Manager Omar Rodea** is a skilled collaborator, experienced construction project manager and engineer. Omar's daily role at Filanc is to manage all aspects of preconstruction. His expertise will be critical to our success.
- ✓ **Design Engineer Gary Silverman** has over 28 years of experience as a design engineer, regulator and Owner. Gary will apply those skills to ensure successful collaboration with the City's CMAR engineering firm, IEC.
- ✓ **Construction Consultants John Arrieta and Wes Wise** have focused their entire careers in construction on the delivery of pipeline projects for the City of San Diego and are recognized for their Value Engineering and Constructability assessment skills. The project will benefit from their experience.

- ✓ **Tunneling Expert, Paul Vadnais** has over 35 years of experience in the field and has participated on complex tunneling projects throughout the State of California, including many in San Diego County. Project risks will be mitigated by Paul's insights.
- ✓ **Construction Manager, Paul Mochel** performed these services while with the City before forming Valley Construction Management. Paul will make sure that we perform at the highest level of quality control and comply with all contractual obligations.
- ✓ **Chief Estimator Bob Zaiser** leads Filanc's estimating department – the best in the business. Bob will lead us in developing a GMP that will deliver the City a best value project.

COMMITMENT TO SMALL BUSINESS

Filanc shares the City's commitment and dedication to the principles of equal opportunity in the workplace and in subcontracting. The City has established a goal of 20% participation by small or disadvantaged businesses for both stages of the project. In this proposal, we commit to 40% for Stage 1 and at least 30% for Stage 2.

We commit to significantly exceed the requirement for participation by small and disadvantaged businesses.

We have done this by adding experts whose contributions to the project will not only have tangible benefits, but who are also certified by the City as either an Emerging Local Business Enterprise (ELBE), a Small Local Business

Enterprise (SLBE) or a Service Disabled Veteran Owned Business (SDVOSB).



John Arrieta and Wes Wise of Arrieta Construction, Inc. are important members of our Pre-Construction Services Team. John is a well-known local contractor that has provided high quality pipeline construction services to the City of San Diego for decades. Similarly, Wes Wise has dedicated his entire career to the construction of pipeline projects in San Diego. Arrieta Construction is certified by the City as an ELBE. As currently structured, Arrieta is not able to otherwise prequalify as a prime contractor for this project. This gives them an opportunity to be involved in this landmark project and to develop experience in CMAR project delivery.



When we need to construct and maintain

resource and cost-loaded electronic schedules, Filanc relies on Marsha Peterson of Peterson Scheduling. We have worked together on many projects and are strong supporters of her business, which is now certified by the City as an ELBE.



Paul Mochel is a highly experienced Certified Construction

Manager (CCM) with focused expertise in pipeline construction. He is a principal in Valley Construction Management, a certified SLBE. Paul is currently working with us on a design-

build pipeline project for the City of Oceanside. He will fill the key role of Contract Compliance Officer working with our Project Manager to ensure compliance with all EOC subcontracting commitments, and applicable labor laws.



Two aspects of this project are critical to it

being a success; well planned and executed community outreach that addresses all of the concerns of the local residents and stakeholders and effective outreach to small businesses to encourage their participation on the project. Humanability (SLBE) will serve as our consultant to ensure that these needs are addressed.

MEETING ALL PROJECT CHALLENGES

In this proposal we present our plan to meet each of the challenges that the project will face. Our team has the experience and resources to address every technical and schedule challenge as well as the challenges of meeting the needs of the public and the small business community.

The fundamental approach we rely on is open collaboration. We will work diligently with the City, Infrastructure Engineering Corporation and all other stakeholders to ensure that this project is completed to the highest level of quality and value without impacting the 100 year anniversary celebration for Balboa Park.

5. Project Challenges and Issues

PROJECT CHALLENGES

Filanc has reviewed the RFP and associated design information provided by the City and made a detailed field exploration of the project alignment. Based on project specific conditions and our experience with similar work, we have identified five key challenges for this project. Table 5.1 identifies these challenges and describes how we have successfully addressed them on previous projects.

PROJECT ISSUES

The Filanc team understands the design and technical issues involved with this project. Our understanding comes from our long experience implementing large water and wastewater projects through alternative delivery methods, including CMAR. Our pre-construction team partner, Arrieta Construction (ELBE), has built numerous pipeline projects for the City of San Diego, and brings a depth of understanding from that perspective.

- Schedule – We understand that developing and managing a schedule to execute the work affected by the Balboa Park Centennial Celebration before December 1, 2014 is important to meet replacement goals mandated by EPA and established by the City.
- Site Mobilization – We understand the importance of establishing staging and laydown areas in strategic locations to facilitate efficient work production while minimizing disruptions to the community. We will use lean construction techniques to schedule material delivery “just in time” for

usage, to prevent having to stockpile and double-handle excessive quantities.

- Constructability – We understand that a key role of the CMAR is to provide value engineering input during the design to improve the constructability of the project, thereby reducing its cost and shortening the schedule.
- Construction Sequencing – We recognize that a primary way to work efficiently is to develop and implement a construction sequencing plan, in coordination with City Operations and the Water Department, that enables simultaneous work in multiple locations while respecting permit and moratorium constraints and maintaining reliable water service.
- Permit and Code Compliance – Key permits must be obtained in a timely manner to facilitate the work. Of most significance, permits will be required from Caltrans and Metropolitan Transit District for several encroachments of their ROW. Also, coordination with California Department of Public Health (CDPH) is needed to address code requirements for separation of water mains from adjacent non-potable sources.
- Cost Containment – We understand that the City has a limited budget for this project. We will work collaboratively with the Consultant and the City during Stage I to introduce value engineering ideas to minimize the project cost without sacrificing quality, and then provide effective management of subcontractors during Stage II, to prevent cost escalations.

Table 5.1 below, provides a summary of the challenges we have identified and examples of how we overcame similar issues in the past.

Table 5.1 Filanc Experience in Effectively Addressing Key Project Challenges

| Key Challenge | Description | Similar Experience |
|--|---|--|
| 1 Sequencing the Work | The work must be scheduled and sequenced innovatively to meet key milestone dates while respecting Operations constraints associated with maintaining water service. | Detailed advanced planning allowed Filanc to sequence work to successfully meet a key milestone – shutdown of Metropolitan Water District of Southern California’s F.E. Weymouth Water Treatment Plant which serves 19 million people. |
| 2 Coordinating with Operations | Scheduling and implementing shut-downs, tie-ins and system testing must be done in close coordination with City Water Operations. | Filanc prepared Maintenance of Operations Plans to ensure smooth implementation of shut-downs, tie-ins and system testing. Recent examples include the shut downs required to bring the new Rancho Peñasquitos pump station on line for the City of San Diego. |
| 3 Collaborating with Consultant | It is vital to the success of the project that the CM and the Consultant, though not contractually bound to each other, work effectively together to achieve best value for the City. | On the City of Yuma water treatment plant CMAR project, Filanc collaborated with Carollo Engineers to incorporate numerous VE and constructability improvements to the design. |
| 4 Budget Control | In Stage I, the CM must focus on reducing the project cost to below the City budget. During Stage II, the CM must implement effective project controls to ensure the established GMP is not exceeded. | Our VE/constructability efforts during pre-construction reduced the budget by \$2 million from the City of Yuma’s initial target estimate and the project was delivered on budget. |
| 5 Subcontractor Management/QC | A primary skill of an effective CMAR is the simultaneous management of multiple subcontractors to ensure quality workmanship and other contract requirements. | Construction Manager Arnold Wingler has managed projects in excess of \$40 million and has expert skills in managing subcontractors to deliver work meeting all quality and contractual requirements. |

6. Cost Estimate Review & Potential Savings

COST ESTIMATE REVIEW

The Filanc Team has reviewed the cost estimate prepared by the Consultant as presented in Technical Memorandum 7 (TM7). We have prepared Table 6.1 to present the findings of our review, which are identified on a line item-by-line item basis. In general, we found the estimate to be reasonably thorough and accurate. Where appropriate, we have revised the list of bid items to better reflect those that are typically included in City of San Diego pipeline projects. Also, for many of the items, we have provided alternative unit prices based on recent bids for similar work in the City. These changes result in both additions and reductions in the extended prices for the bid items.

On balance, we believe the project can be constructed for over 7 percent less than the \$17 million estimate by the Consultant.

Table 6.1 shows in green and red text that we recommend both increases and decreases in the unit prices to comprise the estimate. This

should provide the City comfort that the current budget is adequate to construct the project. We will work collaboratively with the City and the Consultant during Stage I to reduce that figure by at least 5 percent through value engineering, as discussed further below.

SUGGESTED BID ITEM REVISIONS

Table 6.1 shows suggested bid item changes in blue text. In summary, the changes are as follows:

- Imported Backfill (Bid Items 13, 14 and 30) – From our experience, the native San Diego Formation soils are highly suitable for use as backfill material. As such, Items 13 and 14, which are not standard City bid items, can be deleted. Further, because of the suitability of native material for backfill, we believe the quantity shown in Item 30 is a significant over estimation. Assuming 10 percent import material; we created Bid Item 30A to revise the quantity from 17,000 tons to 2,500 tons.
- Striping (Bid Items 18, 23 and 66) – Striping should be moved from stand-alone Item 66 to be part of paving in Items 18 and 23. These items are traditionally grouped.
- Disinfection and Testing (Bid Items 36 and 37) – These are not standard City bid items. The cost of disinfection and hydrostatic testing is included in the pipe price.
- Pipeline Removal (Bid Item 50) – This is not a standard City bid item. The cost of pipe removal is included in the cost of pipe installation.
- Meter Boxes (Bid Item 54) – This is not a standard City bid item. The cost of meter boxes is included in the cost of water services.
- Highlining (Bid Item 67) – Highlining costs should be provided on a ‘LF’ basis, rather than ‘LS’. Bid Items 67A, 67B and 67C have been added to address this, as typically seen in City bids.
- Cut and Plug (Bid Item 71) – As indicated in TM7, cuts and plugs will be done by City forces, so this item should be deleted from the Bid Form.
- Potholing (Bid Item 78) – This item has been added to provide for potholing during

preconstruction to enable timely development of steel pipe shop drawings.

- Additional Items (Bid Items 79 – 90) – These are bid items that are typically found in City pipeline projects and have been added for completeness.

SUGGESTED UNIT PRICE REVISIONS

Suggested revisions have been made to many of the unit prices in the cost estimate. Notes for each bid item are included in Table 6.1 to indicate the basis of the change. These changes reflect our team’s extensive experience installing pipelines in San Diego; some in the very neighborhoods as the Upas Street pipeline. Also, many of the changes apply unit prices from the following recently bid City projects:

- Harbor Drive 16” Pipeline – Bid Date: April 5, 2012
- Water Group 928 – Bid Date: July, 17, 2012
- Water Group 914 – Bid Date: May 15, 2102
- Water and Sewer Group 788 – Bid Date: August 14, 2012

Note that we inflated the unit prices that derive from the non-prevailing wage Group Jobs by 23 percent to convert to prevailing wage rates. The Harbor Drive project was prevailing wage, so no adjustment is needed.

POTENTIAL OPPORTUNITIES FOR SAVINGS

As the CMAR, we will work closely with the Consultant’s design team to reduce the construction budget by a target of 5 percent without downgrading the project objectives or design intent. Potential design changes that could result in budget reductions would be collaboratively vetted through careful analysis of not only the initial cost savings, but also the long term effect on operations and energy

usage. A range of value engineering ideas will be considered, including those that would improve constructability, thereby reducing the cost of construction, modifications to material sizes or types to maintain functionality for reduced unit cost, and creative sequencing to accelerate the project schedule, thereby reducing overhead costs.

Based on a thorough review of the RFP materials and an extensive field exploration of the alignment, specific cost-saving ideas that we hope to explore with the City and the Consultant include:

1. Change Pipe Materials – Savings can be achieved by using AWWA C905 PVC, rather than steel, for the 24” and 30” pipe. This material is already proposed for the 16” pipelines. Unit cost savings can be achieved for materials and installation costs will be reduced because PVC can be installed more quickly. Also, the contractor would not have to pothole the complete alignment before ordering pipe since shop drawings are not required with PVC pipe.
2. Allow Contractor to Make Connections – Currently, the specifications make the Contractor responsible for highlining, but the connections and “cuts and caps” are to be done by City forces. By allowing the Contractor to do all of this work, it can be coordinated more smoothly, saving an estimated 2 to 5 months of the construction schedule, thereby reducing overhead costs.
3. Compress Schedule – We will develop, in coordination with City Operations, an aggressive sequencing plan. This will allow the City to meet their objective of completing work before the Balboa Park Centennial Celebration, but will also save

money by reducing overhead costs due to a compressed schedule. The sequencing plan will show how work can be constructed simultaneously on multiple headings without impairing the City's ability to provide reliable water service to its customers. The schedule will also be sequenced to minimize impacts to the community, thereby saving time and money. For example, we would seek to construct the work in front of the Boy Scout and Girl Scout facilities in the fall to not interfere with heavy traffic during the summer camp season or the winter/spring Girls Scout cookie drive.

4. Slipline Existing Pipe – Where possible, it could save costs to slipline existing pipelines rather than open cut, remove existing, and replace with new. For example, it may be possible to slipline the existing 24" pipe between Kettner Blvd. and Pacific Highway (Sheet C-1 of the 30% drawings). By sliplining the new 16" into the existing 24" and grouting the annular space, it would save time and money and be safer for workers in this highly trafficked area. This method may also enable obtaining a Caltrans permit more quickly, since there would be less excavation in their right-of-way. Sliplining may also be possible in other areas, such as in Upas between Jackdaw and Ibis (Drawing C-3).
5. Use Alternative SR 163 Crossing – The SR 163 crossing is an expensive proposition, with significant risk due to its length and the steepness of the bore on both sides of the freeway. We understand that some alternatives have been considered, and their feasibility may be compromised by both technical as well as Caltrans permitting

restrictions. However, it is worth exploring further, for example:

- a. The length of the HDD crossing could be shortened by open cutting closer to the Caltrans right-of-way on one or both sides of the freeway. Access and environmental impact would have to be considered, but it appears that it may be possible at least on the west approach.
- b. Sliplining or pipe bursting could be done in the existing 30" pipe. The feasibility of the pulling new pipe through existing angle points would have to be confirmed, but initially it looks promising. It would also be necessary to take the existing pipe out of service during construction without use of a highline.
- c. The existing pedestrian bridge could potentially be used to carry the new pipe across the freeway, eliminating the need to do a directional drill. There is no cell under the bridge, but the sidewalk could potentially be modified to encase the new pipe. The structural properties of the bridge would have to be evaluated, but even if some retrofit were required, the cost could still be attractive.

Table 6.1 Suggested Revisions to 30 Percent Cost Estimate for Upas Street Pipeline Project

| Item | Quantity | Unit | NAICS | Payment Reference | Description | IEC TM 7 Unit Pricing | | Suggested Unit Pricing | | Difference | Notes |
|------|----------|------|--------|-------------------|--|-----------------------|---------------|------------------------|---------------|--------------|--|
| | | | | | | Unit Price | Extension | Unit | Extension | | |
| 1 | 1 | LS | | 2-4.1 | Bonds (Payment and Performance) | \$ 250,000.00 | \$ 250,000.00 | \$ 150,000.00 | \$ 150,000.00 | \$ (100,000) | Usually less than 1% of total. City pays actual invoice cost. |
| 2 | 1 | EA | | 3-3.2.2 | Certified Payroll | \$ 24,000.00 | \$ 24,000.00 | \$ 1,000.00 | \$ 1,000.00 | \$ (23,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 3 | 1 | AL | | 7-5.3 | CalTrans Encroachment Permit | \$ 15,000.00 | \$ 15,000.00 | \$ 15,000.00 | \$ 15,000.00 | \$ - | Allowance item |
| 4 | 1 | LS | 238990 | 7-9.1.1 | Video Recording of Pre-existing Conditions | \$ 10,000.00 | \$ 10,000.00 | \$ 5,000.00 | \$ 5,000.00 | \$ (5,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 5 | 1 | LS | 237310 | 7-10.2.7 | Traffic Control | \$ 130,000.00 | \$ 130,000.00 | \$ 65,000.00 | \$ 65,000.00 | \$ (65,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 6 | 1 | LS | 237310 | 7-10.2.7 | Flashing Arrow Boards | \$ 30,000.00 | \$ 30,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ (20,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 7 | 1 | AL | 237310 | 7-10.5.4 | Portable Changeable Message Signs (PCMS) | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ - | Allowance item |
| 8 | 1 | AL | 237110 | 9-3.1 | Operation & Maintenance Manuals | \$ 10,000.00 | \$ 10,000.00 | \$ - | \$ - | \$ (10,000) | This is not a standard City bid item. The O&M's for the PRS Stations will be minor |
| 9 | 1 | LS | | 9-3.4.1 | Mobilization | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | \$ - | Agreed, 3% max of Contract Value |
| 10 | 1 | AL | | 9-3.5 | Field Orders | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | \$ - | Allowance item |
| 11 | 1 | LS | 238910 | 300-1.4 | Clearing and Grubbing | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ - | Agreed, may be needed in the park area on the west side of the tunnel where we will open cut the pipe. |
| 12 | 200 | LF | 238910 | 300-1.4 | Removal and Disposal of Existing Railroad Tracks | \$ 50.00 | \$ 10,000.00 | \$ 45.00 | \$ 9,000.00 | \$ (1,000) | Reference: Water Group 928 w/ 23% adder for Prevailing Wage |
| 13 | 3,500 | CY | 237310 | 300-2.9 | Excavate and Export (Unclassified) | \$ 80.00 | \$ 280,000.00 | \$ - | \$ - | \$ (280,000) | Not a standard City bid item. Not needed with San Diego formation material for backfill. |
| 14 | 3,500 | CY | 237310 | 300-4.9 | Excavate and Fill (Unclassified) | \$ 25.00 | \$ 87,500.00 | \$ - | \$ - | \$ (87,500) | Not a standard City bid item. Not needed with San Diego formation material for backfill. |
| 15 | 30 | EA | 237310 | 302-1.12 | Traffic Detector Loop Replacement | \$ 600.00 | \$ 18,000.00 | \$ 350.00 | \$ 10,500.00 | \$ (7,500) | Reference: Harbor Drive 16" Pipeline Replacement |
| 16 | 1,500 | TON | 237310 | 306-1.5.1 | Temporary Resurfacing | \$ 40.00 | \$ 60,000.00 | \$ 105.00 | \$ 157,500.00 | \$ 97,500 | Reference: Harbor Drive 16" Pipeline Replacement. Cold mix costs \$80 ton just to purchase & deliver. |
| 17 | 98,000 | SF | 237310 | 302-1.12 | Cold Milling Asphalt Concrete Pavement | \$ 0.50 | \$ 49,000.00 | \$ 0.35 | \$ 34,300.00 | \$ (14,700) | Reference: Harbor Drive 16" Pipeline Replacement |
| 18 | 84,000 | SF | 237310 | 302-4.5 | Rubberized Emulsion-Aggregate Slurry Seal Type II & Striping | \$ 0.50 | \$ 42,000.00 | \$ 0.45 | \$ 37,800.00 | \$ (4,200) | Reference: Harbor Drive 16" Pipeline Replacement. Striping always included in this bid item. |
| 19 | 200 | TON | 237310 | 302.4.5 | AC Patching for Slurry Seal | \$ 200.00 | \$ 40,000.00 | \$ 200.00 | \$ 40,000.00 | \$ - | Reference: Harbor Drive 16" Pipeline Replacement |
| 20 | 1 | LS | 237310 | 302.4.5.1 | Bond for Slurry Seal | \$ 10,000.00 | \$ 10,000.00 | \$ 1,000.00 | \$ 1,000.00 | \$ (9,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 21 | 6,000 | SF | 237310 | 302-5.1.2 | Damaged AC Pavement Replacement | \$ 8.00 | \$ 48,000.00 | \$ 12.00 | \$ 72,000.00 | \$ 24,000 | Reference: Harbor Drive 16" Pipeline Replacement. New City spec requires deep lift AC with Grind & Cap in Non AC Overlay Areas. |
| 22 | 6,000 | SF | 237310 | 302-5.2.1 | Pavement Restoration Adjacent to Trench | \$ 8.00 | \$ 48,000.00 | \$ 12.00 | \$ 72,000.00 | \$ 24,000 | Reference: Harbor Drive 16" Pipeline Replacement. New City spec requires deep lift AC with Grind & Cap in Non AC Overlay Areas. |
| 23 | 2,800 | TON | 237310 | 302-5.9 | 1 1/2" Asphalt Concrete Overlay & Striping | \$ 85.00 | \$ 238,000.00 | \$ 108.00 | \$ 302,400.00 | \$ 64,400 | Reference: Harbor Drive 16" Pipeline Replacement. Striping always included in this bid item. |
| 24 | 300 | CY | 237310 | 302-6.8 | Concrete Pavement | \$ 200.00 | \$ 60,000.00 | \$ 325.00 | \$ 97,500.00 | \$ 37,500 | Reference: Harbor Drive 16" Pipeline Replacement. This should be bid by the square foot not by the cubic yard. |
| 25 | 1,000 | LF | 237310 | 303-5.9 | Curb and Gutter (6" Curb, Type ___) | \$ 25.00 | \$ 25,000.00 | \$ 30.00 | \$ 30,000.00 | \$ 5,000 | Reference: Harbor Drive 16" Pipeline Replacement |
| 26 | 2,400 | SF | 237310 | 303-5.9 | Cross Gutter | \$ 10.00 | \$ 24,000.00 | \$ 10.00 | \$ 24,000.00 | \$ - | Agreed |
| 27 | 4,000 | SF | 237310 | 303-5.9 | Remove and Replace Existing Sidewalk | \$ 6.00 | \$ 24,000.00 | \$ 9.00 | \$ 36,000.00 | \$ 12,000 | Reference: Harbor Drive 16" Pipeline Replacement |
| 28 | 120 | EA | 237310 | 303-5.10.2 | Curb Ramp Type ___ w/ _____ Detectable Warning Tiles | \$ 3,000.00 | \$ 360,000.00 | \$ 2,400.00 | \$ 288,000.00 | \$ (72,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 29 | 1 | LS | 237110 | 306-1.1.6 | Trench Shoring | \$ 60,000.00 | \$ 60,000.00 | \$ 60,000.00 | \$ 60,000.00 | \$ - | Agreed |
| 30 | 17,000 | TON | 237110 | 306-1.6 | Imported Backfill | \$ 35.00 | \$ 595,000.00 | \$ - | \$ - | \$ (595,000) | Reference: Harbor Drive 16" Pipeline Replacment. Unit price should be \$16/TON. Quantity is also too high. This is good San Diego Formation material, so max. 10% may need backfill (est. 2,500 TONS). See item 30A. |
| 30A | 2,500 | TON | 237110 | 306-1.6 | Imported Backfill | \$ - | \$ - | \$ 16.00 | \$ 40,000.00 | \$ 40,000 | See note for Item 30, above. |
| 31 | 330 | LF | 237110 | 306-1.6 | 8" PVC Water Main | \$ 95.00 | \$ 31,350.00 | \$ 75.00 | \$ 24,750.00 | \$ (6,600) | References: Water Group 914 & Sewer/Water Group 788 plus 23% adder for Prevailing Wage. |

Table 6.1 Suggested Revisions to 30 Percent Cost Estimate for Upas Street Pipeline Project

| Item | Quantity | Unit | NAICS | Payment Reference | Description | IEC TM 7 Unit Pricing | | Suggested Unit Pricing | | Difference | Notes |
|------|----------|------|--------|-------------------|--|-----------------------|-----------------|------------------------|-----------------|--------------|--|
| | | | | | | Unit Price | Extension | Unit | Extension | | |
| 32 | 6,485 | LF | 237110 | 306-1.6 | 12" PVC Water Main | \$ 130.00 | \$ 843,050.00 | \$ 105.00 | \$ 680,925.00 | \$ (162,125) | References: Water Group 914 & Sewer/Water Group 788 plus 23% adder for Prevailing Wage. |
| 33 | 7,710 | LF | 237110 | 306-1.6 | 16" PVC Water Main | \$ 160.00 | \$ 1,233,600.00 | \$ 160.00 | \$ 1,233,600.00 | \$ - | Agreed. Confirmed with Harbor Drive Project. |
| 34 | 2,455 | LF | 237110 | 306-1.6 | 24" Dielectric Tape Wrapped and CML&C Steel Water Main | \$ 250.00 | \$ 613,750.00 | \$ 301.00 | \$ 738,955.00 | \$ 125,205 | Adjusted per our estimate and Ameron's current steel pipe price. |
| 35 | 5,620 | lf | 237110 | 306-1.6 | 30" Dielectric Tape Wrapped and CML&C Steel Water Main | \$ 300.00 | \$ 1,686,000.00 | \$ 360.00 | \$ 2,023,200.00 | \$ 337,200 | Adjusted per our estimate and Ameron's current steel pipe price. |
| 36 | 22,000 | LF | | | <u>Disinfection of Piping</u> | \$ 2.00 | \$ 44,000.00 | \$ - | \$ - | \$ (44,000) | Not a Standard City bid item. Included in pipe price. |
| 37 | 22,000 | LF | | | <u>Hydrostatic Testing of Piping</u> | \$ 2.00 | \$ 44,000.00 | \$ - | \$ - | \$ (44,000) | Not a Standard City bid item. Included in pipe price. |
| 38 | 1 | EA | 237110 | 306-1.6 | 6" Fire Service Connection | \$ 4,000.00 | \$ 4,000.00 | \$ 7,000.00 | \$ 7,000.00 | \$ 3,000 | Reference: Harbor Drive 16" Pipeline Replacement |
| 39 | 23 | EA | 237110 | 306-1.6 | 6" Fire Hydrant Assembly & Marker | \$ 7,500.00 | \$ 172,500.00 | \$ 8,500.00 | \$ 195,500.00 | \$ 23,000 | Reference: Harbor Drive 16" Pipeline Replacement |
| 40 | 8 | EA | 237110 | 306-1.6 | 24" Butterfly Valve Class 150B | \$ 8,000.00 | \$ 64,000.00 | \$ 8,000.00 | \$ 64,000.00 | \$ - | Reference: E-Bid Board History |
| 41 | 2 | EA | 237110 | 306-1.6 | 30" Butterfly Valve Class 150B | \$ 8,500.00 | \$ 17,000.00 | \$ 13,500.00 | \$ 27,000.00 | \$ 10,000 | Reference: E-Bid Board History |
| 42 | 2 | EA | 237110 | 306-1.6 | 36" Butterfly Valve Class 150B | \$ 9,000.00 | \$ 18,000.00 | \$ 16,000.00 | \$ 32,000.00 | \$ 14,000 | Reference: E-Bid Board History |
| 43 | 7 | EA | 237110 | 306-1.6 | 8" Gate Valve | \$ 2,000.00 | \$ 14,000.00 | \$ 1,500.00 | \$ 10,500.00 | \$ (3,500) | Reference: Harbor Drive 16" Pipeline Replacement |
| 44 | 83 | EA | 237110 | 306-1.6 | 12" Gate Valve | \$ 3,000.00 | \$ 249,000.00 | \$ 2,700.00 | \$ 224,100.00 | \$ (24,900) | Reference: Harbor Drive 16" Pipeline Replacement |
| 45 | 82 | EA | 237110 | 306-1.6 | 16" Gate Valve | \$ 5,000.00 | \$ 410,000.00 | \$ 4,000.00 | \$ 328,000.00 | \$ (82,000) | Reference: Harbor Drive 16" Pipeline Replacement |
| 46 | 1 | LS | 237110 | 306-5.3 | Removal of Existing Upas & Park PRS | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ - | Agreed |
| 47 | 1 | LS | 237110 | 306-5.3 | Removal of Existing Upas & Brant PRS | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ - | Agreed |
| 48 | 1 | LS | 237110 | 306-5.3 | Removal of Existing Upas & Hawk PRS | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | \$ - | Agreed |
| 49 | 4,065 | LF | 237110 | 306-5.3 | Water Main Abandonment (Slurry Fill) | \$ 10.00 | \$ 40,650.00 | \$ 15.00 | \$ 60,975.00 | \$ 20,325 | Reference: 24" Helix Pipeline Project |
| 50 | 11,280 | LF | 237110 | 306-5.3 | <u>Water Main Removal (Metallic Pipe)</u> | \$ 20.00 | \$ 225,600.00 | \$ - | \$ - | \$ (225,600) | Not a standard bid item and will not be used. The removal/disposal of the existing pipe is included in the installed price of the new pipe since the operation is done at the same time. |
| 51 | 6,485 | LF | 237110 | 306-5.3 | Water Main Removal (Asbestos Cement) | \$ 35.00 | \$ 226,975.00 | \$ 35.00 | \$ 226,975.00 | \$ - | Agreed. Hazardous disposal and handling will trigger pollution insurance. |
| 52 | 198 | EA | 237110 | 306-14.1 | 1" Water Service | \$ 800.00 | \$ 158,400.00 | \$ 2,375.00 | \$ 470,250.00 | \$ 311,850 | Reference: Water Group 928, which had services cross railroad tracks, too. Added 23% for Prevailing Wage. |
| 53 | 45 | EA | 237110 | 306-14.1 | 2" Water Service | \$ 1,000.00 | \$ 45,000.00 | \$ 3,600.00 | \$ 162,000.00 | \$ 117,000 | Reference: Water Group 928, which had services cross railroad tracks, too. Added 23% for Prevailing Wage. |
| 54 | 200 | EA | 237110 | 306-15 | <u>Water Meter Boxes</u> | \$ 300.00 | \$ 60,000.00 | \$ - | \$ - | \$ (60,000) | Not a City standard bid item. The cost of the new service includes the water meter box, so this bid item is not necessary. |
| 55 | 12 | EA | 237110 | 306-18 | 4" Blowoff Valve Assembly | \$ 5,000.00 | \$ 60,000.00 | \$ 6,250.00 | \$ 75,000.00 | \$ 15,000 | Reference: Harbor Drive 16" Pipeline Replacement |
| 56 | 9 | EA | 237110 | 306-19 | 2" Air & Vacuum Valve, Class 150 | \$ 6,000.00 | \$ 54,000.00 | \$ 6,000.00 | \$ 54,000.00 | \$ - | Agreed. Confirmed with Harbor Drive Project. |
| 57 | 1 | LS | | | Pressure Reducing Station - Upas & Hawk | \$ 200,000.00 | \$ 200,000.00 | \$ 172,000.00 | \$ 172,000.00 | \$ (28,000) | Reference: Filanc estimate |
| 58 | 1 | LS | | | Pressure Reducing Station - Upas & Brant | \$ 280,000.00 | \$ 280,000.00 | \$ 266,000.00 | \$ 266,000.00 | \$ (14,000) | Reference: Filanc estimate |
| 59 | 1 | LS | | | Pressure Reducing Station - Upas & Balboa | \$ 230,000.00 | \$ 230,000.00 | \$ 209,000.00 | \$ 209,000.00 | \$ (21,000) | Reference: Filanc estimate |
| 60 | 1 | LS | | | Pressure Reducing Station - Upas & Park | \$ 280,000.00 | \$ 280,000.00 | \$ 270,000.00 | \$ 270,000.00 | \$ (10,000) | Reference: Filanc estimate |
| 61 | 1,560 | LF | | 306-20.12 | Horizontal Directional Drilling (24" Water Main) | \$ 1,200.00 | \$ 1,872,000.00 | \$ 827.00 | \$ 1,290,120.00 | \$ (581,880) | Reference: Project specific estimate by Filanc team |
| 62 | 20 | EA | 561730 | 308-8 | Furnish and Plant 15-Gallon Tree | \$ 500.00 | \$ 10,000.00 | \$ 500.00 | \$ 10,000.00 | \$ - | Agreed |
| 63 | 20 | EA | 561730 | 308-8 | Furnish and Plant 36" Box Tree | \$ 4,000.00 | \$ 80,000.00 | \$ 2,000.00 | \$ 40,000.00 | \$ (40,000) | Reference: E-Bid Board History |
| 64 | 20 | EA | 561730 | 308-8 | Remove and Dispose (Eucalyptus Tree) | \$ 5,000.00 | \$ 100,000.00 | \$ 4,000.00 | \$ 80,000.00 | \$ (20,000) | Reference: Verbal quote from tree subcontractor |
| 65 | 4 | EA | 541370 | 309-4 | Survey Monuments | \$ 3,000.00 | \$ 12,000.00 | \$ 1,000.00 | \$ 4,000.00 | \$ (8,000) | Lower price because the survey is performed by City forces |
| 66 | 1 | LS | 237310 | 310-5.6.10 | <u>Traffic Striping, Marking and Signing</u> | \$ 66,000.00 | \$ 66,000.00 | \$ - | \$ - | \$ (66,000) | This bid item is not necessary since the striping is performed under bid items 18 & 23. |
| 67 | 1 | LS | 237110 | 700-1.2.2.10 | <u>High lining by the Contractor</u> | \$ 60,000.00 | \$ 60,000.00 | \$ - | \$ - | \$ (60,000) | This bid item should be by the "LF". See bid items 67A thru 67C for take off of required work. |
| 67A | 9,000 | LF | | | <u>Furnish Highline Materials</u> | \$ - | \$ - | \$ 8.00 | \$ 72,000.00 | \$ 72,000 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage |

Table 6.1 Suggested Revisions to 30 Percent Cost Estimate for Upas Street Pipeline Project

| Item | Quantity | Unit | NAICS | Payment Reference | Description | IEC TM 7 Unit Pricing | | Suggested Unit Pricing | | Difference | Notes | |
|--|----------|------|--------|-------------------|---|---|---------------|------------------------|---------------|---------------|---|--|
| | | | | | | Unit Price | Extension | Unit | Extension | | | |
| 67B | 29,050 | LF | | | Highline Installation and Teardown | \$ - | \$ - | \$ 3.25 | \$ 94,412.50 | \$ 94,413 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 67C | 1 | LS | | | Highline Maintenance & Repairs | \$ - | \$ - | \$ 7,500.00 | \$ 7,500.00 | \$ 7,500 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 68 | 54 | EA | 237110 | 700-1.3.2.10 | 8" through 12" Connections to the Existing System by Contractor | \$ 5,000.00 | \$ 270,000.00 | \$ 3,700.00 | \$ 199,800.00 | \$ (70,200) | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 69 | 12 | EA | 237110 | 700-1.3.2.10 | 16" Connections to the Existing System by Contractor | \$ 15,000.00 | \$ 180,000.00 | \$ 15,000.00 | \$ 180,000.00 | \$ - | Agreed. Confirmed with Water Group 928 | |
| 70 | 2 | EA | 237110 | 700-1.3.2.10 | 20" or Greater Connections to the Existing System by Contractor | \$ 20,000.00 | \$ 40,000.00 | \$ 20,000.00 | \$ 40,000.00 | \$ - | Agreed. Use Helix 24" Pipeline as reference | |
| 71 | 20 | EA | 237110 | 700-1.4.9 | Cut and Plug of the Existing System by Contractor | \$ 800.00 | \$ 16,000.00 | \$ - | \$ - | \$ (16,000) | Per TM 7, this work done by City forces. | |
| 72 | 1 | LS | 237990 | 800-2.15 | Construction Fencing and Access Route | \$ 44,000.00 | \$ 44,000.00 | \$ 44,000.00 | \$ 44,000.00 | \$ - | No change, although it is not clear where this is needed. | |
| 73 | 1 | LS | 561730 | 800-2.15 | Revegetation and Erosion Control | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ - | No change, although it is not clear where this is needed. | |
| 74 | 1 | LS | 541330 | 801.8.4 | Water Pollution Control Program Development | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ - | Agreed | |
| 75 | 1 | LS | 237990 | 801.8.4 | Water Pollution Control Program Implementation | \$ 60,000.00 | \$ 60,000.00 | \$ 60,000.00 | \$ 60,000.00 | \$ - | Agreed | |
| 76 | 1 | LS | | | Biological Monitoring | \$ 50,000.00 | \$ 50,000.00 | \$ 50,000.00 | \$ 50,000.00 | \$ - | No change, although it is not clear where this is needed. | |
| 77 | 1 | LS | | | Archaeological & Native American Monitoring | \$ 50,000.00 | \$ 50,000.00 | \$ 135,000.00 | \$ 135,000.00 | \$ 85,000 | This bid item should be by the "LF". Per the Harbor Drive 16" Pipeline project, this work goes for about \$6/LF. There is approximately 22,500' of pipeline to monitor. | |
| 78 | 100 | EA | | | Potholing for 24" and 30" Steel Pipe | | | \$ 700.00 | \$ 70,000.00 | \$ 70,000 | Required to enable timely development of shop drawings. All other potholing is included in the pipe unit prices. | |
| 79 | 1 | LS | 541330 | 7-10.2.7 | Traffic Control Design (D Sheets by IEC/Shop Drawings by CMAR) | | | \$ 15,000.00 | \$ 15,000.00 | \$ 15,000 | Reference: Harbor Drive 16" Pipeline Replacement | |
| 80 | 3 | EA | 237310 | 9-3.1 | Community Sign | | | \$ 750.00 | \$ 2,250.00 | \$ 2,250 | Reference: Harbor Drive 16" Pipeline Replacement | |
| 81 | 500 | CY | 237310 | 300-1.4 | Additional Pavement Removal & Disposal | | | \$ 50.00 | \$ 25,000.00 | \$ 25,000 | Reference: Harbor Drive 16" Pipeline Replacement | |
| 82 | 34,555 | SY | 237310 | 302-7.4 | Paving Fabric (True Pave) Under the 1.5" AC Overlay | | | \$ 3.75 | \$ 129,581.25 | \$ 129,581 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 83 | 25 | EA | 237310 | 303-5.9 | Contractor Date Stamp & Historical Impressions | | | \$ 380.00 | \$ 9,500.00 | \$ 9,500 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 84 | 500 | CY | 237110 | 306-1.2.1.1 | Additional Bedding | | | \$ 40.00 | \$ 20,000.00 | \$ 20,000 | Reference: Harbor Drive 16" Pipeline Replacement | |
| 85 | 150 | CY | 237110 | 306-1.6 | Thrust Anchors for Pipes 16" and Larger | | | \$ 330.00 | \$ 49,500.00 | \$ 49,500 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 86 | 30 | EA | 237310 | 301-1.7 | Adjust Existing Gate Valve Covers | | | \$ 300.00 | \$ 9,000.00 | \$ 9,000 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 87 | 15 | EA | 237310 | 301-1.7 | Adjust Existing Manhole Covers | | | \$ 500.00 | \$ 7,500.00 | \$ 7,500 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 88 | 300 | LBS | 237310 | 302-13.5 | Crack Seal (for the Slurry Seal) | | | \$ 18.00 | \$ 5,400.00 | \$ 5,400 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 89 | 10 | EA | 237110 | 306-15 | New Water Meter Box for Existing 1" Service | | | \$ 500.00 | \$ 5,000.00 | \$ 5,000 | Reference: Water Group 928 w/ 23% adder for Prevailing Wage | |
| 90 | 2,500 | SF | 237110 | 700-1.3.1.5 | Pavement Restoration for City Forces Work | | | \$ 15.00 | \$ 37,500.00 | \$ 37,500 | Reference: Harbor Drive 16" Pipeline Replacement | |
| LEGEND | | | | | | | | | | | | |
| <p>Blue Text = Bid item edits or additional bid items typically included in City projects.</p> <p>Red Text = Projected decrease in cost of line item.</p> <p>Green Text = Projected increase in cost of line item.</p> | | | | | | SUBTOTAL BASE BID: | | | \$ 13,382,375 | \$ 12,425,794 | \$ (956,581) | |
| | | | | | | CONTINGENCY (20%): | | | \$ 2,676,475 | \$ 2,485,159 | \$ (191,316) | |
| | | | | | | ESTIMATED TOTAL BASE BID: | | | \$ 16,058,850 | \$ 14,910,953 | \$ (1,147,898) | |
| | | | | | | CITY FORCES SHUTDOWN (2%): | | | \$ 267,648 | \$ 248,516 | \$ (19,132) | |
| | | | | | | CONSTRUCTION CONTINGENCY (5%): | | | \$ 669,119 | \$ 621,290 | \$ (47,829) | |
| | | | | | | ESTIMATED TOTAL CONSTRUCTION COST: | | | \$ 16,995,616 | \$ 15,780,758 | \$ (1,214,858) | |
| | | | | | | ESTIMATED REDUCTION IN PROJECT COST: | | | | | 7.15% | |

7. Project Approach and Schedule

GENERAL APPROACH

As a large general contractor who specializes in alternative delivery of water and wastewater infrastructure projects of all kinds, Filanc is well-suited to the CMAR role. Our company culture and the skill sets of our project managers and key personnel are geared toward effective collaboration and partnering with owners and design professionals. We have long understood the value this approach brings to projects for all concerned.

As a brief background, Filanc successfully served as CMAR on over \$90 million dollars of water utility projects in the last ten years, including pipeline construction involving horizontal directional drilling (HDD). Similarly, all of the design-build projects we have completed, including more than a half a dozen for the City of San Diego, required strong communication and coordination with our project partners to be successful. We understand the overriding importance of effective collaboration to achieve project objectives and are prepared to fully partner with the City and their consultant, Infrastructure Engineering Corporation (IEC) to bring best value to the City on the Upas Street Pipeline Replacement Project (Project).

COLLABORATING WITH THE CITY

As CMAR, Filanc will proactively manage the project for the City with a key objective of minimizing time impacts to City staff. We will do this by developing and maintaining a comprehensive, integrated project schedule to effectively orchestrate the numerous parallel tasks necessary to meet established milestones. All actions will be done in accordance with City

policies and procedures and thoroughly documented. Examples of ways that we will provide effective coordination include compiling and conveying City design input from multiple departments to IEC and processing permits in a timely manner.

Effective coordination with Operations is critical to project success. During Stage 1, Operations' input will be important in developing project sequencing to address issues that would affect water service reliability, work adjacent to other projects, moratoriums, special permit conditions and acquisition of long lead items. During construction this coordination is particularly critical for scheduling of shutdowns and tie-ins to ensure water service is maintained and impact to the community is minimized, and for facility testing and startup. We will work closely with City staff to minimize the time required to resolve punch list items, enabling the City to accept each work package in the project within a reasonable timeframe.

COLLABORATING WITH THE CONSULTANT

We will form a team with IEC during the design period to offer input from a construction perspective aimed at improving the quality of the project while reducing the cost. We will provide constructability reviews and work closely with IEC and City staff in evaluating the merit of value engineering concepts. As a minimum, our interface with IEC will be via participation in progress meetings every two weeks, but we expect a virtually continuous interaction as we endeavor to provide effective input without delaying the design schedule.

PARTNERING

Filanc strongly believes in partnering for most large projects, and particularly for one such as

this where close coordination and collaboration between multiple parties is needed to execute a complicated scope within a constricted schedule. We advocate and, as CMAR, would organize a formal facilitated partnering session in association with the kickoff of our scope of work. Ideally this would be followed up by one or more additional sessions to reinforce the partnering principles initially established.

STAGE I – PRE-CONSTRUCTION SERVICES

During Stage I, Preconstruction Services, our Team will review and provide constructability input to the IEC design; develop and iteratively update the cost estimate; schedule the project to define a work sequence with multiple work packages that accommodates pertinent project constraints; and bid and award subcontracts to enable reaching a final GMP. The following discussion addresses these topics in detail.

DESIGN REVIEW

We will work closely with IEC, the design engineer, to provide effective input to the design [without impacting the design schedule](#). By actively participating at biweekly meetings, the Filanc team will stay abreast of design issues and can help resolve them by offering real-time perspectives from multiple vantage points:

- Filanc’s Operations staff has the depth of experience to identify constructability concerns and propose practical, innovative solutions that will save time and money for the City.
- Our subcontractors, ELBE Arrieta Construction and SLBE Valley Construction Management, both with a wealth of experience installing and managing the construction of pipelines for the City, will

provide valuable input on effective construction approaches.

- Filanc’s Director of Design Engineering, who has designed multiple pipeline projects for the City, will be involved to offer additional design perspective and coordinate the input of the construction team.

When a more complicated design issue is identified, we will provide a thorough cost analysis within a timeframe that will allow a recommended solution to be discussed and merged into the design process without undue delay. These analyses may be to evaluate the construction cost impact of alternative alignments or material selections, or to address other specific value engineering concepts. In these cases, a formal memorandum will be issued to document the effort.

We understand that the design is progressing throughout this selection process for the CMAR. We assume that the design, which is at 30 percent complete now, will be approximately 60 percent complete when the CMAR receives Notice to Proceed (NTP). We will provide review of the design at that stage and concurrent with subsequent formal reviews by the City, so as not to impact the design schedule. These subsequent reviews are assumed to be at the 90 percent and Final (100%) design stages. In addition to providing design comments, we will use these opportunities to update the cost estimate and the project schedule.

COST ESTIMATING

Based on the design plans and specifications at the level of completion when we receive them following NTP, Filanc will develop a construction estimate for the project using Timberline software. This will be a detailed estimate which

will allow accounting for all labor, materials and equipment expenses. A sample of a Timberline estimate prepared for this project is provided as the end of this section. As presented, the estimate shows the bid items in Table 6.1 rolled up into individual totals. However, for illustration purposes, two of the bid items (Item 32 - 12" PVC Water Main and Item 58 – Pressure Reducing Station – Upas and Brant) are expanded to show the level of detail that comprises each estimated item. This software makes it easy to adjust any variable as new information is learned through the design process. Timberline will also produce a variance report so it is immediately clear the overall impact of any unit adjustments.

As discussed in Section 6, above, our preliminary review of the \$17 million estimate in TM7 indicates that we believe this project can be constructed for less than that amount. This assessment is based on applying current unit prices for similar recent work in the City and should provide comfort that costs can be contained within the City's budget.

After NTP, we will refine our estimate in Timberline and present it as a range in a format acceptable to the City. That range will become the baseline from which we will work collaboratively with IEC and the City to reduce the high end construction cost by at least 5 percent through value engineering, without reducing the quality of the work. The evaluation of VE concepts will also account for life cycle costs, including operations, maintenance and energy costs.

At each design milestone and at interim points when any significant design alternative (anticipated to affect the cost by at least 1

percent) is considered, the estimated cost range will be updated and formally presented. In this way we will verify that the project is still within City budget limitations and quantify the savings that would result from implementing mutually determined value engineering recommendations. A final opinion of construction cost will be issued prior to negotiating the final GMP.

DISCUSSION OF CRITICAL PATH SCHEDULE

Filanc will develop and regularly update a task-oriented CPM schedule to show how the project can be completed within the contract allowed time frame. The schedule will be prepared in Primavera 6 software and in accordance with City standards and policies. It will be updated throughout Stage I at the same frequency as the cost estimate to reflect the impact to schedule of design changes and value engineering recommendations.

The schedule will be cost loaded to facilitate managing resources to meet project budget and schedule objectives. Initially, cost data will be taken from estimates of the various work packages that will be defined at this stage, and then refined with bid results from competitive solicitation of subcontractors. This cost loaded schedule will be a vital tool in managing the work during Stage II.

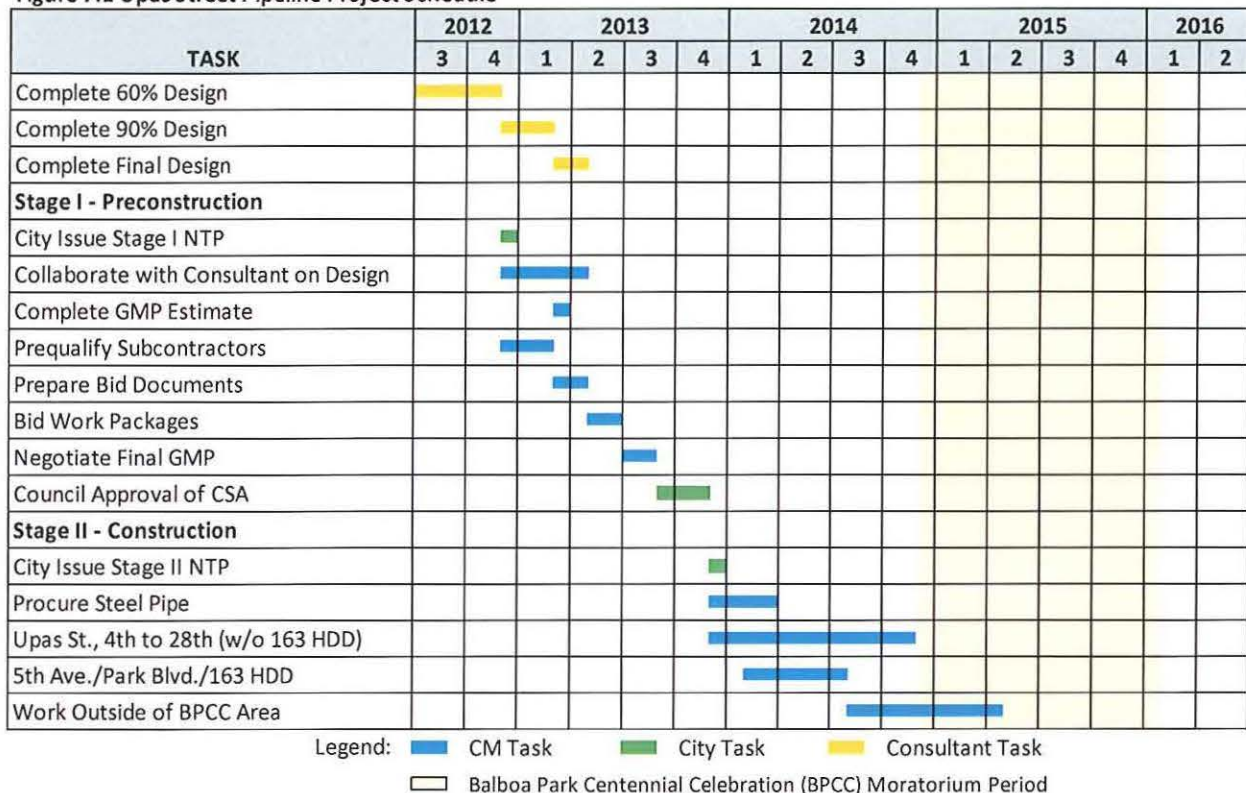
Developing a feasible, time-efficient project schedule that describes a logical sequence of work requires a detailed understanding of the durations and dependencies of design and construction tasks. The schedule must also acknowledge and be structured to accommodate various external constraints that will come to bear on project progress. In this case, these constraints include City and Caltrans

permits, Operations requirements for maintaining water service with adequate reliability, coordination with other adjacent construction activity, and moratoriums and street restrictions due to City events. The most significant constraint to consider is the Balboa Park Centennial Celebration (BPCC), which is scheduled to take place from December 1, 2014 to January 15, 2016 throughout the Balboa Park area. During this 62-week period, no construction can occur in Upas Street on the entire north frontage of Balboa Park as well as in Park Boulevard and 5th Avenue. This restriction affects the vast majority of work in the project scope.

Figure 7.1 is a simplified version of our proposed project schedule, which shows the work affected by the BPCC moratorium complete before the moratorium period begins

on December 1, 2014. Figure 7.2, presented at the end of this section, is a more detailed Primavera version of the same timeline. We understand that meeting this date is the desired outcome for the City to meet EPA mandated and Water Department established replacement goals. Filanc will make every effort to drive the schedule to achieve that completion date by providing timely input to the design process, implementing an efficient process for soliciting subcontractor bids, negotiating the GMP, and managing multiple work crews in the field. However, it is important to note that the schedule outlined is aggressive and will require similar efforts on the part of IEC and the City to meet targeted milestone dates. Our schedule is predicated on having a design at a level of completion sufficient for bidding (assumed to be 90%) before March 1, 2013 and NTP from the City for Stage II by December 1,

Figure 7.1 Upas Street Pipeline Project Schedule



2013. This will provide 12 months to construct the work in Upas Street between 4th Avenue and 28th Street, less the trenchless crossing of SR 163. From our experience, this too will be an aggressive schedule, but we will work closely with City Operations to sequence the work in a manner that ensures maintaining water service with adequate reliability, minimizes shutdowns for connections and service tie-ins, and maintains effective traffic flow and access for residents and emergency vehicles. If for any reason the schedule cannot be maintained, work will be shut down and put on hold for the 62-week moratorium period, recommencing in January 2016.

As presented in Figure 7.1 and described below, the project scope is subdivided into three line items for convenience, primarily based on location relative to the BPCC moratorium area. However, it is planned for the work to be bid in multiple packages to facilitate meeting project schedule milestones, accommodate project constraints, address unique scope elements, and provide opportunity for SLBE/ELBE/DVBE firms. Described here is just one of many possible ways to package the work to achieve the project objectives.

1. Upas Street Frontage of Balboa Park – This reach includes the 12-inch, 24-inch and 30-inch pipelines between 4th Avenue and 28th Street, except the SR 163 crossing. We plan to first construct the 12-inch pipelines and connect services before installing the parallel larger pipelines, thereby maximizing distribution system redundancy. Also, lagging the 24-inch and 30-inch pipelines will provide opportunity to procure the steel pipe, which requires an extended lead time for shop drawing preparation and

fabrication. If possible, after coordinating with Operations, work may be done on multiple headings simultaneously in an effort to compress the schedule and complete the work before the BPCC moratorium. In this case, multiple work packages may be bid.

2. 5th Avenue, Park Avenue and the SR 163 Crossing – As currently envisioned in the 30 percent design, the SR 163 crossing will be done by horizontal directional drilling (HDD) methods. This will require a specialty subcontractor and the work must be planned as a separate undertaking due to Caltrans permitting considerations. Because it is advantageous for competitive bidding purposes to have a general contractor as the lead subcontractor to oversee the work of the HDD subcontractor, the HDD work is coupled with the pipelines in 5th and Park Avenues. These segments are substantial enough to attract a strong general contractor, yet the work is separate and virtually unaffected by the work in Upas Street. It is envisioned that the PRS facilities at Park Avenue and at 7th Street would be included in this work package.

3. Remaining Work Outside of the BPCC Area – The remaining work is comprised of an assortment of smaller noncontiguous pipeline segments and PRS facilities, as listed below. These pieces of work will be bid in multiple work packages. Due to their size, some of them will be identified as set-asides for SLBE, ELBE, DVBE and SDVOSB firms.

- a. Upas Street, 28th Street to Ray Street
- b. Upas Street, 4th Avenue to Brant Street

- c. Upas Street, Ibis Street to Jackdaw Street
- d. Sassafras Street, India Street to Kettner Boulevard
- e. Railroad Approaches between Kettner Boulevard and Pacific Highway
- f. PRS Facility at Upas Street and Brant Street
- g. PRS Facility at Upas Street and Hawk Street

BIDDING AND AWARD OF SUBCONTRACTS

In preparation for bidding work packages to subcontractors, firms will be prequalified in accordance with procedures outlined in the City's White Book. This will involve an outreach effort to solicit interest in all aspects of the work, including pipeline installation, paving and striping, traffic control and potholing, to name a few. Special effort will be made to identify and solicit interest from SLBE, ELBE, DVBE and SDVOSB firms by staging outreach events in the local community. These efforts will be managed by Humanability, a woman-owned SLBE firm that we've added to our team for this purpose.

Through the solicitation process, we will request information to assess qualifications, including experience with similar work, references, bonding capacity, and safety record. We will screen this information to select a minimum of three qualified contractors for each type of work. Since we envision concurrent work in multiple areas, more than three prequalified firms may be required to ensure that at least three bids are received from contractor's that would not be overcommitted if they won a second contract.

When the design has progressed sufficiently, we will develop bid documents for each work

package identified in the scheduling process. These documents will include the front end, containing instructions to bidders, bid and bonds forms, and general and special conditions, to go along with the design drawings and technical specifications prepared by IEC. The bid packages will be sent to prequalified firms as soon after the completion of design as possible. It is anticipated that approximately 3 to 4 weeks will be allowed for subcontractors to prepare bids. The bid results will be shared in an "open book" fashion with the City, to verify that subcontractors are selected to achieve the best value combination of qualifications and price.

It should be noted that Filanc does not intend to self-perform work on this project, preferring to focus on the role of CMAR. However, we will carefully scrutinize all bids that are received and may offer the City the option to allow us to execute certain aspects of the work where we believe we can do so more cost effectively than the bidders. The installation of the pressure reducing stations is a potential example. Similarly, if any subcontractor who is awarded work fails to live up to their obligations, Filanc is prepared to step in and finish the work, if it is in an area of our expertise.

DEVELOPMENT OF FINAL GMP

We will revise our cost estimate from final design to reflect the results of competitive bidding and prepare a GMP Proposal in a format acceptable to the City. In addition to construction costs, the GMP Proposal will include general condition costs, the construction fee, reimbursables, contingencies for the CMAR and the City, and insurance costs, as well as a narrative to describe the basis for all of these cost items. We will meet with the

City to review the GMP Proposal and adjust it as necessary to address input from the City and their independent third party consultant. If any design changes are made during this period, adjustments will be similarly made.

STAGE II – CONSTRUCTION

During Stage II, Filanc's CMAR services will be very similar to its traditional role as general contractor. We will manage subcontractors complete the work to meet or improve upon schedule, budget and quality requirements, while coordinating with City Operations to minimize disruption to water service and impact to the community. As always, we will ensure that all work is performed safely.

COORDINATION WITH CITY OPERATIONS

Effective coordination with City Operations is key to efficiently completing this project. Coordination will occur through weekly construction meetings and in the field with City inspectors. Plans will be mutually developed to schedule and implement cuts and caps, shutdowns, tie-ins and testing of installed facilities. The goal will be to sequence work as aggressively as possible while maintaining necessary reliability of water service, providing access to homes and residences, implementing effective traffic control, and respecting time or date work restrictions.

SUBCONTRACTOR MANAGEMENT

We will closely manage subcontractors through implementing proven project controls for budget, schedule and quality.

- **Budget Control** – Filanc will manage the work of each subcontractor to be completed within the established GMP by diligently scrutinizing all pay requests and

reconciling any discrepancies. Similarly any other document that could lead to a budget impact, such as daily reports, RFI's and change order requests, will be reviewed and addressed in a timely manner to prevent future claims. Filanc will use Spitfire, its computer-based project management system to track all documents and costs. Its versatile reporting features will enable development of real time reports for use by our Construction Manager and for sharing information with the City.

- **Schedule Control** – The cost-loaded Primavera CPM schedule developed at the end of Stage I will be maintained on a weekly basis throughout the construction period to verify that the critical path for the project will enable meeting established milestones, such as the start of the moratorium period for the Balboa Park Centennial Celebration. In this way, if a slip in the schedule is identified, corrective measures can be developed and implemented in a timely manner. Our schedule will be maintained by Marsha Peterson of ELBE Peterson Scheduling, a professional scheduler with whom Filanc has had a long-standing relationship.
- **Quality Control** – We will develop a project specific Construction Quality Plan, based on our standard plan implemented for all of our construction projects. Included will be a communications plan; procedures and forms for reporting and document control; and procedures for materials testing and inspection, for materials storage and handling, and for installation of the work. Also, included will be guidelines for startup,

testing and commissioning of the project. The plan will be implemented by our full-time Construction Manager through our Construction Superintendent, Jaime Borden, who has a long-history of pipeline construction. Jaime will regularly interface with City inspection staff to ensure all work is performed to meet or exceed the specified requirements.

CONSTRUCTION SAFETY

Filanc is proud of its safety record and will enforce strict safety procedures for all of its subcontractors. This will begin by prequalifying subcontractors that similarly value safety on the jobsite. We will develop a project specific safety plan that complies with Cal OSHA rules and regulations, which will be implemented by our Director of Safety, Dave Little. We will hold daily "tailgate" safety meetings to reinforce job safety procedures and will complete daily job site analysis (JSA) forms and use them to brief crews on safety tasks for that day. Any safety incidents will be reported immediately through proper channels.

COMMUNITY OUTREACH

One of the most important aspects to consider when planning, designing and constructing a water system improvement project is developing an effective strategy to encourage an open dialogue throughout the public involvement process. This is the communications strategy that Humanability™ will embrace as Community Relations Liaison for the Filanc team. We believe this approach, combined with their relationships and decades of previous experience with business leaders, community leaders, and water projects, will strengthen public trust and emphasize the City of San Diego's commitment to the community,

and to improving its water pipelines and other infrastructure systems.

The construction of the Upas Street Pipeline Project will be highly localized, primarily affecting residents, commuters, students, businesses and visitors in the Balboa, Uptown, North Park and Hillcrest neighborhoods of San Diego. The project directly impacts Balboa Park, a highly visible and integral symbol of San Diego that will celebrate its 100th anniversary in 2015. It is imperative that we establish clear communication channels and develop effective relationships between the community, the construction team, the CM team, and City staff to assure a successful project.

To develop clear project communication channels and effective relationships, we will:

1. Participate in pre-construction and periodic update meetings of the team
2. Review and comment on materials prepared for public outreach
3. Provide or attend public presentations and key stakeholder meetings about the project
4. track public comments and inquiries
5. Convey information to and from the CM team
6. Convey public comments and inquiries addressed to the CM team to the construction team and City staff
7. Provide consultation or produce materials for the construction outreach team

We believe these activities will support clear, cohesive and consistent messaging throughout the project, add depth to the outreach team, minimize negative project impacts, and foster positive relationships between the City and its stakeholders.

Table with columns: Bid Item, Spec #, Area, Alignment, Description, Takeoff Quantity, Grand Total Unit Price, Grand Total, Labor Man Hrs, Labor Price, Labor Amount, Material Price, Material Amount, Sub Price, Sub Amount, Equip Price, Equip Amount, Other Price, Other Amount, Sales Tax. Rows include items like '200 Upas St. East of Brant', 'Pressure Reducing Station - Upas & Balboa', etc.

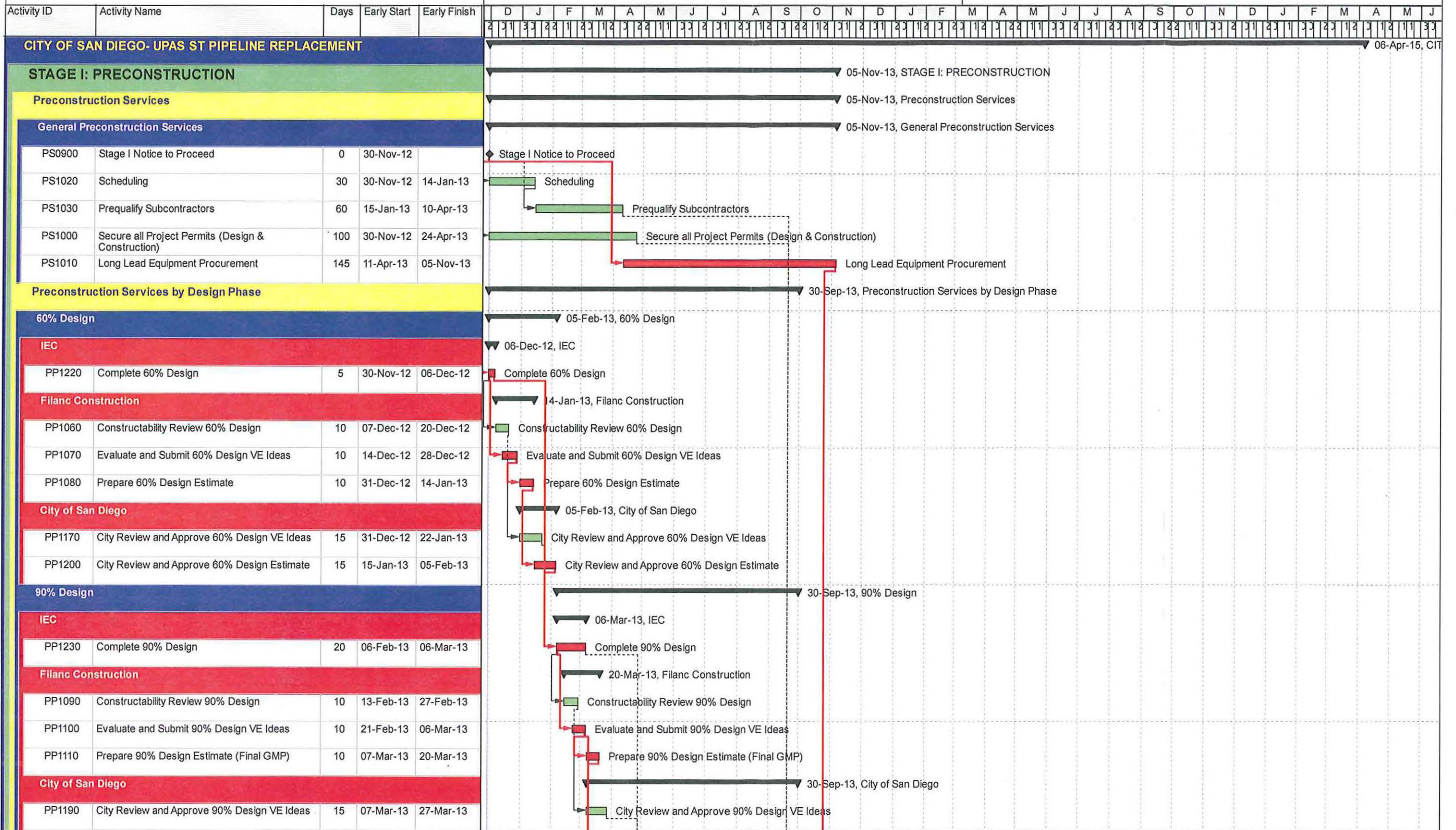
Estimate Totals

| Description | Amount | Totals |
|--------------------------------------|-------------------|-------------------|
| SUBTOTAL BASE BID: | 12,425,794 | 12,425,794 |
| CONTINGENCY (20%) | 2,485,159 | |
| ESTIMATED TOTAL BASE BID: | 2,485,159 | 14,910,953 |
| CITY FORCES SHUTDOWN (2%) | 248,515 | |
| CONSTRUCTION CONTINGENCY (5%) | 621,290 | |
| ESTIMATED TOTAL CONSTR. COST: | 869,805 | 15,780,758 |
| Total | | 15,780,758 |

We agree to do the above estimated work for the price of 15,780,758 dollars

Signature _____
Print Name _____
Date _____

Signature _____
Print Name _____
Date _____

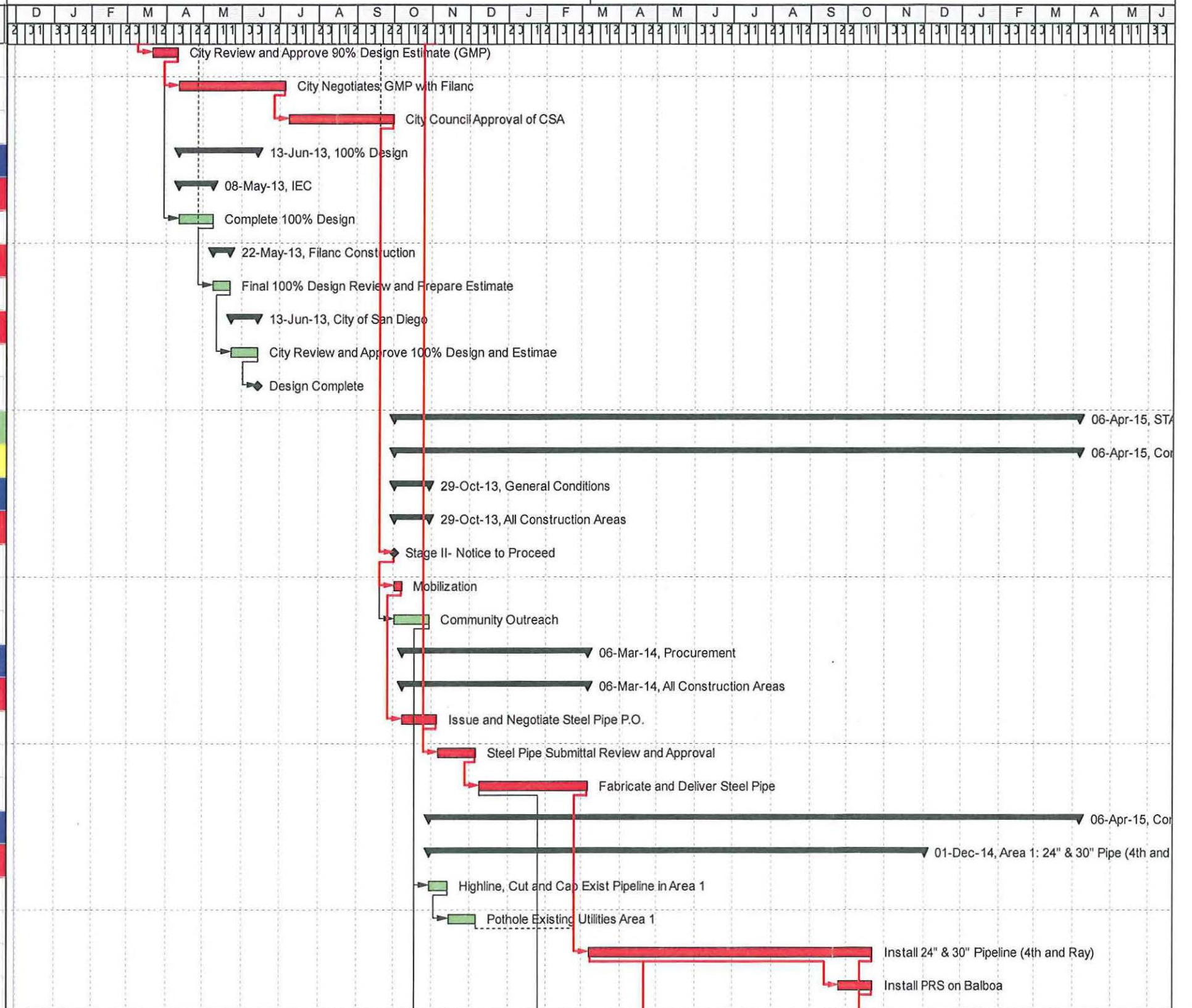


█ Actual Work ◆ Milestone
█ Remaining Work ◀ Summary
█ Critical Remaining Work

MASTER CMAR SCHEDULE

FIGURE 7.2

| Activity ID | Activity Name | Days | Early Start | Early Finish |
|---|---|------|-------------|--------------|
| PP1210 | City Review and Approve 90% Design Estimate (GMP) | 15 | 21-Mar-13 | 10-Apr-13 |
| PP1280 | City Negotiates GMP with Filanc | 60 | 11-Apr-13 | 05-Jul-13 |
| PP1290 | City Council Approval of CSA | 60 | 08-Jul-13 | 30-Sep-13 |
| 100% Design | | | | |
| IEC | | | | |
| PP1240 | Complete 100% Design | 20 | 11-Apr-13 | 08-May-13 |
| Filanc Construction | | | | |
| PP1250 | Final 100% Design Review and Prepare Estimate | 10 | 09-May-13 | 22-May-13 |
| City of San Diego | | | | |
| PP1260 | City Review and Approve 100% Design and Estimate | 15 | 23-May-13 | 13-Jun-13 |
| PP1270 | Design Complete | 0 | | 13-Jun-13 |
| STAGE II: CONSTRUCTION | | | | |
| Construction Phase | | | | |
| General Conditions | | | | |
| All Construction Areas | | | | |
| CPG1000 | Stage II- Notice to Proceed | 0 | 01-Oct-13 | |
| CPG1020 | Mobilization | 5 | 01-Oct-13 | 07-Oct-13 |
| CPG1010 | Community Outreach | 20 | 01-Oct-13 | 29-Oct-13 |
| Procurement | | | | |
| All Construction Areas | | | | |
| CPP1000 | Issue and Negotiate Steel Pipe P.O. | 20 | 08-Oct-13 | 05-Nov-13 |
| CPP1010 | Steel Pipe Submittal Review and Approval | 20 | 06-Nov-13 | 06-Dec-13 |
| CPP1020 | Fabricate and Deliver Steel Pipe | 60 | 09-Dec-13 | 06-Mar-14 |
| Construction | | | | |
| Area 1: 24" & 30" Pipe (4th and Ray) | | | | |
| CPC1000 | Highline, Cut and Cap Exist Pipeline in Area 1 | 10 | 30-Oct-13 | 13-Nov-13 |
| CPC1010 | Pothole Existing Utilities Area 1 | 15 | 14-Nov-13 | 06-Dec-13 |
| CPC1020 | Install 24" & 30" Pipeline (4th and Ray) | 160 | 07-Mar-14 | 22-Oct-14 |
| CPC1490 | Install PRS on Balboa | 20 | 24-Sep-14 | 22-Oct-14 |



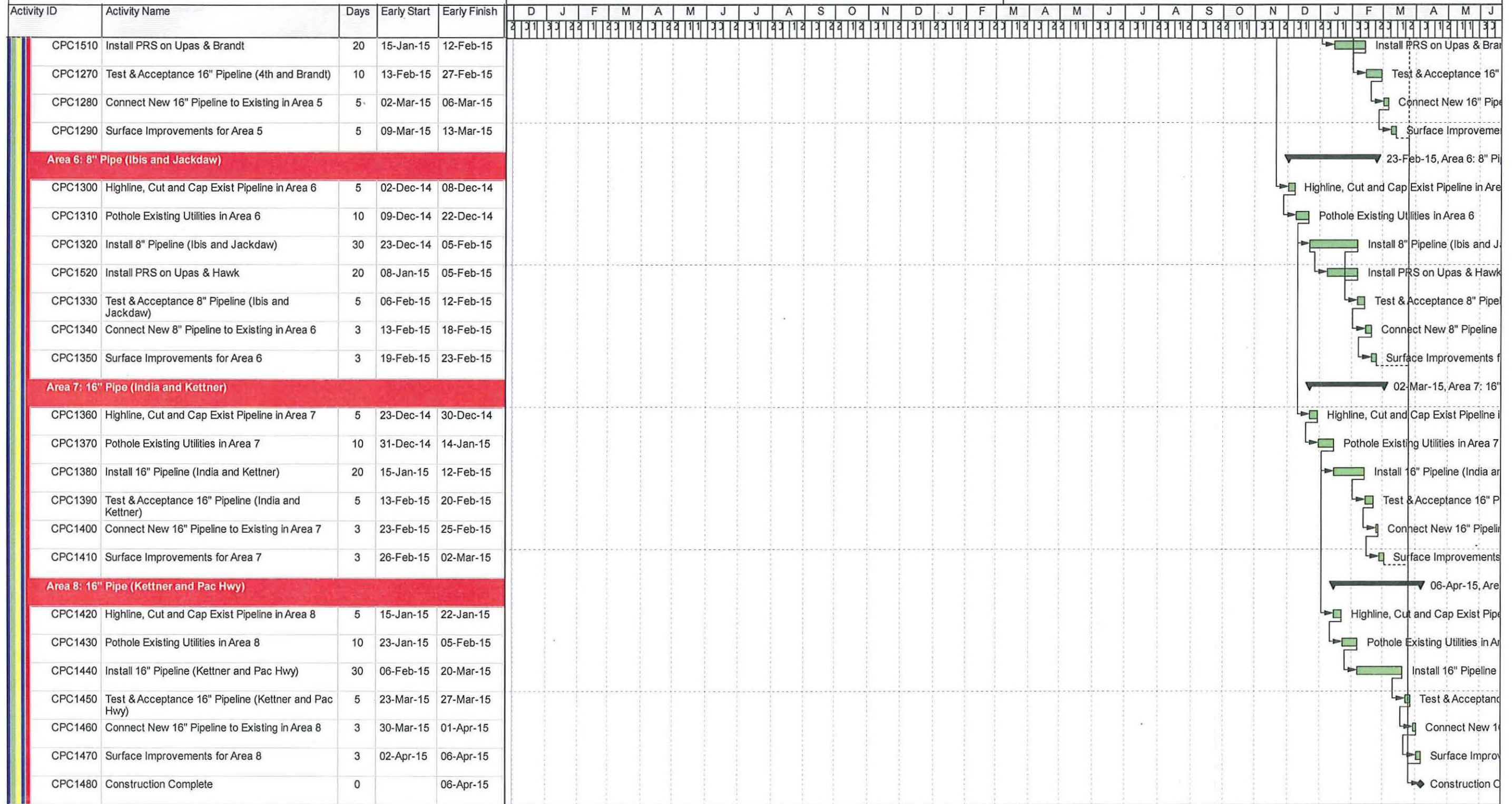
MASTER CMAR SCHEDULE

FIGURE 7.2

Sept 14, 2012

J.R. FILANC CONSTRUCTION C

- █ Actual Work
- █ Remaining Work
- █ Critical Remaining Work
- ◆ Milestone
- ▶ Summary



■ Actual Work ◆ Milestone
■ Remaining Work ▼ Summary
■ Critical Remaining Work

MASTER CMAR SCHEDULE

FIGURE 7.2

Sept 14, 2012

J.R. FILANC CONSTRUCTION CO

8. Organization and Staffing

Figure 8.1 below presents an updated and expanded organization chart to depict our proposed staffing for both Stage I and Stage II services. Staff members that were not previously identified as part of the limited organization chart presented in our Statement of Qualifications (SOQ) are indicated by an asterisk (*). Their one-page resumes are provided in Appendix B of this proposal. All other project staff members are consistent with the SOQ. Their resumes are presented in Appendix C of the SOQ.

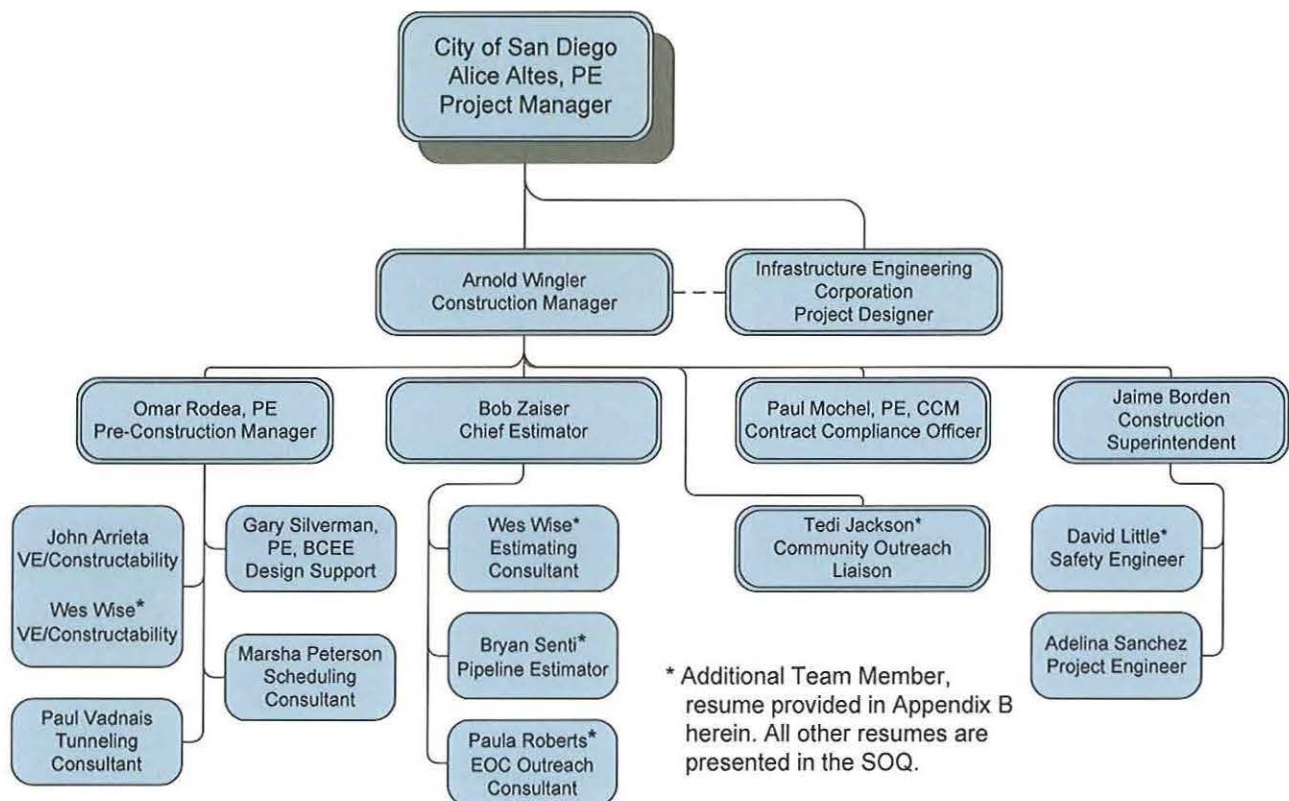
The project will be led by Arnold Wingler who will serve as Filanc’s Construction Manager. He

will be the principal point of contact with the City and the design engineer, Infrastructure Engineering Corporation (IEC). He will have full responsibility for successful delivery of the project and compliance with all contract requirements.

STAGE I

During the Pre-Construction stage, Mr. Wingler will be supported by our team of subject matter experts led by Omar Rodea. Mr. Rodea, Filanc’s Pre-construction Services Manager, will coordinate all collaboration activities between IEC and our internal team of construction professionals to perform value engineering (VE), constructability reviews, tunneling options analysis, design review and alternative

Figure 8.1 Expanded Project Organization Chart



materials evaluations. Key members of this team include John Arrieta and Wes Wise, both of Arrieta Construction (ELBE) two of the most experienced pipeline constructors in the region having worked their entire careers on City of San Diego projects. Also participating will be Paul Vadnais of Vadnais Construction, a specialty tunneling contractor who will evaluate tunneling options beneath the 163 Freeway and Gary Silverman, Filanc's Director of Design Engineering, who will review the project design and conduct alternative materials evaluation. Marsha Peterson of Peterson Scheduling (ELBE) will establish the baseline schedule that will be used to assess potential schedule impacts of VE/constructability concepts. She will continue on through Stage II as the project scheduler.

GMP development will be led by Bob Zaiser, Filanc's Chief Estimator. He will be supported by Bryan Senti, Filanc's lead piping estimator as well as by the entire Estimating Department, and by Wes Wise of Arrieta whose direct past experience will ensure the validity of all production and process assumptions used in the initial estimating phase. A conceptual estimate will be developed and modified to evaluate the budgetary impacts of potential VE/constructability/alternative materials concepts developed as part of Stage I.

Outreach to ELBE/SLBE/DVBE firms will begin shortly after notice to proceed to encourage their participation in the project. These efforts will be led by Paula Roberts of Humanability (SLBE) our Third Party Outreach Consultant. Tedi Jackson, also of Humanability, will begin performing duties as our liaison with the City and IEC to assist in implementing the Community Outreach Plan for the project.

These activities will continue through the end of the project.

Once the design has been matured and is suitable for GMP development, bid packages will be developed and structured to enable maximum participation by small and emerging businesses. Our approach to subcontracting is described further in the Equal Opportunity Strategic Plan presented in Appendix C.

STAGE II

During the construction phase, Mr. Wingler will be assisted by Jaime Borden of Filanc who will serve as the Construction Superintendent. Mr. Borden will be onsite during construction and responsible for overseeing the work of all subcontractors and compliance with the Project Quality Assurance/Quality Control Plan, Safety Plan and environmental management plans. Construction will be supported by Adelina Sanchez who, as Project Engineer, will coordinate the preparation of all submittals, shop drawings, product data sheets and samples. She will also coordinate quality control, testing and special inspections. David Little will serve as our Project Safety Engineer and will perform daily tailgate safety briefings, review of subcontractor safety plans and implementation and periodic site inspections.

Paul Mochel a Principal with Valley Construction Management, will serve as the Contract Compliance Officer (CCO). He will assist Construction Manager Arnold Wingler and Filanc's Labor Law Compliance department, in ensuring that our subcontractors and suppliers comply with labor laws and regulations. These include including prevailing wage, certified payroll, apprenticeship utilization, and subcontracting requirements. Compliance

documentation will be provided with each progress payment request.

Table 8.1 below, identifies each staff member or category, the member's role on the Project, location where each staff member is now assigned, and when each staff member will be released from other current assignments. Table 8.2 provides the approximate number of hours per month or Full Time Equivalent range the project team members will contribute during the design, bidding and construction phases.

Table 8.1 Staffing Plan

| Staff Member/Category | Project Role | Current Assignment | Date Available |
|------------------------------|-----------------------------|---|-----------------------|
| Arnold Wingler | Construction Manager | Holtville Reservoir and UV System Project | October 2012 |
| Omar Rodea | Pre-Construction Manager | Oceanside 511 Pump Station and Pipeline | October 2012 |
| Gary Silverman | Design Support | Oceanside 511 Pump Station and Pipeline | October 2012 |
| Bob Zaiser | Chief Estimator | Various | October 2012 |
| John Arrieta | VE/Constructability | Various | October 2012 |
| Wes Wise | VE/Constructability | Various | October 2012 |
| Paul Mochel | Contract Compliance Officer | Various | October 2012 |
| Marsha Peterson | Scheduling | Various | October 2012 |
| Bryan Senti | Piping Estimator | Various | October 2012 |
| Paul Vadnais | Tunneling Consultant | Various | October 2102 |
| Paula Roberts | EOC Outreach | Various | October 2012 |
| Adelina Sanchez | Project Engineer | Camp Pendleton South Plant | January 2013 |
| Jaime Borden | Construction Superintendent | Irvine Ranch Water District Plant Expansion | May 2013 |
| Tedi Jackson | Community Liaison | Various | October 2012 |
| Christine Ludlow | Startup & Testing | Orange County Water District Digester | December 2013 |
| David Little | Safety Engineer | Various | October 2012 |

Table 8.2 Estimate of Hours Contributed Per Month

| Staff Member/Category | Design | Bidding | Construction |
|----------------------------------|---------------|----------------|---------------------|
| Arnold Wingler | 20 | 20 | 160 |
| Omar Rodea | 20 | 60 | 40 |
| Gary Silverman | 20 | | |
| Bob Zaiser | 20 | 20 | |
| John Arrieta | 10 | | |
| Wes Wise | 20 | | |
| Paul Mochel | 20 | 20 | 80 |
| Marsha Peterson | 20 | | 10 |
| Bryan Senti | 10 | 10 | |
| Paul Vadnais | 5 | | |
| Paula Roberts | 10 | | |
| Adelina Sanchez | 40 | 40 | 160 |
| Jaime Borden | 10 | | 160 |
| Tedi Jackson | 10 | | 20 |
| Christine Ludlow | 20 | | 40 |
| David Little | | | 40 |

9. Proposed Fee and General Conditions for Construction Services

As specified in the RFP at Sections 2.12, 3.10.4, and 3.11 of Exhibit B, our proposed GMP for Stage I services and proposed general conditions, hourly labor rates, overhead, fee and insurance are presented in our Price Proposal under separate cover. The following sections describe our proposed level of effort Stage I.

PROPOSED LEVEL OF EFFORT FOR STAGE I PRE-CONSTRUCTION SERVICES

The following Scope of Work outlines the tasks proposed to be executed by the CMAR during Stage I – Preconstruction Services. Described is the level of effort associated with each aspect of the work, and is provided in support of the Stage I GMP presented in our sealed Price Proposal. These scope elements are also linked to the proposed project schedule presented in Section 7. The overall duration for Stage I is proposed to be 9 months for the CMAR (December 1, 2012 to September 1, 2013), and the level of effort for each task within Stage I is predicated on maintaining the durations identified in the proposed schedule.

Task 1. Project Administration

This task includes day-to-day coordination and communication with the City and IEC, the City's design consultant; participation in up to 10 biweekly design progress meetings with IEC during the assumed 5 months of design remaining when we receive NTP; and preparation of a progress report for each of the proposed 9 months of Stage 1. Also included

are project controls for maintaining budget, schedule and quality of work products.

Task 2. Design Reviews

We will conduct up to 3 formal design reviews, at the 60%, 90% and 100% stages of design, to provide input on constructability, clarity and consistency. Our findings from each design review will be documented as notations on the drawings, which will be consolidated in one set to also include the input of the City.

Task 3. Cost Estimating

Starting with the 60% design documents, assumed to be the level of completion when we receive NTP, we will prepare a detailed cost estimate for the project using Timberline software. The estimate will be revised and updated after each additional formal design review and at multiple times in between as value engineering ideas are analyzed and incorporated. As we evaluate the cost implications of design and construction alternatives identified through the value engineering process, we will formally report the findings to the City, including a variance analysis between the budget and the cost estimate and recommendations for modifications to the budget. The estimate will initially be expressed as a range, and then refined to a single final estimate for use in determining a GMP.

Task 4. Scheduling

Within 2 weeks after NTP, we will develop a detailed, task-oriented schedule using Primavera software showing how Stage I and Stage II of the project will be completed within allowable times in the contract. The primary milestone is completion of the work affected by the Balboa Park Centennial Celebration moratorium prior to December 1, 2014. Marsha Peterson of Peterson Scheduling will assist us

with this task. As Stage I progresses, the schedule will be periodically updated to address implications of design changes and to define permit timelines, material procurement, construction sequencing and work packages needed to meet the desired endpoint. When sufficient data is available in Stage I, the schedule will be cost-loaded and used as a master tool to manage subcontractors and maintain project control.

Task 5. Bidding and Award of Subcontracts

In preparation for bidding work packages to subcontractors, we will prequalify firms in accordance with procedures outlined in the City's White Book. This will involve soliciting interest and qualification information from the construction community for all aspects of the work. We will make a special effort to identify and solicit interest from SLBE, ELBE, DVBE and SDVOSB firms by staging outreach events in the local community. We will screen the prequalification information to select a minimum of three qualified contractors for each type of work. When the design has progressed sufficiently, we will develop bid documents for each work package. The bid packages will be sent to prequalified firms and the bid results will be shared in an "open book" fashion with the City, to verify that subcontractors are selected to achieve the best value combination of qualifications and price.

Task 6. Develop Final GMP

We will revise our cost estimate to reflect the results of competitive bidding and prepare a GMP Proposal in a format acceptable to the City. In addition to construction costs, the GMP Proposal will include general condition costs, the construction fee, reimbursables, contingencies for the CMAR and the City, and insurance costs, as well as a narrative to

describe the basis for all of these cost items. We will meet with the City to review the GMP Proposal and adjust it as necessary to address input from the City and their independent third party consultant. If any design changes are made during this period, adjustments will be similarly made.

Task 7. Prepare Preconstruction Plans

As required, we will develop planning documents during the preconstruction stage to facilitate construction, including a dewatering plan, an air pollution control plan, a stormwater pollution prevention plan (SWPPP), a noise abatement plan, and a hazardous waste materials management plan. Also, for each work package, we will prepare and maintain a plan to manage material delivery, inventory and assembly, and waste disposal.

Task 8. Permitting and Agency Coordination

We will identify project permit requirements and coordinate with IEC in preparing the applications and support documents needed to obtain construction related permits. We will transmit project documents and provide effective communication with regulatory agencies, as needed, to receive their review comments.

Task 9. Community Outreach

Humanability, a woman-owned SLBE firm specializing in community outreach for construction projects, has joined our team as Community Liaison to provide input from a construction perspective to the community outreach effort led by IEC. They will attend meetings organized up by IEC and provide input to the outreach plan to address construction issues such as access to residences and businesses, noise mitigation, and notifications of water outages and construction staging.

10. Equal Employment and Contracting Opportunity

In accordance with Section 4.3 of the RFP, we have prepared a project-specific Economic Opportunity Contracting Strategic Plan which is presented herein as Appendix C. As required by Section 3.12 of Exhibit B of the RFP, the Strategic Plan contains a listing of subcontractors for pre-construction services that are known at this time using Form AA36. Commitment letters and certifications of ELBE/SLBE/SDVOSB status from the listed subcontractors are also provided in the plan.

CERTIFICATION OF EXCEPTIONS TO THE REQUEST FOR PROPOSAL

FOR

UPAS STREET PIPELINE REPLACEMENT PROJECT

The undersigned, a duly authorized representative of J.R. Filanc Construction Company, Inc.
(Company Name)

hereby certifies that J.R. Filanc Construction Company, Inc. takes no exceptions to this
(Company Name)

Request for Proposal and its Exhibits, and is willing and able to comply with all the requirements therein.

Catherine B. Final *Catherine B. Final* September 13, 2012
Authorized Representative Date

Secretary
Authorized Representative's Title

J.R. Filanc Construction Company, Inc.
Company

OR

The undersigned, a duly authorized representative of _____
(Company Name)

hereby certifies that _____
(Company Name)

is willing and able to comply with all the requirements of the Request for Proposals and its Exhibits, with the following exceptions listed in the attached (attach exceptions).

Authorized Representative

Date

Authorized Representative's Title

Company

Bryan L. Senti

Lead Piping Estimator

Education

B.S., Construction
Engineering
California State
Polytechnic University,
Pomona

Company Tenure

26 year

Industry

Tenure

33 years

Professional Affiliations

Associated General
Contractors of America
American Public Works
Association
American Society of Civil
Engineers
California Water
Environment
Association

Professional Experience

Bryan is currently the Lead Piping Estimator for J.R. Filanc Construction. He has been employed by the company since 1986 and has been in the construction industry since 1979. Bryan has been involved in the procurement and design of large piping systems for many major projects, and estimates mechanical and large piping for all projects. Bryan has significant experience in value engineering of mechanical systems. Bryan has completed 104 projects since 1986 where he managed the piping estimate, design, drawing layout and material procurement.

Selected Project Experience

Agua Viva Water Treatment Facility (WTF) Final Phase III

City of Yuma, \$92.8 Million

Bryan was the Lead Piping Estimator on the 17,000 ft. - 60" and 72" pipe for this award winning project. The facility was completed in three phases over the course of seven years with Filanc serving as the Construction Manager at-Risk.

Western Riverside County Regional Wastewater Reclamation Plant, Contract No. 1

Western Riverside County Regional Wastewater Authority, \$24.8 Million

Bryan was the Lead Piping Estimator on the 16,250 ft. - 36" and 48" pipe for this design-build construction project of a new 8 MGD Title 22 wastewater reclamation plant, featuring a 2 ½ mile pipeline that was constructed from the plant to the outfall in the Santa Ana River.

RP-5 Wastewater Treatment Plant (WWTP)

Inland Empire Utilities Agency, \$54 Million

Bryan was the Lead Piping Estimator on the 15,840 ft. 12" and 30" pipe for this construction project of a new 12 MGD WWTP located in Chino, California that included modifications to an existing plant, and over one mile of interconnecting pipelines.

South Bay Advanced Recycled Water Treatment Facility

Santa Clara Water District, \$42.4 Million

Bryan was the Lead Piping Estimator on the 9,000 ft. 12", 16" and 36" pipe for this advanced WTF that uses secondary effluent from the SJ/SC WPCP to produce high-purity recycled water using microfiltration (MF), reverse osmosis (RO), and ultraviolet (UV) disinfection.

Fresno/Clovis Regional Wastewater Reclamation Facilities Organic Upgrade

City of Fresno, \$105.3 Million

Bryan was the Lead Piping Estimator on the 7,850 ft. 60" and 72" pipe for this wastewater facility upgrade that increased capacity from 80 MGD to 91 MGD.

Wes Wise

Construction Manager

Education

B.S., Business
Administration – Focus in
Business Management
San Diego State University
1999

Industry Tenure

13 years

Professional Affiliations

Engineering and General
Contractors of America
(EGCA)
Associated General
Contractors (AGC)
East County Posse Charity
Organization

Certifications

LEED
OSHA Competent Person
OSHA Confined Space
Awareness – Title 8 and
Federal Standard
1910.146
First Aid/CPR
OSHA 10-Hour
Training for Storm Water
Pollution Prevention
10-Hour EM-385
Management Action
Program
Training in Managing
Delays, Acceleration &
Inefficiency
AGC Construction
Supervisor
Primavera Planning and
Scheduling
Training for Underground
Service Alert Safety
Awareness 2012

Professional Experience

Mr. Wise's extensive expertise includes projects such as water and sewer group jobs for the City of San Diego, storm water projects for the City of San Diego, design build water, wastewater, and sewer projects, water pump stations, sewer lift stations, large diameter tunnel projects, pipe bursting, pipe rehabilitation, direction drilling, jack & bore, micro-tunneling, large diameter steel & PVC water mains, concrete and structural demolition, large diameter storm drain facilities, flow control facilities, PRS stations, material processing, portable crushing systems, and asphalt overlay paving projects. Mr. Wise is skilled in job cost estimating, project management, and onsite construction of large and complex projects. He has proven his ability to manage and coordinate numerous vendors, subcontractors, and in house construction activities. As the project manager, he will coordinate all construction activities and ensure that all project milestones are met for his scope of work.

Selected Project Experience

Famosa Accelerated Water & Sewer Main Replacement

City of San Diego Public Works, \$3.6 Million

Removed and replaced 10,166' of cast iron water main & service laterals ranging in size from 8" through 16" and the removal and replacement of 8,755' of existing 6" thru 12" sewer mains and service laterals including associated street improvements.

Sewer Group

City of San Diego Public Works Department, \$1.5 Million

Removal and replacement of 8,344' of existing 8" sewer mains and service laterals including associated street improvements. The project also included extensive directional drilling and pipe bursting thru backyards.

City of San Diego Public Works Department, \$1.3 Million

Removed and replaced 2,288' of cast iron water main & service laterals ranging in size from 8" thru 16" and the removal and replacement of 3,172' of existing 6" thru 8" sewer mains and service laterals including associated street improvements. The project also included pipe bursting, directional drilling, and sewer pipeline rehabilitation.

Sewer & Water Group

City of San Diego Public Works Department, \$1.3 Million

Remove and replace 2,288' of cast iron water main & service laterals ranging in size from 8" thru 16" and the removal and replacement of 3,172' of existing 6" thru 8" sewer mains and service laterals including associated street improvements. The project also included pipe bursting, directional drilling, and sewer pipeline rehabilitation.

Otay II Pipeline Improvements – North Encanto

City of San Diego Public Works Department, \$5.5 Million

Furnish & install 7,580' of 42" steel pipe (CML&C) through an existing neighborhood. All valves, appurtenances, and connections were performed by contractor. Once pipeline installation was completed an AC overlay was installed on all affected streets. In addition we pressure grouted and abandoned 7,000' of the old 36" steel pipe.

Mr. LaVine has over 20 years' experience in SCADA design and development.

He performs communication systems analysis including radio path propagation surveys, FCC license coordination services, network design and installation, HMI system design and development, programming and screen design of Operator Interface Terminals (OIT), logic programming of Remote Terminal Units (RTU) and Programmable Logic Controllers (PLC).

PROJECT EXPERIENCE

- South Mesa Water Company: South Mesa SCADA System upgrade. Replaced aging Motorola, Wonderware Intouch SCADA system with Rockwell Automation CompactLogix PLCs and Rockwell Automation FactoryTalk View Site Edition. System includes four reservoirs with 4.5 MG storage, three booster stations and seven wells.
- East Valley Water Municipal District: A continuing effort as the District's System Integrator. ATSI installed the original system in 1991 and has maintained it current ever since. System includes over 40 remote sites with a mixture of Rockwell ControlLogix PLCs and CSE-Semaphore Kingfisher RTUs. The Remote sites communicate over a 450 MHz simplex radio frequency. The HMI system consists of a ClearSCADA redundant server pair communicating over a 5.8 GHz Ethernet radio link over a distance of approximately 5 miles.
- Fallbrook Public Utility District: A continuing effort as the District's System Integrator. ATSI installed the original system in 1992 and has maintained it current ever since. System includes over 29 remote sites encompassing the fresh water distribution system and the waste water collections system. It also includes the Red Mountain Ultra Violet WTP consisting of a Rockwell ControlLogix Master PLC that provides supervisory control over three UV Reactor CompactLogix PLCs. The remote sites include CSE-Semaphore Kingfisher RTUs. The Remote sites communicate over a 450 MHz simplex radio frequency. The HMI system consists of a ClearSCADA redundant server pair communicating over an Ethernet link. The Red Mountain WTP communicates over a T1 line over a distance of approximately 7 miles.
- Camp Pendleton Marine Base: Called in to modify an existing Iron-Manganese WTP control logic. The logic has been inoperable since installation and efforts to correct the ongoing problems were fruitless. ATSI re-programmed the Rockwell Automation SLC 5/05 PLC to the design engineer's specifications.
- Indian Wells Municipal Water District: Installed a complete SCADA system consisting of 28 remote sites including two Arsenic Removal WTPs. The system communicates over a 450 MHz simplex radio frequency. Communication to the two WTPs is over a 5.8 GHz Ethernet radio link.

James F. LaVine

Senior System Integrator

Title/Firm:

Principal Owner, ATSI, Inc.

Years of Experience: 21

Education

Licenses and Certifications

Rockwell Automation
Schneider Electric ClearSCADA
Wonderware Intouch/Active Factory
Intellution Fix
OPTO 22
Motorola MOSCAD
CSE Semaphore – Kingfisher
Core Certificate in Computer Information Systems

Client References

Mike Henderson, East Valley Water District
Past Working Relationship: Water Superintendent
Tel: (909) 772-5144

Email: mhenderson@eastvalley.org

Ken Silliman, Indian Wells Water District
Past Working Relationship: Lead Operator for the District

Tel: (760) 608-3947

Email: ksilliman@iwwd.com

Mark Meeler, Myoma Water Company
Past Working Relationship: General Manager

Tel: (760) 250-6208

Email: markmeeler@myomawater.com

David Michalko, Valencia Heights Water Company
Past Working Relationship: General Manager

Tel: (626) 332-8935

Email: dmichalko@vhwc.org

Paula Roberts, M.A., Principal & Project Manager

Before joining Humanability, Paula Roberts spent 20 years managing community relations and providing public outreach for infrastructure, open space, parks and natural resources projects.

Paula's experience includes:

- 15 years, Sweetwater Authority PIO and Communications Director (1989-2004)
- 2 years, Minnehaha Creek Watershed District, Contract Consultant (2005-2007)
- 3 years, MN Metropolitan Council Public Involvement Coordinator (2005-2008)
- 1 year, Cuyamaca Community College Instructor (2009-2010)
- Principal and Project Manager, Humanability (2009-present)

Paula's past projects include providing public outreach and community relations for:

- Sweetwater Authority Pipeline Replacement Program (15 years)
- Bonita Road 42" Pipeline Project (2 years)
- Sweetwater Authority Emergency Pipeline Repairs (15 years)
- Sweetwater Authority/County of San Diego Urban Runoff Facilities and Fee Program (15 years)
- City of Chula Vista Street Improvements (15 years)
- Natural Resources Element, Guide and Training for the 2010 Twin Cities Comprehensive Plan (3 years)
- Guide to the Twin Cities regional parks and trails (1 year)
- Minnehaha Creek Watershed Management Plan (2 years)
- MN Governor's Water Supply Advisory Committee (3 years)
- City of San Diego City Council Redistricting Commission (1 year)

Education

M.A., Organizational Management, University of Phoenix, San Diego, CA

B.A., Organizational Behavior & Communications, Concordia University, St. Paul, MN

Certified Grade 2 Water Use Efficiency Practitioner (AWWA)

Technical Advisory Committee Service (Years)

Association of California Water Agencies Communications (6)

Metropolitan Water District of Southern California External Relations (10)

San Diego County Water Authority Joint Public Information (15)

San Diego County Water Authority Conservation (10)

Association of California Water Agencies Education (6)

Association of California Water Agencies Regulatory (6)

Association of California Water Agencies Grass-root Campaigns (3)



Tedi Jackson, Principal & Strategic Advisor



Before founding Humanability Communications, Tedi served 3 years as public affairs manager for Western Municipal Water District in Riverside County, where she managed a multi-disciplinary team responsible for strategic public relations and coalition development. She was instrumental in branding the District as a water industry leader, expanded water use efficiency programs, and led a coalition of 40 water professionals from four Southern California counties to develop the first water use efficiency chapter for the Santa Ana Watershed Project Authority's 2008 Integrated Regional Water Management Plan.

During more than 8 years at the City of San Diego, Tedi served as a supervising public information officer, managing community and media relations for the City's Water Department. In this role, she oversaw internal and external stakeholder communications, water quality and capital improvement program outreach, emergency response and customer service. She executed strategic communications plans, handled crisis communications, implemented performance improvement initiatives and issued public notifications in coordination with local and state regulators. She responded to more than 1,000 media calls and resolved thousands of customer complaints.

Throughout the '80s and '90s, Tedi implemented communications and resource conservation projects across California while operating her first business, Sustainable Technologies. She has also served as an instructor for UCSD's Extension Program, and held planning positions with SANDAG and Dames & Moore.

Tedi helped create the first statewide watershed sign program for California's highways, piloted in San Diego County and approved by Caltrans in 2008. She chaired the San Diego Area Regional Sustainability Partnership Communications Committee and is an active volunteer with Rady Children's Hospital Beads of Courage Program.

Education

B.A., Urban Planning, University of California, San Diego, CA
Certified Public Involvement Professional

Technical Advisory Committees (Years)

San Diego County Water Authority Joint Public Information Committee (8)
Metropolitan Water District External Relations Advisory Committee (8)

0.01

trust

FILANC



Equal Opportunity Contracting Strategic Plan for the

Upas Street Pipeline Replacement Project Construction Manager at Risk (CMAR) Contract



September 14, 2012

Submitted to:
City of San Diego
Public Works Department
1200 Third Avenue, Suite 200, MS 56P
San Diego, CA 92101
Attention: Claudia Abarca



Submitted by:
J.R. Filanc Construction Company, Inc.
740 N. Andreasen Dr.
Escondido, CA 92029
(760) 941-7130

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commit. collaborate. construct.

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Attachment A: Form AA36 and ELBE/SLBE Certifications

Attachment B: Small Business Outreach Ads

Attachment C: Labor Law Requirements Form

2. Introduction

J.R. Filanc Construction Company, Inc. (Filanc) is committed to creating opportunities for certified Small Local, Emerging Local, and Disadvantaged Veteran Owned Business Enterprises (SLBE, ELBE, DBE, MBE, WBE and DVBEs) on the projects we manage. This document presents our Equal Opportunity Contracting Strategic Plan for the Upas Street Pipeline Replacement Construction Manager at Risk project.

3. Participation Commitment

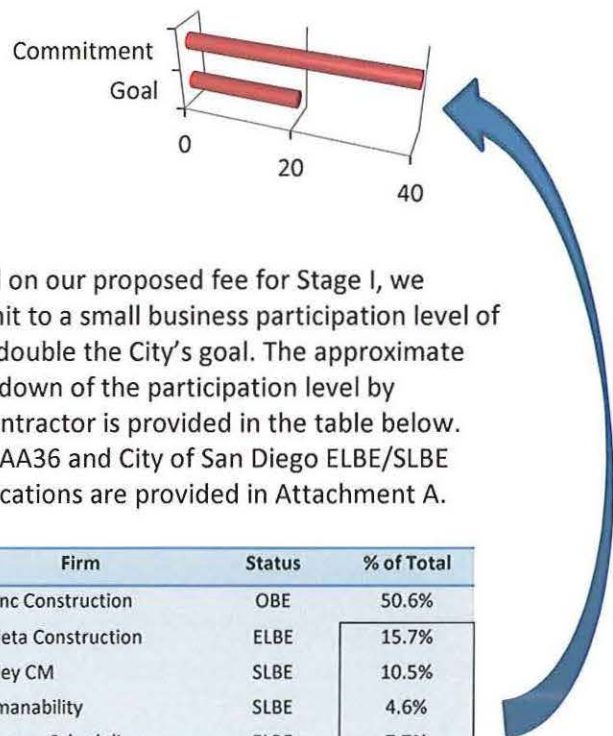
The City of San Diego has established a 20% subcontracting participation goal for each stage of the project. Our participation level commitments in the form a percentage of the

total contract value for each stage are presented in the following sections.

STAGE I: PRE-CONSTRUCTION SERVICES

During Stage I, Filanc will collaborate with the City and its design engineer, Infrastructure Engineering Corporation (IEC), to finalize the design of the Upas Street pipeline project to provide the City a robust and high value solution. As indicated in our Statement of Qualifications (SOQ), we have assembled a team of industry experts to participate in the pre-construction activities. In addition to their technical qualifications, many of our team members are certified by the City as ELBE, SLBE or DVBE/SDVOSB.

Double the Goal for Stage I



Based on our proposed fee for Stage I, we commit to a small business participation level of 40%, double the City’s goal. The approximate breakdown of the participation level by subcontractor is provided in the table below. Form AA36 and City of San Diego ELBE/SLBE certifications are provided in Attachment A.

| Firm | Status | % of Total |
|----------------------|--------|-------------|
| Filanc Construction | OBE | 50.6% |
| Arrieta Construction | ELBE | 15.7% |
| Valley CM | SLBE | 10.5% |
| Humanability | SLBE | 4.6% |
| Peterson Scheduling | ELBE | 7.7% |
| ATSI | DVBE | 1.6% |
| Vadnais Corporation | OBE | 1.6% |
| Other | | 7.7% |
| TOTAL | | 100% |

STAGE II: CONSTRUCTION SERVICES

It is our intention to perform strictly as the General Contractor and Construction Manager and, barring any unforeseen complications, not to self-perform construction on this project. As part of our Guaranteed Maximum Price (GMP) development, we will prepare bid packages to provide maximum opportunity for small and emerging businesses to submit competitive bids. We will perform extensive outreach to raise interest in the project to encourage the participation of ELBE/SBLE/DVBE firms in the bidding process. In anticipation of this effort, we have already initiated some forms of outreach (Attachment B).

Based on the nature of the work and the availability of qualified ELBE/SLBE/DVBE businesses in the market, we are confident in committing to achieve a first tier subcontractor participation level of at least 30%.

Stage I subcontractors Peterson Scheduling, Valley Construction Management (VCM) and Humanability will continue on as part of our team in Stage II. Paul Mochel of VCM will serve as our Contract Compliance Officer (CCO) and will assist Construction Manager Arnold Wingler and Filanc's Labor Law Compliance department, in ensuring that our subcontractors and suppliers comply with labor laws and regulations. These include including prevailing wage, certified payroll, apprenticeship utilization, and subcontracting requirements.

Marsha Peterson will provide schedule maintenance services and will coordinate electronic interfacing of the schedule with the City. Tedi Jackson of Humanability will serve as our Community Outreach Liaison, representing the construction perspective in the project-wide outreach effort led by IEC.

4. General Approach to Achieve Subcontractor Participation

Our general approach for achieving a high level of small business subcontracting participation during GMP negotiations consists of three principal components:

1. **Active Outreach.** Beginning immediately after Notice to Proceed for Stage I, we will engage our Third Party EOC Outreach consultant to plan and coordinate our outreach program. The program will include advertisements in local business publications, direct solicitations to trade organizations, and direct communication with City certified ELBE/SLBE firms possessing the NAICS codes for required services. We will also host an outreach event to encourage participation.
2. **Bid Package Development.** During Phase I, we will develop bid packages that are specifically structured (set-asides) to enhance/encourage small business bidding. By having Arrieta Construction, a contractor specializing in City pipeline construction that is also an ELBE, on our pre-construction team, we have a unique opportunity to understand the needs and concerns of small and emerging businesses. **We will incorporate the SLBE/ELBE perspective into every package we develop.**

We will offer assistance to bidders to obtain bonding, lines of credit and/or insurance and will offer to provide necessary equipment, supplies and materials. These actions serve to reduce the financial burden on small companies and allow them to bid more substantial scopes of work.

3. **Open Book Contracting.** After bids are received from appropriately prequalified bidders, we will perform an open book review in collaboration with the City. Bids will be reviewed and final selections will be

coordinated with the City to assure that participation goals are met and that the best value is obtained.

5. Subcontracting Categories

STAGE I: PRE-CONSTRUCTION SERVICES

During Stage I of the project, we anticipate requiring subcontracted assistance in the following categories, at a minimum:

- Value engineering (pipeline construction)
- Value engineering (tunneling, horizontal directional drilling)
- Design review/value engineering pressure reducing valve controls and SCADA integration
- Scheduling
- Estimating
- Community Outreach Liaison
- EOC Outreach Consultant
- Quality Assurance/Quality Control planning
- Permitting
- Air pollution, hazardous materials and stormwater management planning

STAGE II: CONSTRUCTION

During Stage I of the project, we anticipate requiring subcontracted assistance in the following categories, at a minimum:

- Community Outreach Liaison
- Contract Compliance Officer
- Partnering facilitator
- Air pollution, hazardous materials and stormwater/water pollution control management
- Surveying
- Potholing/utility identification
- Pipeline construction
- Video recording of pre-existing conditions

- Traffic control design, supplies and signage
- Cold milling
- Slurry seal and striping
- Pavement restoration
- Contractor date stamp and impressions
- Curb and gutter replacement
- Curb ramps and warning tiles
- Horizontal directional drilling
- Permitting
- Archeological and Native American construction monitoring
- Paleontological mitigation and monitoring
- Concrete supplier
- Pipe and fitting supplier
- Trucking
- Site security

6. Mentorship Programs

Mentorship of Subcontractors: Filanc is an active participant in the City of San Diego - AGC San Diego Chapter Mentor-Protégé Program and has received special commendations for our efforts. As a mentor in the Mentor-Protégé program, Filanc is matched with the owner of a small and emerging contractor for a three-year program to help them improve their ability to weather the ups and downs of the industry, grow their business, and understand the basics that make a successful construction firm. As indicated in our SOQ, Filanc has recently completed a 3-year program with Pacific West Builders, a Woman-owned, Disadvantaged, HUBZone contractor. We have already volunteered to participate in the next San Diego-AGC Mentor Protégé Program.

In addition to this formal program, Filanc continually provides mentoring to subcontractors in a wide variety of service areas. The team we have assembled for the Upas CMAR project is an excellent example. We

have established a mentor-protégé relationship with Arrieta Construction, a San Diego ELBE, which offers benefits to both companies. Filanc and Arrieta have successfully teamed to be selected for one of the City's Multiple Award Construction Contracts (MACC) for Water, Wastewater, and Stormwater Pipeline Projects. This was a strategic pursuit for both companies and is consistent with our mentoring of Arrieta in the areas of alternative project delivery methods such as design-build and CMAR.

Filanc is also providing informal mentoring to Valley Construction Management as it seeks to identify its role in an integrated alternative project delivery team. At our encouragement, Valley Construction Management has applied for and been certified as a San Diego SLBE. Similarly, we encouraged our long-time scheduling consultant, Marsha Peterson to become certified with the City as an ELBE. Since doing so, she has experienced an increase in the number of opportunities for new work.

During the process of implementing the Upas project, Filanc will continue to provide mentoring assistance to subcontractors we identify through our outreach efforts and are successful in bidding work. We will make every effort to provide maximum opportunity for small, emerging and disabled veteran businesses to participate in the project.

Mentorship during employment. Filanc maintains a wide variety of internal mentoring programs within the organization to encourage career growth and skills development. Programs are in place to mentor all categories of staff from the field labor to executive levels. For example, journeyman laborers showing leadership potential and the desire to advance their careers are eligible to participate in our **Superintendent-In-Training program**. The SIT program is a formal process where candidates are assigned to one of the firm's senior Superintendents who serves as a direct mentor. The trainee is required to develop a full understanding of the roles and responsibilities

of a project Superintendent. As their understanding and competencies grow, they are assigned additional responsibilities.

Pacesetters is a program developed by Filanc to train and mentor new employees and junior staff, primarily Project Engineers pursuing a career track toward Project Management. The program requires each participant to complete a full rotation within each company department to develop an understanding of how the company works and to develop competencies to support their advancement toward Project Management.

Leadership Edge is a program designed to create a learning/mentorship environment to develop executive leadership skills within the firm. Admittance to the program requires a formal application and interview and is limited to those showing the greatest aptitude for leadership. Leadership Edge members take on important corporate development issues and perform extensive research in order to provide recommendations for implementation. For 2012, Leadership Edge is performing an analysis of how Filanc can more formally incorporate Lean Construction techniques. Graduates of Leadership Edge are often selected for leadership positions in the firm including Project Management, Department Management or other Executive roles.

7. *Veteran Business Inclusion and Employment Plan*

Veteran Business Inclusion. As an experienced federal contractor, Filanc has developed an extensive network of veteran-owned contractors and suppliers who specialize in the wet utility construction market. We will include these contacts in our outreach efforts performed as part of this project. Filanc is also a Member of Elite SDVOB, a nationwide networking association based in San Diego that is dedicated to assisting veteran owned businesses. As part of this project, we will work

with the San Diego Chapter to inform member companies of the opportunities for this project. In addition, we will also utilize the resources available through the U.S. Department of Veterans Affairs and other organizations.

Veteran Employment. Filanc is a member of the Helmets to Hardhats organization, which is dedicated to providing employment for veterans in the construction industry. One of our most successful hires was Sean Paul who came to us through the program as an apprentice and has since advanced his career to the levels of Journeyman and Operator as a full time Filanc employee.

Filanc is signatory to all of the local Carpenter, Laborer and Cement Mason unions in southern California including Local 89 in San Diego. We utilize labor from each of these Unions on our projects. Our Unions are very active in recruiting veterans. They too utilize the Helmets to Hardhats program. For the last several years, Local 89 has waived its initiation and readmission fees to Helmets to Hardhats participants to encourage veterans to join. Working with our signatory Unions, we will make every effort to utilize veterans on this project.

8. Apprenticeship Utilization

Filanc supports and contributes to Union Apprenticeship Programs and the San Diego AGC Apprenticeship Programs through Master Labor Agreements (contracts) and is signatory with the local Carpenters, Laborers, and Cement Masons Unions. Filanc complies with Labor Code Section 1777.5 which requires contractors to employ registered apprentices on public work projects.

9. Prevailing Wage Law Compliance Monitoring

Filanc performs over \$100 million of wet utility construction each year, of which nearly all is

subject to prevailing wage law. We maintain a Labor Law Compliance Department lead by Gini Hambly. She interacts on a daily basis with each of our project managers to monitor compliance with applicable laws and reviews all subcontractor certified payroll submissions.

Before a subcontractor is allowed to begin work on a project they are informed of their responsibilities under applicable federal and state labor law. Filanc subcontractors must sign an acknowledgement of this information and certify that they will comply with applicable labor compliance laws (examples provided in Attachment C).

Paul Mochel of VCM will serve as the Contract Compliance Officer (CCO) for this project. He will report directly to Construction Manager Arnold Wingler and will assist Filanc's Labor Law Compliance department to ensure full compliance with labor laws and regulations including prevailing wage, certified payroll, apprenticeship utilization, and subcontracting requirements. He will be responsible for the monitoring and enforcement of EOC requirements throughout the project duration.

10. Performance Outcomes, Milestones and Reporting

Performance Outcomes. Our successful implementation of this plan will result in the following performance outcomes:

1. Demonstrated ELBE/SLBE/DVBE participation of 40% for Stage I and no less than 30% on Stage II
2. Establishment of additional subcontractor mentoring relationships
3. Participation by veteran-owned businesses
4. Utilization of veteran personnel
5. Compliance with apprenticeship utilization under Labor Code Section 1777.5

6. Documented compliance with Labor Code Sections 1771.5 and 1776, certified payroll records documenting payment of prevailing wages.

11. Individual Responsible for Strategic Plan Implementation

Construction Manager Arnold Wingler will have overall responsibility for the implementation of this plan. He will be fully supported in this effort by the following staff:

- Norbert Schulz, Small Business Liaison Officer
- Julia Masaitis, Filanc Outreach Coordinator
- Humanability, Third Party Outreach Consultant
- Gini Hambly, Prevailing Wage Compliance
- Vince Diaz, Labor Relations
- Cindy Rodriguez, Purchasing Manager
- Ana Martinez, Accounts Payable

SUBCONTRACTORS LIST

Attachment 1

| NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR | TAX ID NUMBER | CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR | TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES | PERCENT OF SUBCONTRACTOR PARTICIPATION, MATERIAL SOR SUPPLIES | MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, OR SDVOSB [ⓐ] | WHERE CERTIFIED [ⓑ] | CHECK IF JOINT VENTURE PARTNERSHIP |
|---|---------------|---|---|---|---|------------------------------|------------------------------------|
| Name: <u>Arrieta Construction</u> Address: <u>1215 N. Marshall Avenue</u> City: <u>El Cajon</u> State: <u>CA</u> Zip: <u>92020</u> Phone: <u>619.448.7683</u> | 95-2596768 | Contractor | Pipeline Const. Engineering, Estimating | 15.7% | SLBE, SB | CITY, CA | |
| Name: <u>Valley Construction Management</u> Address: <u>3525 Del Mar Heights Rd. #192</u> City: <u>San Diego</u> State: <u>CA</u> Zip: <u>92130</u> Phone: <u>866.966.2720</u> | 20-8309093 | Vendor | Value Eng, Const Mgmt. QA/QC | 10.5% | ELBE | CITY | |
| Name: <u>Peterson Scheduling</u> Address: <u>32605 Womsi Rd./P.O. Box #829</u> City: <u>Pauma Valley</u> State: <u>CA</u> Zip: <u>92061</u> Phone: <u>760.413.8793</u> | 45-2694487 | Designer | Scheduling | 7.7% | ELBE | CITY | |

ⓐ As appropriate, Bidder shall identify Subcontractor or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

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

ⓑ As appropriate, Bidder shall indicate if Subcontractor or Supplier is certified by:

| | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

The CM will not receive any points for subcontracting participation percentages if the CM fails to submit the required proof of certification.

SUBCONTRACTORS LIST

Attachment 1

| NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR | TAX ID NUMBER | CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR | TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES | PERCENT OF SUBCONTRACTOR PARTICIPATION, MATERIAL OR SUPPLIES | MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, W _o SB, OR SDVOSE [ⓐ] | WHERE CERTIFIED [ⓐ] | CHECK IF JOINT VENTURE PARTNERSHIP |
|---|---------------|---|---|--|--|------------------------------|------------------------------------|
| Name: <u>Humanability Communications</u> Address: <u>1025 Birch Avenue</u> City: <u>Escondido</u> State: <u>CA</u> Zip: <u>92027</u> Phone: <u>760.580.4630</u> | 90-0769007 | Vendor | Community Outreach | 4.6% | SLBE | CITY | |
| Name: <u>Advanced Telemetry Systems (ASTI)</u> Address: <u>1951 Don Lee Place</u> City: <u>Escondido</u> State: <u>CA</u> Zip: <u>92029</u> Phone: <u>760.738.6804</u> | 33-0454232 | Contractor | SCADA | 1.6% | SDVOSE | SBA | |
| Name: <u>Vadnais Corporation</u> Address: <u>2130 La Mirada Drive</u> City: <u>Vista</u> State: <u>CA</u> Zip: <u>92081</u> Phone: <u>858.550.1460</u> | 95-2383867 | Contractor | VE, Risk Eval, Constructability | 1.6% | OBE | N/A | |

ⓐ As appropriate, Bidder shall identify Subcontractor or Suppliers as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

- | | | | |
|---|-------------------|--|------|
| Certified Minority Business Enterprise | MBE | Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE | Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE | Certified Emerging Local Business Enterprise | ELBE |
| Certified Small Local Business Enterprise | SLBE | Small Disadvantaged Business | SDB |
| Woman-Owned Small Business | W _o SB | | |
| Service-Disabled Veteran Owned Small Business | SDVOSE | | |

ⓑ As appropriate, Bidder shall indicate if Subcontractor or Supplier is certified by:

- | | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | San Diego Regional Minority Supplier Diversity Council | SRMSDC |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

The CM will not receive any points for subcontracting participation percentages if the CM fails to submit the required proof of certification.



THE CITY OF SAN DIEGO

July 3, 2012

Arrieta Construction, Inc.
John D. Arrieta
1215 N. Marshall Avenue
El Cajon, CA 92020

Subject: Small Local Business Enterprise Certification

Dear Mr. Arrieta:

Congratulations! We have reviewed your **renewal application** and you have been approved for re-certification as a City of San Diego Emerging Local Business Enterprise (ELBE). Your certification number is 10AC0086 and your classification is Construction. Please reference this certification number when bidding on City projects.

For the City's SLBE Program, your certification is effective July 1, 2012. This certification expires on July 1, 2014 at which time you will need to reapply in accordance with the SLBE guidelines.

Special Note:

To ensure the correct information is included in our database please go to <https://pro.prismcompliance.com> select City of San Diego under jurisdiction, select go, type in your company name, select go, select your company and review the information. If there is inaccurate/missing information please e-mail pjordan@sandiego.gov.

If you have any questions please call 619-236-6297.

Thank you,


Debra Fischle-Faulk
Department Director



Administration Department
Small Local Business Enterprise Program
202 C Street, 9th Floor, MS 9A
San Diego, CA 92101-4806
Telephone (619) 236-6297 Fax (619) 236-7344

Sheryl Norris

From: CertBounceBack@dgs.ca.gov
Sent: Friday, March 04, 2011 4:50 PM
To: Sheryl Norris
Subject: State of CA Notification Letter



State of California • Edmund G. Brown Jr., Governor • State and
Consumer Services Agency

DEPARTMENT OF GENERAL SERVICES • PROCUREMENT
DIVISION

Office of Small Business and DVBE Services

707 Third Street, 1st Floor, Room 400 • P.O. Box 989052, West
Sacramento, CA 95798-9052

Phone (916) 375-4940 Fax (916) 375-4950 www.dgs.ca.gov

Mar 4, 2011

SB APP

Supplier #1312
ARRIETA CONSTRUCTION INC
1215 N MARSHALL AVE
EL CAJON CA 92020

Dear Business Person:

Congratulations on your certified small business status with the State of California. Your certification entitles you to benefits under the state's Small Business Participation Program within state contracting, including a five percent bidding preference and special provisions under the Prompt Payment Act.

Certification Period

From Mar 4, 2011 to Mar 31, 2013

Business Types

Construction

Classifications

831015 - Water and sewer utilities

Proof of Certification Status

To verify your firm's small business certification status go to
<http://www.eprocure.dgs.ca.gov/default.htm> and select "SB/DVBE Search."



THE CITY OF SAN DIEGO

August 3, 2012

Valley CM, Inc.
DBA Valley Construction Management
Galina R. Mochel
10744 Cherry Hill Drive
San Diego, CA 92130

Subject: Small Local Business Enterprise Certification

Dear Galina:

Congratulations! We have reviewed your application and you have been approved for certification as a City of San Diego Emerging Local Business Enterprise (ELBE). Your certification number is 12VC0646 and your classification is General Services. Please reference this certification number when bidding on City projects.

For the City's SLBE Program, your certification is effective July 19, 2012. This certification expires on July 19, 2014 at which time you will need to reapply in accordance with the SLBE guidelines.

Special Note:

To ensure the correct information is included in our database please go to <https://pro.prismcompliance.com> select City of San Diego under jurisdiction, select go, type in your company name, select go, select your company and review the information. If there is inaccurate/missing information please e-mail pjordan@sandiego.gov.

If you have any questions please call 619-236-6297.

Thank you,


Debra Fischle-Faulk
Department Director

Administration Department
Small Local Business Enterprise Program
202 C Street, 9th Floor, MS 9A
San Diego, CA 92101-4806
Telephone (619) 236-6297 Fax (619) 236-7344





THE CITY OF SAN DIEGO

June 1, 2012

Peterson Scheduling
Marsha A. Peterson
Jeffrey P. Peterson
32605 Womsi Road
Pauma Valley, CA 92061

Subject: Small Local Business Enterprise Certification

Dear Marsha and Jeffrey:

Congratulations! We have reviewed your application and you have been approved for certification as a City of San Diego Emerging Local Business Enterprise (ELBE). Your certification number is 12PS0737 and your classification is General Services. Please reference this certification number when bidding on City projects.

For the City's SLBE Program, your certification is effective May 25, 2012. This certification expires on May 25, 2014 at which time you will need to reapply in accordance with the SLBE guidelines.

Special Note:

To ensure the correct information is included in our database please go to <https://pro.prismcompliance.com> select City of San Diego under jurisdiction, select go, type in your company name, select go, select your company and review the information. If there is inaccurate/missing information please e-mail pjordan@sandiego.gov.

If you have any questions please call 619-236-6297.

Thank you,


Debra Fischle-Faulk
Department Director

Administration Department
Small Local Business Enterprise Program
202 C Street, 9th Floor, MS 9A
San Diego, CA 92101-4806
Telephone (619) 236-6297 Fax (619) 236-7344





THE CITY OF SAN DIEGO

August 24, 2010

Humanability Communications Consulting
Tedi L. Jackson
1025 Birch Avenue
Escondido, CA 92027

Subject: Small Local Business Enterprise Certification

Tedi
Dear Ms. Jackson:

Congratulations! We have reviewed your application and you have been approved for certification as a City of San Diego Small Local Business Enterprise (SLBE). Your certification number is 11HC0124 and your classification is General Services. Please reference this certification number when bidding on City projects.

For the City's SLBE Program, your certification is effective August 13, 2010. This certification expires on August 13, 2012 at which time you will need to reapply in accordance with the SLBE guidelines.

If you have any questions please call 619-236-6297.

Thank you,

Debra Fischle-Faulk
Debra Fischle-Faulk
Department Director

Administration Department
Small Local Business Enterprise Program
202 C Street, 9th Floor, MS 9A
San Diego, CA 92101-4806
Telephone (619) 236-6297 Fax (619) 236-7344



**SUPPLIER CLEARINGHOUSE
CERTIFICATE OF ELIGIBILITY**



CERTIFICATE EXPIRATION DATE: 7/6/2013

The Supplier Clearinghouse for the Utility Supplier Diversity Program of the California Public Utilities Commission hereby certifies that it has audited and verified the eligibility of

Humanability of Escondido, CA as a WBE

pursuant to Commission General Order 156, and the terms and conditions stipulated in the Verification Application Package. This Certificate shall be valid only with the Clearinghouse seal affixed hereto.

Eligibility must be maintained at all times, and renewed within 30 days upon any changes of ownership or control. Failure to comply may result in a denial of eligibility. The Clearinghouse may reconsider certification if it is determined that such status was obtained by false, misleading or incorrect information. Decertification may occur if a verification criterion under which eligibility was awarded later becomes invalid due to Commission ruling. The Clearinghouse may request additional information or conduct on-site visits during the term of verification to verify eligibility.

This certification is valid only for the period that the above named firm remains eligible as determined by the Clearinghouse. Utility companies may direct inquiries concerning this Certificate to the Clearinghouse at 800-359-7998 in Los Angeles.

VON: 10GS0011

8/16/2010

SBA Profile

[Privacy Statement](#)

([Back to Profile List](#), or use Back button)

Identification, Location & Contacts

This profile was last updated:09/09/2011

Status: Active in Searches

SAM Registration: Registered, will expire 09/10/2012

Name of Firm: ADVANCED TELEMETRY SYSTEMS INTERNATIONAL, INC.

Trade Name ("Doing Business As ..."):ATSI

DUNS Number: 858717606

Parent DUNS Number:

Address, line 1: 1951 DON LEE PL

Address, line 2:

City: ESCONDIDO

State: CA

Zip: 92029-1141

Phone Number: 760-738-6804

Fax Number: 760-738-4839

E-mail Address: jim@atsionline.com

WWW Page: <http://www.atsionline.com>

E-Mall (electronic mail
selling firm's products):

Contact Person: JAMES LAVINE

Contact Title:

County Code (3 digit): 073

Congressional District: 50

Metropolitan Statistical Area:7320

CAGE Code: 6H6X1

Year Established: 1991

Accepts Government Credit Card?: Yes No

GSA Advantage Contract(s):

(Note: Size information is now under "NAICS Codes with Size Determinations by NAICS", below.)

P1561055

Organization, Ownership & Certifications

Legal Structure: Corporation

Ownership and Self-Certifications:Service-Disabled Veteran, Veteran

Current Principals

(none given)

"Business Development Servicing Office" (for certifications)

SAN DIEGO DISTRICT OFFICE (SBA office code 0954)

8(a) Certification:

SBA 8(a) Case Number:
SBA 8(a) Entrance Date:
SBA 8(a) Exit Date:

Small Disadvantaged Business Certification:

SDB Entrance Date:
SDB Exit Date:

HUBZone Certification:

HUBZone Certified?: Yes No
HUBZone Certification Date:N/A

8(a) Joint Venture Certification:

8(a) JV Entrance Date:
8(a) JV Exit Date:

DBE Certifications (and State):

(none)

Non-Federal-Government Certifications:

(none given)



Capabilities Narrative:

(none given)

Special Equipment/Materials:

(none given)

Business Type Percentages:

(none given)

Bonding Levels

Construction Bonding Level (per contract)(none given)
 Construction Bonding Level (aggregate)(none given)
 Service Bonding Level (per contract)(none given)
 Service Bonding Level (aggregate)(none given)

NAICS Codes with Size Determinations by NAICS:

| # | Primary? | Code | NAICS Code's Description | "Buy Green"? (1) | Small? (2) |
|---|----------|--------|--|------------------|------------|
| 1 | | 238210 | Electrical Contractors and other Wiring Installation Contractors. | | Yes |
| 2 | | 238990 | All Other Specialty Trade Contractors | | Yes |
| 3 | | 541330 | Engineering Services General \$14m small business size standard: [Yes] Special \$35.5m size standard for Marine Engineering and Naval Architecture: [Yes] Special \$35.5m size standard for Military and Aerospace Equipment and Military Weapons: [Yes] Special \$35.5m size standard for Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992: [Yes] (4) | | Yes |
| 4 | | 541511 | Custom Computer Programming Services | | Yes |
| 5 | | 541512 | Computer Systems Design Services | | Yes |
| (1) By entering Yes for "Buy Green", the firm asserts that it obeys EPA guidelines for environmental friendliness for this NAICS code. Note, EPA guidelines do not exist for every NAICS code. (2) If Yes, the firm's revenues/number of employees do not exceed the NAICS code's small business size standard. (4) As seen above, the size standard can depend on subcategories within a NAICS code. | | | | | |

Keywords:

(none given)

Miscellaneous:

Quality Assurance Standards:(none given)
 Electronic Data Interchange capable?:[] Yes [X] No



Exporter?: (firm hasn't answered this question yet)
 Export Business Activities: (none given)
 Exporting to: (none given)
 Desired Export Business Relationships:(none given)
 Description of Export Objective(s):(none given)

Performance History (References)

(none given)

The structure of this page was last updated 07/25/2012, as part of Small Business Source System 8.0.



ARRIETA CONSTRUCTION, INC.

General Engineering Contractors

September 6, 2012

J.R. Filanc Construction Company, Inc.
740 N. Andreasen Drive
Escondido, CA 92029

Subject: Commitment Letter for
Pre-Construction Services Support
City of San Diego Upas Street Pipeline Replacement Project
Construction Manager at Risk Contract

Dear Sirs,

This letter serves as confirmation of our commitment to assist J.R. Filanc Construction Company, Inc. (Filanc) during the Pre-Construction Services phase of the Upas Street Pipeline Replacement Project Construction Manager at Risk (CMAR) project. Based on our discussions, Arrieta Construction, Inc. (Arrieta) will assist Filanc by providing expert services in the areas of pipeline construction value engineering, constructability reviews and conceptual estimating. We will work as part of the Filanc team to assist the project designer, Infrastructure Engineering Corporation, in developing a best value design solution for the pipeline. In addition, Arrieta will provide input into the scoping of bid packages used to develop the Guaranteed Maximum Price (GMP) to ensure that they provide the maximum opportunity for small and emerging local businesses to participate in the project. As a City of San Diego certified Emerging Local Business Enterprise (ELBE) that has specialized in pipeline construction for 50 years, Arrieta is uniquely positioned to provide these services.

Thank you for the opportunity to participate in this exciting and challenging project. We view this as another excellent avenue for us to continue our mentor-protégé relationship with Filanc in the areas of alternative project delivery of wet utilities.

Sincerely,

Wes Wise
Vice President
Arrieta Construction, Inc.



September 6, 2012
J.R. Filanc Construction Company, Inc.
740 N. Andreasen Drive
Escondido, CA 92029

Subject: Commitment Letter for
Pre-Construction Services Support
City of San Diego Upas Street Pipeline Replacement Project
Construction Manager at Risk Contract

Dear Sirs,

This letter serves as confirmation of our commitment to assist J.R. Filanc Construction Company, Inc. (Filanc) during the Pre-Construction and Construction Services phases of the Upas Street Pipeline Replacement Project Construction Manager at Risk (CMAR) project. Based on our discussions, Valley Construction Management will assist Filanc by providing expert services in the areas of value engineering, construction phasing, construction management, quality assurance/quality control, and independent review of contract documents. As a City of San Diego certified Emerging Local Business Enterprise (ELBE) that specializes in construction management for wet utilities, Valley Construction Management is uniquely positioned to provide these services.

Thank you for the opportunity to participate in this exciting and challenging project. We look forward to once again working with Filanc on another interesting and challenging project.

Sincerely,

Sincerely,
Valley Construction Management

A handwritten signature in black ink that reads 'Paul Mochel'.

Paul Mochel, PE, CCM
Construction Manager



Advanced Telemetry
Systems International, Inc.

D.C.S.
Distributed Control System
Intelligently Designed - Fault Tolerant SCADA

September 7, 2012

J.R. Filanc Construction Company, Inc.
740 N. Andreasen Drive
Escondido, CA 92029

Subject: Commitment Letter for
Pre-Construction Services Support
City of San Diego Upas Street Pipeline Replacement Project
Construction Manager at Risk Contract

Dear Sirs:

This letter serves as confirmation of our commitment to assist J.R. Filanc Construction Company, Inc. (Filanc) during the Pre-Construction and Construction Services phases of the Upas Street Pipeline Replacement Project Construction Manager at Risk (CMAR) project. Based on our discussions, ATSI will assist Filanc by providing expert services in the area of Supervisory Control and Data Acquisition (SCADA) system design review, and independent review of contract documents. As a Disabled Veteran Business Enterprise (DVBE) that has specialized for over 20 years in the design and installation of modern SCADA systems to the Water and Waste Water industries, ATSI is uniquely positioned to provide these services.

Thank you for the opportunity to participate in this exciting and challenging project. We look forward to once again working with Filanc on another interesting and challenging project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim", with a small flourish at the end.

James F. LaVine
ATSI, Inc.



PO Box 1188, Escondido, CA 92033
Telephone 760.580.4630 or 619.794.6406
info@humanability.biz

September 6, 2012
J.R. Filanc Construction Company, Inc.
740 N. Andreasen Drive
Escondido, CA 92029

Subject: Commitment Letter for
Pre-Construction Services Support
City of San Diego Upas Street Pipeline Replacement Project
Construction Manager at Risk Contract

Dear Sirs,

This letter serves as confirmation of our commitment to assist J.R. Filanc Construction Company, Inc. (Filanc) during the Pre-Construction and Construction Services phases of the Upas Street Pipeline Replacement Project Construction Manager at Risk (CMAR) project. Based on our discussions, Humanability will assist Filanc by providing expert services as your Community Outreach Liaison and Third Party Outreach Coordinator to increase participation by SLBE, ELBE, DVBE and SDVOSB firms. As a City of San Diego certified Small Local Business Enterprise (SLBE) that specializes in providing these services, Humanability is uniquely positioned to provide these services.

We look forward to working with Filanc on this interesting and challenging project.

Sincerely,

A handwritten signature in black ink that reads "Paula Roberts".

Paula Roberts, M.A.
Principal and Project Manager
Humanability
619.794.6406
paula@humanability.biz



P.O. Box #829
Pauma Valley, CA 92061

◆ CPM Scheduling

◆ Project Management Training

◆ Consulting

September 7, 2012

J.R. Filanc Construction Company Inc.
740 N. Andreasen Drive
Escondido, CA 92029

RECEIVED
SEP 10 2012
Filanc Construction

RE: Commitment Letter for
Pre-Construction Services Support
City of San Diego Upas Street Pipeline Replacement Project
Construction Manager at Risk Contract

Dear Sirs:

This letter serves as confirmation of our commitment to assist J.R. Filanc Construction Company, Inc. (Filanc) during the Pre-Construction and Construction Services phases of the Upas Street Pipeline Replacement Project Construction Manager at Risk (CMAR) project. Based on our discussions, Peterson Scheduling will assist Filanc by providing Primavera P6 schedule development and maintenance services. We will develop a baseline schedule during the pre-construction phase that can be used to assess the impact of value engineering impact analysis. During the construction phase we will develop and maintain a cost and resource-loaded schedule working with Project Manager Arnold Wingler. As a City of San Diego certified Emerging Local Business Enterprise (ELBE) that specializes in construction scheduling, Peterson Scheduling is uniquely positioned to provide these services.

Thank you for the opportunity to participate in this exciting and challenging project. We look forward to once again working with Filanc on another interesting and challenging project.

Sincerely,

Marsha Peterson
Peterson Scheduling Inc.
P.O. Box 829
Pauma Valley, CA 92061

**PUBLICATION AFFIDAVIT
DECLARATION OF PUBLICATION**

FILE COPY

STATE OF CALIFORNIA

FILED

Suzie Davidson /Art Director

REQUESTING SUB-BIDS
AEOE Requests Sub Bids on all trades from qualified SLBE/ELBE/VOSB/DVBE Subcontractors and Suppliers for the Following Project:

CITY OF SAN DIEGO
Upas Street Pipeline Replacement Project
Construction Manager At Risk (CMAR)
BID DATE: SEPTEMBER 14, 2012 AT 12:00 P.M.

J.R. Filanc Construction requests Subcontractor/Vendor/Supplier Bids for the Following Items:
Asphalt Paving, Concrete Paving, Aggregates, Ready Mix, Trucking, Pedestrian Ramp/Flat Work Construction, Pipeline Install, Piping, Tunneling/Drilling, Landscaping, Surveying, Road Striping/Signage, Fencing, Archeological/Paleontological/Native, American Monitoring, Biological Monitoring, Traffic Control Design/Services, Traffic Control Supplies, Erosion Control, Stormwater Management Supplies, Pipeline Video Surveying, Safety Supplies.

J. R. FILANC CONSTRUCTION COMPANY, INC.
(AN EQUAL OPPORTUNITY EMPLOYER)
740 N. Andreasen Drive, Escondido, CA 92029
License No.: 134877
Phone: 760-941-7130/Fax: 760-941-3969
Contact: Julia Masaitis

Plans are available for review at the following locations:
J.R. Filanc Construction Office or J.R. Filanc Web Site: www.filanc.com.

Contact Julia Masaitis to receive access to the plans and specs via iSqFt.
J.R. Filanc Construction Company, Inc. is willing to set aside any portion of work, no matter how small, to encourage SLBE/ELBE/VOSB/DVBE participation. If you require assistance in obtaining Bonding, Insurance, Lines of Credit, necessary equipment, supplies, materials or related assistance or services, please contact our office.

100% Payment and Performance Bonds May Be Required.

The undersigned declares:

I am over the age of 18 years and a citizen of the United States. I am not a party to and have no interest in this matter. I am principal clerk of the publisher of the Construction Up-Date, Inc, and Minority Bidders Bulletin, a trade/focus publication in the City of San Diego, the County of San Diego, and the State of California. This notice, a true copy hereon, was published on the below date(s):

I declare under penalty of perjury that the foregoing is true and correct.
Executed at San Diego, California

Suzie Davidson
signature



DATES PUBLISHED



9/16/12

9/13/12

TRADE PUBLICATION

FOCUS PUBLICATION

ALSO DISPLAYED ON WEB SITE @ <http://www.goodfaitheffort.com>



SAN DIEGO CONTRACTING OPPORTUNITIES CENTER (SDCOC)

Request for Assistance to locate Subcontractors/Suppliers

| | | |
|--|--|---|
| Today's Date: | August 30, 2014 | |
| From: Please include your company name, point of contact, address, phone, fax & email | J.R. Filanc Construction Company, Inc. Julia Masaitis, Outreach Coordinator 740 North Andreasen Drive Escondido, CA 92029 760-941-7130 760-941-3969 bids@filanc.com www.filanc.com | |
| Project Title: | Upas Street Pipeline Replacement Project Construction Manager at Risk | |
| Project Agency Owner: (i.e. City of San Diego, SANDAG, etc.) | City of San Diego | |
| Due Date & Time for Subs/Suppliers to submit their interest to you. | Construction phase services (see below): open, exact date to be determined in early 2013 Please contact us to express your interest in the project. | |
| Requesting subs/suppliers for the following trades: (i.e. plumbers, electricians, concrete, etc.) | Subcontractors: Asphalt paving/sealing Concrete paving Pedestrian ramp/flat work construction Pipeline installation Tunneling/horizontal directional drilling Landscaping Surveying Road striping/signage Fencing Archeological/Paleontological/Native American monitoring Biological monitoring Traffic control design/services Erosion control Pipeline video surveying | Suppliers: Aggregates Trucking Safety supplies Traffic control supplies Piping Concrete Asphalt Stormwater management supplies |

NOTE: San Diego Contracting Opportunities Center **does not** provide a list of subcontractors/suppliers to you. We will process your request and distribute to the applicable trades you're looking for. If interested, they will contact you directly. To satisfy your request, please submit this form two (2) weeks prior to due date if possible. **The posting of your request typically takes between 3-4 business days.**

ATTACHMENT A – LABOR LAW REQUIREMENTS FORM

Checklist Review for use at Job Start/Pre-Con Meetings

-- in accordance with CCR Section 16430 --

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

The award of a public works contract requires that all workers employed on the project be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors.

The contractor is responsible for obtaining and complying with all applicable general prevailing wage rates for trade workers and any rate changes, which may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on public works projects per Labor Code Section 1777.5; Contractors and subcontractors must complete and submit a DAS 140 (Contract Award Information Form) to all applicable apprenticeship committees (for each apprenticeable craft or trade) within 10 days of execution of the contract or subcontract but not later than the first day in which the contractor or subcontractor has workers employed upon the public work. Apprentices are to be employed in all crafts and in all trades with approved training programs. Contractors are to employ apprentices at a ratio of 1 apprentice hour for every 5 journeyman hours or as otherwise approved by the Division of Apprenticeship Standards approved (Joint or Unilateral) Apprenticeship Training Committees.

3. Penalties

Penalties, including forfeitures and debarment, shall be imposed for contractor/subcontractor failure to pay prevailing wages, failure to maintain and submit accurate certified payroll records upon request, failure to employ apprentices, and for failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813. Monetary penalties (maximum) of \$50 per day per worker shall be imposed for failure to pay correct prevailing wage; \$25 per day per worker shall be imposed for overtime violations; \$25 per day per worker assessed for failure to provide certified payroll information (LC 1776 (g)) as requested. Where contractor is found in violation, a penalty of \$100 per calendar day for noncompliance of apprenticeship issues can be assessed.

4. Certified Payroll Records

Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or to his or her authorized representative on request. Disclosure of certified payroll information to anyone other than the Awarding Body (District), its agent, or the Department of Industrial Relations requires that personal information about the employees (name, address and social security number) listed on the forms be redacted (omitted) to protect privacy.

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly to the Labor Compliance Officer. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated "No Work" for that week.

5. **Nondiscrimination in Employment** Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:
 - a. **Equal Employment Poster** The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project. All other labor and employment-related posters are also to be properly displayed on the jobsite.
6. **Kickback Prohibited** Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages. Such a violation may constitute a felony.
7. **Acceptance of Fees Prohibited** Contractors and subcontractors are prohibited from extracting any type of fee for registering individuals for public work (Labor Code Section 1779); or for filling work orders on public works contracts (Labor Code Section 1780).
8. **Listing of Subcontractors** Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Government Code Section 4100, et seq.).
9. **State Contractor License Laws/Proper Licensing** Business and Professional Code Sections 7026 and 7028.15 specify that all contractors submitting bids must be properly licensed at the time bids are submitted (this includes all subcontractors). Labor Code Section 1021 provides for penalties of \$200 per worker employed, per day, for contracting without the proper California State License.
10. **Unfair Competition Prohibited** Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code Sections 17200-17208).
11. **Workers' Compensation Insurance** All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code Section 3700 (Labor Code Section 1861).
12. **OSHA** Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project. Labor Code 6400 et. seq. requires that all employers furnish a safe and healthful place of employment, establish, implement and maintain an effective injury prevention program and comply with all applicable occupational safety and health standards.
13. **IRCA** Pursuant to the Immigration Reform and Control Act (IRCA) of 1986, employers are required to verify that all Employees working on Public Works contracts are legally able to work in the United States. Employers shall keep the appropriate I-9 forms and documentation on file for all workers employed on the jobsite and make such forms available to inspection and review by the Labor Compliance Officer upon request. For all contractors that violate the immigration law, civil penalties (depending on the violation) are from \$250 to \$10,000 per alien employed. In the event of a pattern, six months imprisonment is possible.
14. **Minority and Women Business Opportunities**
In accordance with Public Contracts Code Section 10108.5, contractors shall ensure that minority and women business enterprises have the maximum opportunity to participate in the performance of contracts and subcontracts.

15. Itemized Wage Statement

Labor Code Section 226 et seq. requires that all employers provide their employees with an itemized statement of the employees' payroll deductions. The itemized statement or "check stub" must be provided with the employees paychecks. Violations of Section 226 subject the employer to a \$100 per worker per day period penalty.

16. Tax Withholding

Revenue and Taxation Codes sections 177299.8, 18682.6 and 24447 make it unlawful for an employer to fail to withhold taxes and fail to provide employees with a Form W-2.

17. Unemployment Insurance

Unemployment Insurance Code sections 13090 and 2101 make it unlawful for an employer to fail to report information required by law to the Employment Development Department, or report false information. This sort of violation commonly occurs when a contractor fails to withhold payroll taxes from his employees and then fails to report wages paid to employees on the Employer's Quarterly Tax Returns. Any violation of these statutes are crimes and subject violators to substantial civil penalties.

In accordance with federal and state laws; and with the awarding body's policies and contract documents, the undersigned contractor herein certifies that it will comply with the foregoing labor law requirements; and fully understands that failure to comply with these requirements will subject it to the penalties cited herein.

Contractors Company Name (please print)

Signature _____

Title _____

Date _____

Project Name _____

Contractor's Project Number _____

Contractor License Number _____

Workers Compensation Policy Number _____