

RESOLUTION NUMBER R-292615

ADOPTED ON DECEMBER 14, 1999

WHEREAS, on November 3, 1998, the electorate of the City of San Diego (the "City") approved Ordinance No. O-18613 (the "Ordinance") which authorized the City and the Redevelopment Agency of The City of San Diego (the "Agency") to enter into a Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project (the "MOU"), within the Centre City East (East Village) Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project; and

WHEREAS, the Ordinance provided that it was the intent of the electorate that the Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the Ordinance; and

WHEREAS, the MOU has been executed by all parties thereto; and

WHEREAS, the City and Agency have certified the Final Subsequent Environmental Impact Report (the "FSEIR") pursuant to the California Environmental Quality Act and adopted Findings of Fact and Statement of Overriding Considerations in connection with that certification; and

WHEREAS, it is now fitting to consider such actions as may be necessary and appropriate to implement the purpose and intent of the Ordinance and MOU, consistent with both the City's and Agency's obligations under state law, and the discretion lawfully vested in the City Council acting on behalf of the City and Agency; and

WHEREAS, on July 27, 1999, by Resolution No. R-292006. the Council of The City of San Diego, authorized the City Manager to execute, for and on behalf of the City, an Interim Agreement with Sverdrup Civil, Inc., in an amount not to exceed \$3,000,000 for preliminary engineering, design and planning services for redevelopment purposes pursuant to the Centre City Redevelopment Plan including the Ballpark Infrastructure Project and Centre City East Redevelopment Area water/sewer enhancements; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a phase funded Design and Construction Management Agreement ("Agreement") with Sverdrup Civil, Inc., for this infrastructure improvement project (Project), under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR-292615, in an amount not to exceed \$41,513,000, with Phase 1 not to exceed \$6,390,000 (inclusive of and superseding the \$187,425, and \$3,000,000 Interim Agreement previously approved) effective upon contract execution and Phase 2 to commence when permanent financing is available in an amount not to exceed \$35,123,000.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$3,202,525 for Phase 1 - \$2,012,525 from Ballpark Interim Financing Fund 10290, \$431,000 from Fund 41506, and \$759,000 from Fund 41500, CIP 73-083.0, Annual Allocation Water

Main Replacements, is hereby authorized, provided that the City Auditor and Comptroller first furnishes a certificate demonstrating that funds are or will be available in the City Treasury, solely and exclusively for the purpose of providing funds for the above Project.

APPROVED: CASEY GWINN, City Attorney

By

Deborah L. Berger
Deputy City Attorney

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ORIGINAL

**BALLPARK INFRASTRUCTURE
DESIGN/BUILD AGREEMENT**

DOCUMENT NO. RR-292615
FILED DEC 14 1999
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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DESIGN/BUILD AGREEMENT

This Agreement is made and entered into this _____, by and between The City of San Diego (herein "City"), a municipal corporation, and Sverdrup Civil, Inc. ("DCM"). City and DCM are sometimes hereinafter referred to as "Parties."

RECITALS

WHEREAS, City desires to engage Sverdrup Civil, Inc. located at 675 Anton Blvd. Suite #400, Costa Mesa, California 92626.

WHEREAS, City desires to demolish existing structures, relocate utility infrastructure and construct parking lots, parking structures, new streets, streetscape and landscaping to support Ballpark Project [collectively hereinafter referred to as "Project"], as depicted in the Design Criteria and Performance Specifications ("Criteria") at a total cost not to exceed \$41,513,000 ["Contract Amount"].

WHEREAS, the City desires to contract with a single entity for the design and construction of the Project, as set forth in this Agreement, including Glossary of Terms and Exhibits, which are hereby incorporated by this reference and referred to hereafter collectively as "Agreement."

WHEREAS, the DCM has proposed to design and construct the Project, in accordance with the Request for Proposals issued by City and as depicted in the Criteria, and are prepared to enter into this Agreement.

WHEREAS, the Parties entered into an interim agreement for assessment of hazardous materials for the Project (on file in the Office of the City Clerk as Document No. C-09407) on June 29, 1999 in the not to exceed amount of \$187,425. The actual amount paid to the DCM shall be deducted from the GMP for the entire Project.

WHEREAS, the Parties entered into an Interim Design Agreement for Engineering Services (on file in the Office of the City Clerk as Document No. R-292006) related to the design portion of this Project on August 17, 1999 in the amount of \$3 million to be deducted from the GMP for the entire Project.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein:

THE PARTIES AGREE:

Section 1: General Scope of Services to be Performed by DCM

1.1 Except as expressly provided in this Agreement, DCM is to design and provide City with a complete Project in accordance with all of the terms set forth in this Agreement ("Professional Services" or "Services").

1.2 The Services and Work to be provided by DCM are to be performed in four "Phases" [Design, Bidding, Construction and Start up]; which are specified in the Scope of Services, Exhibit 6.1.

1.3 The DCM shall:

1.3.1 Design and construct the Project in accordance with the Criteria dated February 25, 1999 on the Project Site (as shown in Attachment A to Exhibit 1.3.1), subject to mutually agreed upon revisions resulting from the DCM's review of the Ballpark District Urban Design Theme (Reference ¶ 6.1.2 in the Scope of Services Exhibit 6.1), including value engineering adjustments mutually agreed upon by the Parties.

1.3.2 Not exceed the Guaranteed Maximum Price ("GMP") determined pursuant to Section 6.3 of this Agreement. The GMP shall not exceed the amount as set forth in Exhibit 1.3.2 which shall include all Hard Construction Costs necessary to provide a fully completed and functional Project, including but not limited to the cost for all labor, equipment, and material, and the Fixed Fee which includes fees and expenses of any type, including all expenses under this Agreement, associated with completing the Project, whether on-site or off-site. Any such costs in excess of said GMP shall be the sole responsibility of the DCM unless a Change Order is approved by the City. However, Exhibit 1.3.2 can be amended by mutual agreement of the Parties provided that there is no change in the GMP and there are sufficient funds in the Project budget authorized by City Council.

1.3.3 Achieve "Substantial Completion" (as defined in Section 18.1) no later than September 30, 2001, and "Final Completion" (as defined in Section 18.2) no later than December 17, 2001, provided however, that DCM receives a Notice to Proceed with the Construction Phase by January 1, 2000.

Section 2: General Obligations of City

2.1 City shall be obligated as follows:

- 2.1.1 Designate a representative (or representatives) who is authorized to act on behalf of City with respect to the Project, except as to those decisions specified herein that require authorization by the San Diego City Council;
- 2.1.2 Make decisions with reasonable promptness to avoid delay in the orderly progress of the Project in accordance with the Construction Schedule attached as Exhibit 2.1.2;
- 2.1.3 Cause to be completed all necessary environmental studies and obtain requisite EIR approvals and/or permits;
- 2.1.4 At the request of DCM, use its best efforts to provide DCM with any available information about Project Site, including a legal description and survey of the Project Site, and provide DCM with the best information available to City pertaining to such things as rights-of-ways, easements, existing utilities, and soil conditions; it will, however, be the responsibility of DCM to verify all such information as it deems necessary to perform its Services under this Agreement subject to provisions in Section 5.4.2.2.
- 2.1.5 Inasmuch as the demolition of an existing structure requires that certain assumptions be made regarding existing conditions, and, of course, some of these assumptions may not be verifiable without expending additional sums of money or destroying portions of existing structures, agree to bear all costs, losses and expenses, including the cost of DCM's additional service arising from the discovery of concealed or unknown conditions in an existing structure that could not reasonably be expected to be discovered by a thorough investigation of Project Site and all available drawings depicting construction of any and all Project Site improvements.

Search known substructure records and furnish the DCM with copies of documents which describe the location of utility substructures, or will indicate on the plans for the Project those substructures, except for service connections, which may affect the Work. Furnish DCM with information regarding removal, relocation, abandonment, or installation of new utilities.
- 2.1.6 Provide DCM with an approved Ballpark District Urban Design Theme at least one hundred twenty (120) calendar days prior to the date the GMP must be established as provided in Section 6.3. The

approved Ballpark District Urban Design Theme shall be incorporated in the Criteria.

- 2.1.7 Provide DCM with Phase 1 Relocation Plans [Plans for the Construction of Downtown Sewer and Water Enhancements (#29709) on file with City Maps and Records] for construction of sanitary and wastewater systems in the Project within thirty (30) calendar days of issuance of the Notice to Proceed for the Design Phase.
- 2.1.8 Provide DCM with a Site Remediation Procedure by November 1, 1999, or other such subsequent date as mutually agreed to by DCM and City. This Site Remediation Procedure shall be followed during the design and construction of the Project when DCM performs Services or Work related to the mitigation of soils.
- 2.1.9 Cooperate with DCM in identifying, processing and securing required permits, licenses and inspections in a timely fashion; however, this duty to cooperate does not relieve DCM of its obligations to identify, apply for and secure all necessary permits, licenses and inspections in a timely manner to support each Milestone and event on the Construction Schedule;
- 2.1.10 Make payments to DCM in the amounts and in accordance with the terms set forth below;
- 2.1.11 Issue Certificate of Substantial Completion when City reasonably determines the Project has achieved Substantial Completion as defined below in Section 18.1; and
- 2.1.12 Issue a Notice of Acceptance when City reasonably determines the Project has achieved Final Completion as defined in Section 18.2.

Section 3: General Obligations of DCM

3.1 DCM shall be obligated as follows:

- 3.1.1 At all times in performing its Services under this Agreement to design and deliver the best possible Project that satisfies the time, monetary, quality and design parameters set forth in this Agreement and comply with each and every requirement in the Criteria;

- 3.1.2 Design and construct the Project on time and in such a manner that the GMP of the Project shall not be exceeded, and if DCM reasonably believes that any action, decision or direction being made by City will likely result in the GMP being exceeded or the Project being completed late, notify City in writing within five (5) calendar days;
- 3.1.3 Perform, or obtain the prior written consent of the City to subcontract DCM Services for the Project utilizing qualified, appropriately licensed and sufficiently experienced architects, contractors, engineers and other professionals. The fact that the City approves the subcontracting of any such Services will in no way relieve the DCM of any of its obligations or responsibilities under the Agreement;
- 3.1.4 Perform all construction Work on the Project utilizing Contractors appropriately licensed by the California Contractors State License Board;
- 3.1.5 Perform all Services as expeditiously as is consistent with reasonable skill and care and shall complete the Services within each and all of the time periods set forth in this Agreement;
- 3.1.6 Be responsible for all errors, omissions or acts arising from the Services DCM provides under this Agreement, including any such errors, omissions or acts of DCM's agents, employees, consultants and Contractors;
- 3.1.7 Comply with the California Fair Employment and Housing Act and all other State, Federal and local laws including, but not limited to, those prohibiting discrimination, on account of race, color, national origin, religion, age, sex or handicap;
- 3.1.8 Study all applicable laws, codes, ordinances, rules, orders, regulations, and statutes affecting the Project, including but not limited to, zoning, environmental, building, fire and safety codes and coverage, density and density ratios and lien laws, and comply with them in performance of its Services. DCM shall ensure that the Project conforms to all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, (collectively "Governmental Requirements") existing as of the date of this Agreement. However, the City recognizes that Governmental Requirements and their interpretations by

governmental officials ("Code Authority") are often subject to change at any time, even after issuance of a building permit. If, after the date of this Agreement, modifications to the Project are required because of a change in Governmental Requirements or their interpretation by a Code Authority which had not previously been given, or which if given, was different than a prior interpretation of a Code Authority, DCM shall make the required modifications, but a Change Order shall be issued awarding DCM any additional costs or time required by such modifications. Nothing contained in this paragraph shall relieve DCM of its obligations to modify the Project at its own expense where DCM has failed to design or construct the Project in compliance with Governmental Requirements applicable as of the date of this Agreement. Such laws or regulations shall include, but not be limited to, the following:

- 3.1.8.1 Comply with the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163) as set forth in Division 15 of the Public Resources Code of the State of California.
- 3.1.8.2 Comply with all applicable standards, orders, or requirements of the United States Environmental Protection Agency regulations (40 CFR Part 15).
- 3.1.8.3 Comply with all applicable standards, orders, or requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001 et seq., as amended).
- 3.1.8.4 Comply with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738.
- 3.1.8.5 Comply with all applicable provisions of the Site Assessment and Mitigation Manual issued by the County of San Diego Environmental Health Department.
- 3.1.8.6 Exercise every reasonable precaution to protect channels, storm drains, and bodies of water from pollution and shall conduct and schedule its operations so as to minimize or avoid muddying and silting of said

channels, drains, and waters. Water pollution control Work shall consist of construction of those facilities which may be required to provide prevention, control and abatement of water pollution.

- 3.1.8.7 Retain consultant with expertise in archeology/paleontology for periodic monitoring of cultural resources and prepare a report for each site visit. These costs shall be a Reimbursable Cost to be paid pursuant to Section 14.4.
- 3.1.9 Take all reasonable steps during the course of the Project so as not to interfere with the ongoing operation of adjacent business and facilities, including but not limited to the following:
 - 3.1.9.1 Not interfere with pedestrian and vehicular access or Project Site safety;
 - 3.1.9.2 Control dust and noise in accordance with the provisions in the Standard Specifications for Public Works Construction;
 - 3.1.9.3 Control odors caused by site excavation or construction equipment as prescribed by the San Diego County Department of Environmental Health;
 - 3.1.9.4 Provide security to protect the Project Site from damages that may result from renovation or contiguous construction of the Project and/or adjacent construction activity;
 - 3.1.9.5 Reasonably protect the Project Site from damage from weather and other conditions arising out of DCM's operations; and
 - 3.1.9.6 Use reasonable care to avoid damaging existing buildings, equipment and vegetation adjacent to the Project Site. If DCM's failure to use reasonable care causes damage to any of this property, DCM shall replace or repair said property at its own expense.

3.1.10. Except as expressly provided herein, be responsible for obtaining all necessary permits which shall be a Reimbursable Cost, for which the DCM will be reimbursed by the City pursuant to Section 14.4.

3.1.11 Conform its design to the requirements of the Americans With Disabilities Act Accessibility Guidelines ("ADAAG"). The City and the DCM further recognize that the interpretation of the ADA and ADAAG by governmental officials and/or courts of law may vary or change.

3.1.11.1 Should such variance or change require DCM to make modifications to previously prepared design or previously installed construction which were in compliance with ADAAG on October 1, 1999, DCM shall be entitled to a Change Order adjusting the cost and time involved in making such modifications.

3.1.11.2 The City acknowledges that the ADA, including ADAAG, are new laws and regulations presenting numerous difficult issues for interpretation. City agrees that the DCM shall only be liable for negligence in the design or construction which is not in compliance with ADA or ADAAG.

3.2 DCM agrees to fully assume all risks, and costs associated with such risks, in performing the Services and meeting the obligations under this Agreement, except for the following risks which are assumed by City:

3.2.1 Design changes which are: (1) requested by the City after approval of Construction Documents or establishment of the GMP, whichever is later, and (2) beyond the scope of the requirements in the Criteria provided that DCM gives the City written notice pursuant to Sections 3.1.2 and 8.4;

3.2.2 Subject to the terms set forth in Section 5, materially differing site conditions from those reasonably anticipated after completion of Design Phase;

3.2.3 Third party litigation for which DCM is not responsible.

3.3 DCM shall cause all Professional Services performed under this Agreement to meet the standards of care recognized in the industry by those providing similar Services on similar types of projects. However, this obligation is contingent on all materials

or consumables supplied by the City (or others on the City's behalf) being within the parameters required by the design and operation of the Project and on any processes supplied by the City (or others on the City's behalf) being proper, accurate and complete. DCM shall be entitled to rely on the accuracy, completeness and appropriateness of all materials, consumables, or processes supplied by the City (or others on the City's behalf).

3.4 DCM warrants that at least one member of DCM shall be licensed by the California Contractor's State License Board as a General Building and a General Engineering Contractor. DCM is to provide a list of the responsible people within their organizations performing Services, which shall include their qualifications and their function, for review by the City prior to start of construction. City and DCM shall establish "key personnel" who shall remain on the Project in the roles designated until Final Completion. List of personnel should include those listed in Section 25.2. If the DCM is a joint venture, DCM shall obtain the joint venture license required by Section 7029 of the California Business and Professions Code from the California Contractor's State License Board. DCM shall comply with all licensing requirements of the State of California, County of San Diego, and City of San Diego.

3.5 DCM shall cooperate with City in obtaining requisite environmental approvals and/or permits.

3.6 The name of the DCM, with its address and the designation of its particular specialties, may be displayed on removable signs at the exterior of the Project. The size, location, and facing of such signs shall be subject to the City's approval. Commercial advertising matter shall not be attached to or painted on the surfaces of buildings, fences, canopies, or barricades.

3.7 Any advertisement referring to the City as a user of a product, material, or service by the DCM or any Contractor, material supplier, vendor or manufacturer is expressly prohibited without the prior written approval of the City.

3.8 DCM may retain a community relations consultant to compile a database of community contacts, provide regular updates about key message points regarding the Project, create direct communications links to the community and construction team members, prepare and distribute informative materials on the Ballpark Project, and conduct community meetings. These costs shall be a Reimbursable Cost to be paid pursuant to Section 14.4.

3.9 The DCM 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 Contractors or potential Contractors.

3.10 As it deems necessary to perform the Work under this Agreement, the DCM shall make reasonable efforts to verify the information provided to it by the City pertaining to the Project Site's legal description, rights-of-way, easements, existing utilities and soils reports.

3.11 DCM shall not begin Work or Services for any of the four Phases set forth in the Scope of Services until City has issued a Notice to Proceed for that particular Phase of the Project. The decision to issue a Notice to Proceed for any Phase is at the sole discretion of the City.

Section 4: Work Restrictions and Competitive Bidding Requirement

4.1 DCM, its subsidiaries, related entities, and its Design Subcontractors, and professional consultants shall not perform any actual construction of any type with their own forces on the Project, unless specific written authorization is received from the City.

4.2 Work on this Project not specifically authorized by City to be performed by DCM, must satisfy the competitive bidding requirements set forth in the Charter and Municipal Code of the City of San Diego and therefore DCM is hereby authorized to act as the agent of City for the limited purpose of conducting the competitive bidding in accordance with said Charter and Municipal Code. In all other capacities it is understood that DCM shall be an independent contractor under this Agreement and that any other reference to "agent" of City in this Agreement does not include or refer to DCM.

4.2.1 DCM shall be responsible for competitively bidding all construction Work to others and for entering into agreements, in DCM's own name, with the lowest responsible and reliable bidder. DCM shall be responsible for all delays resulting from bid protests or challenges resulting therefrom. However, if City determines that DCM has fully complied in good faith with the competitive bidding requirements, it shall be held harmless from any expense or delays resulting from bid protests or challenges resulting therefrom.

4.2.2 DCM shall be responsible for ensuring that these agreements fully comply with all applicable local, state and federal laws, some but not all of which are listed below.

4.2.3 Specifically, § 94 of the City's Charter requires that all construction Work shall be let to the lowest responsible and reliable bidder not less than ten (10) calendar days after advertising for one (1)

calendar day in the official newspaper of City for sealed proposals for the Work contemplated.

4.2.4 All other aspects of City's competitive bid law shall apply, including but not limited to the following:

4.2.4.1 DCM shall have the right to reject all bids and re-advertise;

4.2.4.2 DCM shall award to the lowest responsible and reliable bidder.

4.3 DCM shall require all bidders to furnish a list of subcontractors with their bid in accordance with the requirements of the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq. DCM shall require all successful bidders to comply with the Subletting and Subcontracting Fair Practices Act during performance of the Work and DCM shall conduct all applicable hearings required by Public Contract Code §§ 4100 et seq.

4.4 DCM shall hear and decide bid protests and shall develop and maintain bid protest procedures for that purpose.

4.5 DCM shall require appropriate bid, payment and performance bonds for the Work on bond forms furnished by the DCM. Such bonds shall name the City, as an obligee.

4.6 For Work which City approves to be self-performed by DCM, the following procedures shall be used to establish the cost:

4.6.1 DCM shall submit to City, plans, specifications, quantity take-offs, and additional cost estimate/ guarantee.

4.6.2 City shall obtain an independent cost estimate.

4.6.3 DCM may be required to submit up to two bids.

4.6.4 City and DCM shall negotiate a fixed price or not to exceed time and material contract for the subject Work item.

4.6.5 City may award to DCM or another party at its sole discretion.

Section 5: Project Site Conditions

5.1 Unless expressly provided otherwise in this Agreement, the City has made no other investigation of subsurface conditions in areas where Work is to be performed and makes no warranty of such subsurface conditions or latent physical conditions. The DCM shall do its own exploration as to subsurface or latent physical conditions at the Project Site. All costs to be born by DCM pursuant to the provision of this Section 5 shall be included in the Hard Construction Costs of the GMP.

5.2 Existing Physical Conditions - Subsurface and Existing Structures

5.2.1 DCM will be furnished all available reports of explorations and tests of subsurface conditions at the Project Site including soils and geotechnical reports and other related documents. A list of said reports and other documents is set forth on Exhibit 5.2.1 and is incorporated herein by reference.

5.2.2 DCM shall advise City if any further subsurface investigations are warranted as required by Section 5.3.

5.3 Site Investigation. While it is believed that much of the information pertaining to conditions which may affect the cost of the proposed Work will be shown in the documents listed in Exhibit 5.2.1, the City does not warrant the completeness or accuracy of such information. It is the DCM's responsibility to ascertain the existence of any conditions affecting the cost of the Work which would have been disclosed by reasonable examination of the Project Site. It is the responsibility of the DCM to verify all such information as it deems necessary to perform its Services under this Agreement.

5.3.1 DCM acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, groundwater, tides, or similar physical conditions at the Project Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed before and during Work performance.

5.3.2 DCM also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information

is reasonably ascertainable from an inspection of the Project Site, including any exploratory Work done by City, as well as from the drawings and specifications made a part of this Agreement and DCM on-site observations and/or inspection of the Project.

- 5.3.3 Existing improvements visible at the Project Site, for which no specific disposition is made in the documents listed in Exhibit 5.2.1, but which could reasonably be assumed to interfere with the satisfactory completion of the improvements contemplated by the Criteria, shall be removed and disposed of by the DCM.
- 5.3.4 Rights-of-way or easements for the improvements as shown in the Criteria will be provided by the City. Unless otherwise provided, the DCM shall make arrangements, pay for, and assume all responsibility for obtaining any additional Work areas and facilities temporarily required beyond those provided by City.
- 5.3.5 The DCM shall not disturb any permanent survey monuments, lot stakes or bench marks without prior consent of the City. If any such permanent monuments or bench marks are located such that they will have to be removed to perform the required Work, the DCM shall notify the City within at least seven (7) calendar days before starting any Work. The DCM will take necessary measures to insure their preservation or replacement. The DCM shall bear the cost of replacing any monuments which are damaged or removed.
- 5.3.6 Any failure of DCM to take the actions described and acknowledged in this Section will not relieve DCM from responsibility for estimating properly the difficulty and cost of successfully performing the Project, or for proceeding to successfully perform the Work without additional expense to City.

5.4 Differing Site Conditions

5.4.1 DCM Responsibility - DCM shall notify City in writing within five (5) working days of discovery if DCM believes that any subsurface or physical condition at or contiguous to the Project Site that is uncovered or revealed which:

- 5.4.1.1 Is of such a nature as to establish that any "technical data" provided in Section 5.2.1 is materially inaccurate, or

5.4.1.2 Differs materially from that shown or indicated in the reports furnished by City, or

5.4.1.3 Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Agreement;

5.4.2 City Responsibility -

5.4.2.1 Upon receipt of written notice from DCM of any differing subsurface or physical condition, City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, and cause a decrease or increase in DCM's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Section 15. If City determines that there is no bona fide change in the scope of Work or that it is a minor change which does not impact Contract Time or GMP, City shall notify DCM in writing of its finding within twenty (20) working days.

5.4.2.2 City assumes no responsibility for any conclusions or interpretations made by DCM based on the information made available by City. Nor does City assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

5.4.3 Disallowance of Entitlement - DCM shall not be entitled to any adjustment in the GMP or Contract Time if:

5.4.3.1 DCM knew or should have known of the existence of such conditions at the time the GMP is established pursuant to Section 6.3, or

5.4.3.2 The existence of such condition could reasonably have been discovered or revealed as a result of the examination as required in Sections 5.1 and 5.3.

5.5 Utilities

- 5.5.1 It shall be the DCM's responsibility to determine the location and depth of all utilities, including service connections, which have been marked by the respective owners and which may affect or be affected by its questions. Unless expressly provided otherwise in this Agreement, full compensation for this Work shall be considered as included in the Contract Amount.
- 5.5.2 Upon learning of the existence and location of any utility omitted from or shown incorrectly on the Criteria, or not properly marked, the DCM shall immediately notify the City in writing. When authorized by the City, support or protection of the utility shall be paid for as provided in Section 15 of this Agreement.
- 5.5.3 The DCM shall immediately notify the City and the utility owner if any utility is disturbed or damaged. The DCM shall bear the costs of repair or replacement of any utility damaged.
- 5.5.4 Unless specified otherwise, the DCM shall remove all interfering portions of utilities shown on the Criteria as "abandoned" or "to be abandoned in place." Before starting removal operations, the DCM shall ascertain from the City whether the abandonment is complete, with all costs involved in the removal and disposal to be borne by the DCM.
- 5.5.5 When the Criteria indicate that a utility installation is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility owners and the Work will be done at no cost to the DCM. Utilities which are relocated in order to avoid interference with the proposed permanent Work shall be protected in their relocated position with the cost of such protection to be borne by the DCM.
- 5.5.6 After issuance of the Construction Phase Notice to Proceed, portions of utilities which are found to interfere with the Work will be relocated, altered or reconstructed by the utility owner, or the City may order changes in the Work to avoid interference. Such changes will be paid for in accordance with Section 15 of this Agreement.
- 5.5.7 When the Scope of Services provides for the DCM to alter, relocate, or reconstruct a utility, all costs for such Work shall be the DCM's responsibility. Temporary or permanent relocation or alteration of

utilities requested by the DCM for its convenience shall be its responsibility, and it shall make all arrangements and bear all costs.

- 5.5.8 The DCM shall notify the City if its Construction Schedule is affected by the protection, removal or relocation of utilities. Said notification shall be in writing and shall be included as a part of the Construction Schedule. The DCM shall notify the City in writing of any subsequent changes in the Construction Schedule which will affect the time available for protection, removal or relocation of utilities.
- 5.5.9 The DCM shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, noted and completed in accordance with the Agreement Documents unless the delay is solely due to the actions of parties other than the DCM and the delayed activity is in the critical path leading to Substantial Completion as shown in the most recently approved Construction Schedule. The DCM may be given an extension of time for unforeseen delays attributable to utility relocations or alterations not shown or incorrectly shown on the Agreement Documents, or for unreasonably protracted interference by utilities in performing Work correctly shown on the Agreement Documents. If the DCM sustains loss due to delays attributable to interference, relocations or alterations which could not have been avoided by the judicious handling of forces, equipment or plant, there shall be paid to the DCM such amount as the City may find to be fair and reasonable compensation for such part of the DCM's actual loss as was unavoidable if such event conflicted with an event or activity that was on the critical path as shown in the most recently approved Construction Schedule and no Float Time is available to allow Schedule recovery.
- 5.5.10 DCM may retain a consultant to develop demolition removal utility database, coordinate utility removal or undergrounding, provide utility design and oversee compliance with Construction Schedule. These costs shall be a Reimbursable Cost to be paid pursuant to Section 14.4.

Section 6: DCM's Services and Obligations

6.1 City shall issue a Notice to Proceed with the Design Phase Services on or before November 3, 1999, as specified in Exhibit 6.1.

6.2 City and DCM may mutually agree in writing that DCM may contract for or perform certain limited Construction Phase Services during Design Phase to facilitate completion of the Project, as provided in the Construction Schedule. However, absent such written agreement, DCM shall not proceed with any Work until the City issues a written Notice to Proceed with the Construction Phase.

6.3 On or before March 1, 2000, provided that a Notice-to-Proceed with Design Phase is issued to DCM by November 3, 1999, DCM shall prepare and submit a GMP for approval by City. The GMP shall include all Hard Construction Costs and Fixed Fee, as set forth in Exhibit 1.3.2, for the construction and design of the entire Project as specified in the City approved Construction Documents; provided that:

- 6.3.1 The GMP shall not exceed the amount set forth in Exhibit 1.3.2.
- 6.3.2 The GMP shall include a Contingency Fund which may be used by the DCM with City approval which will not be unreasonably withheld. If the Parties mutually agree that there is a sufficient surplus, the Contingency Fund will be available to provide additional funds for Change Orders as provided in Section 15. Any surplus in the Contingency Fund at the end of the Project shall revert to the City unless otherwise allocated in Section 15. This Contingency Fund will not be available for:
 - 6.3.2.1 Work required due to DCM's and/or any Contractor's and/or Design Subcontractor's failure to perform in accordance with the terms of this Agreement and/or in compliance with the Construction Documents, or
 - 6.3.2.2 Uninsured losses resulting from the negligence of DCM or its Contractors. The City reserves the right to seek reimbursement for any funds used due to errors or omissions of the Design Subcontractors.
- 6.3.3 Subject to Section 17.6, DCM shall prepare, with the cooperation of the City, additive alternates in the amount of \$2,000,000.
- 6.3.4 Should the GMP exceed the amount set forth in Exhibit 1.3.2 the following steps shall be taken in the order stated:
 - 6.3.4.1 The DCM shall work with the City for a period of up to sixty (60) calendar days to redesign the Project, subject to City approval, and shall revise, at its costs, all specifications, design and cost estimate documents and

submit a revised proposed GMP based on such revisions;

6.3.4.2 The City and the DCM shall enter into good faith negotiations to agree upon a GMP amount to be submitted to the City Council for approval or the City may determine not to proceed with the Project and terminate this Agreement in accordance with Section 27.4 of this Agreement;

6.3.5 Said GMP shall be supported by a detailed itemized breakdown that shows: the Fixed Fee and 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 Fund.

6.3.5.1 GMP shall not include a Contingency Fund of greater than 8% of the Hard Construction Costs.

6.3.6 All Hard Construction Costs included in the GMP are for direct Contractor costs including taxes, delivery and installation. City shall reimburse DCM for the exact amount of the subcontract or item invoiced. No markup, handling fee, overhead, or other charges are to be added or paid. Upon Final Completion of the Project and after payment of any Incentive due DCM, any amount of Hard Construction Costs or Contingency Fund monies not utilized shall be returned to the City and shall result in a deductive Change Order.

6.4 DCM shall notify City within five (5) working days in writing whenever DCM reasonably believes that the cost of the Project is likely to exceed the GMP and include in said notice:

6.4.1 An itemized cost breakdown estimate;

6.4.2 A list of recommended revisions which DCM believes will bring Project within the GMP;

6.4.3 Assist City 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; and

6.4.4 Provide a master accounting system and matrix on Quatro Pro or equivalent software that will be updated, expanded and provided to the City monthly as the Project develops.

6.5 On or before March 1, 2000, DCM shall present to the City for approval the following for the entire Project, or any portion thereof as designated by the City: Construction Documents, Construction Management Plan, a detailed Construction Schedule, and a detailed cost breakdown.

6.5.1 Upon presentation by DCM to the City of the items specified in Section 6.5, the City may:

6.5.1.1 Approve the Construction Documents, and Construction Schedule, and authorize DCM to proceed with Bidding Phase Services; or

6.5.1.2 Determine not to proceed with the Project and terminate this Agreement in accordance with Section 27.4 of this Agreement; or

6.5.1.3 Direct DCM to revise and resubmit the documentation submitted pursuant to Section 6.5 in accordance with the directions of the City.

6.5.2 DCM shall bear the cost of revising and resubmitting documentation called for in Section 6.5 of this Agreement if it does not substantially comply with the requirements set forth in the Criteria.

6.6 Unless the DCM receives the City's prior written approval to substitute equal or better quality materials, the DCM warrants to City that: (1) materials and equipment incorporated in the Project will be new, unless otherwise specified, (2) that the Project will be of good quality, free from faults and defects, (3) in strict conformance with the Construction Documents (4) complies with Section 23 and (5) meets all requirements of the Criteria.

6.7 DCM shall prepare a detailed Construction Schedule, including Milestones, in accordance with the Scope of Services in Exhibit 6.1 for approval of City prior to submittal of GMP or January 14, 2000, whichever occurs first.

6.8 Prior to initiating the Work, DCM shall prepare a Project Procedures Manual (Manual) for approval by the City. The Manual shall include all material provided in Exhibit 6.8, in addition to Project specific procedures. Once approved by the City, the

Manual provisions become binding terms of this Agreement which can only be amended by mutual written agreement of the Parties.

6.9 The DCM shall notify the City in writing when DCM believes that the Project has achieved Substantial Completion, participate with City in inspecting the completed construction, prepare punchlists, and cause the punchlist items to be performed and/or corrected in accordance with the Construction Documents.

6.10 The DCM shall assemble and deliver to City upon Final Completion all records, documents, warranties, bonds, guarantees, maintenance/service agreements, and maintenance and operating manuals.

6.11 The DCM shall notify the City in writing when DCM believes that the Project has achieved Final Completion.

Section 7: Agreement Documents

7.1 The following documents are incorporated by this reference into this Agreement and are hereinafter collectively referred to as Agreement Documents. These documents are listed in precedential order with the more specific documents listed first and taking precedence over those listed thereafter as to any inconsistency:

1. Permits from other agencies as may be required by law;
2. Change Orders;
3. Construction Documents;
4. City of San Diego Standard Drawings (Document #769332 filed May 2, 1997)
5. Design Criteria and Performance Specifications (Criteria);
6. Agreement;
7. Project Procedures Manual
8. Standard Specifications for Public Works Construction
9. Downtown Water Sewer Enhancement Plans

7.2 The Agreement Documents are intended to be complementary and cooperative and to describe and provide for a complete Project. Anything in one Agreement Document and not in another, shall be as though shown or mentioned in both.

7.3 It is the intent of the Agreement Documents to describe a complete Project to be constructed in accordance with the Agreement Documents. Any Work that may reasonably be inferred from the Agreement Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for, at no additional cost to City.

- 7.3.1 On all questions relating to quantities, acceptability, execution, progress or sequence of Work, and the interpretation of any Agreement Documents, subject to Section 36, the decision of the City is final and binding, and shall be necessary prior to any payment under the Agreement unless otherwise ordered by the City.
- 7.3.2 When words in the Agreement Documents have a well-known technical or trade meaning, such words shall be interpreted in accordance with such meaning. Reference to 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 standard specification, manual or code in effect at the time of the effective date of the Agreement except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Agreement Documents) shall change the duties and responsibilities of City, DCM or Design Subcontractor, Contractor, or any of their agents or employees from those set forth in the Agreement Documents.

7.4 If the DCM elects to adopt or follow, in whole or in part, any plan or method of Work suggested by the City, but not specified or required, it does so at its own risk and bears responsibility for said decision. The City assumes no responsibility thereof and in no way will be held liable for any defects in the Work which may result from or be caused by use of such plan or method of Work.

Section 8: Additional Services

8.1 City will have the right to direct DCM to perform Additional Services beyond those specified in this Agreement. DCM may provide Additional Services of a design or management nature only if authorized in writing, in advance, by City and after complying with Section 8.4. The City may propose changes to the Work of a Contractor after the bid has been awarded. In the event of a change of this nature, DCM will estimate the cost of the Change Order, assist City in developing drawings and specifications as necessary, solicit a revised bid, negotiate with the Contractor, present a recommendation for a Change Order to City, and implement construction as approved by City.

8.2 For Additional Services which increase the Hard Construction Costs, design costs, General Conditions costs or other reasonably necessary costs of the Project, DCM will be paid the actual cost of the Additional Services as calculated in Section 15, as a Reimbursable Cost pursuant to Section 14.4.

8.3 For Additional Services, DCM will be paid on an hourly basis at hourly rates which shall be actual payroll times a multiplier for Contractor and DCM staff as follows: (a) 2.2 if the Additional Services result in either an extension of the Substantial Completion Date or the use of additional staff not employed specifically for this Project by DCM or not located on the Project Site and (b) 1.7 if the Additional Services do not result in an extension of the Substantial Completion Date and only require the use of staff employed specifically for this Project by DCM and located on the Project Site. If there is a design impact, DCM will be paid actual payroll times 2.9 for architects, engineers, and any Design Subcontractors engaged by DCM. However, in no instance shall the hourly rate times the multiplier result in a rate of over \$150 per hour. Should said Additional Services require a specialty consultant not then employed by DCM on this Project, reimbursement shall be in accordance with a detailed scope and fee proposal, solicited by DCM and accepted by City. Expenses associated with Additional Services shall be paid based on actual cost from submitted receipts with no markup. Alternatively, the Parties may agree to a lump sum fee for Additional Services using the above multipliers.

8.4 If at any time DCM contends that it is being asked to perform Additional Services, it shall immediately give City written notice prior to performing said Services indicating that DCM intends to seek additional compensation beyond the Fixed Fee. Furnishing advance written notice shall be a condition precedent to being able to seek additional compensation from City.

Section 9: Bonds

9.1 DCM shall furnish performance and payment bonds with the City designated as the obligee, each in the amount set forth below, as security for the faithful performance and payment of all DCM's obligations under the Agreement. These bonds shall remain in effect at least until thirty (30) calendar days after the filing date of Notice of Completion, except as otherwise provided by law or regulation or by this Agreement. DCM shall also furnish such other bonds as are required by this Agreement.

9.1.1 The performance bond shall be in the amount of 80% of the GMP for each Funding Phase.

9.1.2 The payment bond shall be in the amount of 80% of the GMP for each Funding Phase.

9.2 All bonds shall be in the form prescribed by City, issued by sureties which are admitted insurers in the State of California and are subject to regulation by the Department of Insurance, and which 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 and

authorized to issue bonds for the limits required in the jurisdiction in which the Project is located.

9.3 Each bond shall be signed by both the DCM and the surety and the signature of the authorized agent of the surety shall be notarized. Should any bond become insufficient, the DCM shall renew the bond within seven (7) calendar days after receiving notice from City. Should any surety at any time be unsatisfactory to the City, notice will be given to the DCM to that effect. No further payments shall be deemed due or shall be made under the Agreement until a new surety shall qualify and be accepted by the City. Changes in the Work, or extensions of time, made pursuant to the Agreement, shall in no way release the DCM or surety from their obligations. Notice of such changes or extensions shall be waived by the surety.

9.4 If the surety on any bond furnished by DCM is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, DCM shall within seven (7) calendar days thereafter substitute another bond and surety, which must be acceptable to City.

9.5 Bond premiums are a Reimbursable Cost for which the DCM will be reimbursed, without markup, pursuant to Section 14.4.

Section 10. Insurance.

10.1 Owner Controlled Insurance Program

10.1.1 General - The City of San Diego as Owner has insured this Project at its expense under an Owner Controlled Insurance Program (OCIP). The City through its OCIP shall provide, at its expense, certain insurance coverage for the DCM, its Contractors and Design Subcontractors ("OCIP Participants") who are engaged in the performance of Professional Services or Work for the Project. The DCM shall enroll in the OCIP using forms provided by the City. All insurance underwriting, payroll, rating or loss history information requested of the OCIP Participants by the City or the City's OCIP Administrative Broker, must be provided within five (5) working days of the request. OCIP Participants shall not be permitted to Work on the Project until they are acknowledged to be enrolled in the OCIP by the City's Administrative Broker. At all times during the term of the Agreement, OCIP Participants shall cooperate with City and City's OCIP Administrative Broker and insurer(s). The coverage provided through the OCIP shall provide primary coverage for Builders Risk Property Insurance, General Liability Insurance, Excess Liability Insurance, Workers Compensation and Employers

Liability Insurance, and Pollution Liability Insurance. The insurance coverage provided by the City shall apply to the operations of each insured at the Policy Site as defined in the OCIP insurance policies. Design Professionals Errors & Omissions Liability Insurance shall be provided to those OCIP Participants providing design services on the Project. The DCM shall require that the insurance, indemnity and Safety Program provisions of this Agreement be included in the Contracts with its Contractors and Design Subcontractors.

- 10.1.2 The OCIP is not intended to provide a complete insurance program to the OCIP Participants. OCIP Participants shall provide additional coverage as required by this Section at its own expense and through its own efforts.
- 10.1.3 The coverage provided by the City is subject to the terms, conditions and other provisions, including exclusions and limitations, contained in the policies covering the OCIP Participants, and shall name the City of San Diego as an additional insured.
- 10.1.4 OCIP Exclusions - Except for Design Professional Liability insurance coverage provided by the City, OCIP coverage shall not extend to the activities or products of DCM, Contractors, suppliers, material men, vendors, haulers, truckers and "owner/operators" whose employees perform no Work on the Policy Site and/or are engaged solely in the delivery, loading, unloading, stocking, testing or hauling of equipment, supplies or materials. The OCIP provides coverage for designated Policy Site employees of OCIP Participants. OCIP Participants employees not normally engaged at the Policy Site and others who occasionally visit the Policy Site and whose compensation is not normally part of the field payroll are excluded from the OCIP. Such persons are required to provide evidence of their own insurance, as specified in "COVERAGE TO BE PROVIDED BY THE DCM" (Section 10.3) before access to the Policy Site is allowed.
- 10.1.5 Dividends and Refunds - All dividends or refunds payable under the programs and policies of insurance obtained pursuant to the OCIP shall belong to the City, and any proceeds therefrom are assigned to the City. The DCM, at the request of the City, will execute and deliver to the City any release, assignment, direction or authorization which the City or any insurance company may require for such purpose.

10.1.6 Elimination of Duplicate Insurance - The OCIP Participants shall eliminate from their contract price the cost of any insurance or self-insurance from their insurance program which duplicates insurance provided by the City. The OCIP Participants shall provide to the City such information or records as may be required or helpful in determining that such cost has not been included in their contract price.

10.1.7 Exclusion From or Termination of OCIP - The City reserves the option to exclude the OCIP Participants from the OCIP or to terminate the OCIP, in whole or in part, at any time upon thirty (30) calendar days written notice to the OCIP Participants. Should the City choose to do so, the OCIP Participants shall obtain insurance for such coverages and amounts and subject to such terms as the City may direct. In such event, there shall be allowed to the OCIP Participants an equitable adjustment in the OCIP Participants compensation. The OCIP Participants shall provide to the City such information or records as may be required or is helpful in determining the increased cost to the OCIP Participants.

10.2 Coverage Provided by the City

10.2.1 Project Design Professional Errors & Omissions Liability - Contractors Pollution Liability Insurance - The City, at its own expense, shall provide to the DCM and its Design Subcontractors, a project Professional Liability policy including Pollution Liability with a Project aggregate limit of \$5 million. Contractors Pollution Liability insurance shall cover all Design Subcontractors and Contractors who are performing Services or Work for the Project. The City shall be the named insured. Coverage shall apply separately to each insured. The addition of multiple insureds shall not operate to increase the policy limit. The policy shall include an extended discovery period of five (5) years. A \$25,000 per claim deductible shall be the responsibility of the DCM.

10.2.2 Commercial General Liability - The City, at its own expense, shall provide to the OCIP Participants Primary Commercial General Liability insurance covering bodily injury, personal injury and property damage liability in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. The addition of insureds shall not operate to increase such limit. Coverage shall continue until 12:01 AM, Pacific Time on the day following the expiration of one year after the last effective date of this Agreement.

Products/Completed Operations Liability coverage shall continue in force for a period of five (5) years after acceptance of the Project by the City. The amount of the deductible that the City will require the OCIP Participants to assume, and for each and every occurrence, shall be determined by the amount, in dollars, of the contract for the OCIP Participants as specified below:

<u>Contract Amount</u>	<u>Deductible Amount</u>
\$0 - \$149,999	\$1,000
\$150,000 - \$1,999,999	\$2,500
\$2,000,000 Plus	\$5,000

Each claim, without regard to the amount claimed, shall be reported promptly to the insurance company, who will adjust and settle it on behalf of the City. Failure to report a claim promptly may jeopardize any coverage owed by the insurer.

10.2.3 Excess Liability - The City will provide at its expense Excess Liability policies affording \$98,000,000 limits in excess of the Commercial General Liability and Workers Compensation/Employers Liability limits afforded on the underlying policies. The coverage will generally be subject to the same terms, conditions and exclusions found in the underlying policies.

10.2.4 Workers Compensation/Employers Liability Insurance - The OCIP Participants shall, at the City's expense, be covered under the applicable laws relating to Workers Compensation and Employers Liability insurance, for all of their employees working on the Project. The OCIP Participants shall be issued a separate Workers Compensation and Employers Liability policy which shall continue until 12:01 AM, Pacific Time on the day following the expiration of one year after the last effective date of this Agreement. Policy limits shall be not less than:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Workers Compensation	Statutory
Employers Liability	
Bodily injury by accident	\$2,000,000 each accident
Bodily injury by disease	\$2,000,000 each employee
Bodily injury by disease	\$2,000,000 policy limit

10.2.5 - Builders Risk Property Insurance

10.2.5.1 A policy of "all risk" Builders Risk Insurance will be provided by the City at its expense. The City will add the OCIP Participants to the policy as named insureds. This insurance shall provide for deductibles. The amount of the deductible that the City will require the OCIP Participants to assume, and for each and every claim, shall be determined by the amount, in dollars, of the contract for the OCIP Participants as specified below:

<u>Contract Amount</u>	<u>Deductible Amount</u>
\$0 - \$149,999	\$1,000
\$150,000 - \$1,999,999	\$2,500
\$2,000,000 Plus	\$5,000

Each claim, without regard to the amount claimed, shall be reported promptly to the insurance company, who will adjust and settle it on behalf of the City. Failure to report a claim promptly may jeopardize any coverage owed by the insurer. If the loss involves more than one insured, then the deductibles shall be pro-rated among the claimants based upon the percentage their loss bears to the entire eligible loss.

10.2.5.2 Coverage for the perils of water damage, tunnel collapse and land movement, as defined in the policy, are included in the Builders Risk Insurance policies subject to a separate deductible of \$100,000 per loss. For damage to the OCIP Participant's work product arising out of the OCIP Participant's faulty or defective workmanship, material, construction or design, plans or specifications, the Builders Risk deductible is \$500,000. It shall be the responsibility of the OCIP Participants to bear the expense of these deductibles. If the loss involves more than one insured, then the deductible shall be pro-rated among the claimants based upon the percentage their loss bears to the entire eligible loss.

10.2.5.3 The insurance provided by the City will not cover any equipment, machinery, tools, or property of similar nature owned, rented or used by the OCIP Participants

which are not destined to become a permanent part of the insured Project.

10.2.5.4 The City shall not be liable or responsible for any loss or damage whatsoever to the items excluded in the policy and the OCIP Participants shall indemnify and hold harmless the City from any claims or causes of action brought by any person or parties as a result of loss or damage to such excluded items. The Builders Risk coverage for the OCIP Participants shall expire from the time such insured property is accepted, taken over, or taken into use by the City.

10.2.6 Cooperation - The OCIP Participants shall cooperate fully with and provide any information or records requested by the City, or City's OCIP Administrative Broker regarding all aspects of the OCIP, including but not limited to claims, audit, payroll, insurance records and safety. Delays in reporting information to the City or City's OCIP Administrative Broker may result in delays in progress payments to the DCM. Questions concerning the OCIP shall be directed to the City's OCIP Administrative Broker.

10.3 Coverage to be Provided by the DCM (Not Provided by City)

10.3.1 Policies - Throughout the life of this Agreement, the OCIP Participants shall pay for and maintain in full force and effect, with a carrier or carriers authorized by the California Insurance Commissioner to do business in the State of California, the policies described herein. All costs of coverage for the Project which are required in this Section 10.3 shall be a Reimbursable Cost subject to provisions of Section 14.4.

10.3.2 Commercial General Liability Insurance for Off-Site Activities - All OCIP Participants shall provide Commercial General Liability Insurance evidencing coverage for their operations which are not covered by the OCIP. Coverage must not contain exclusions for blanket contractual, broad form property damage, personal injury, premises and operations, products/completed operations, fire legal liability, Explosion, Collapse and Underground Property Damage Liability. The limit of such coverage shall be:

		Contractors and Design Subcontractor <u>of any tier</u>
	<u>DCM</u>	
General Annual Aggregate (other than Products/Completed Operation)	\$10,000,000	\$2,000,000
Products/Completed Operations Aggregate Limit	\$10,000,000	\$2,000,000
Personal Injury Limit	\$ 5,000,000	\$1,000,000
Each Occurrence	\$ 5,000,000	\$1,000,000

10.3.3 Automobile Liability Insurance - The DCM shall provide Automobile Liability Insurance evidencing coverage in an amount not less than \$1,000,000 Combined Single Limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles and name the City, its respective elected officials, officers, employees, agents and representatives as additional named insureds.

10.3.4 Workers Compensation and Employers Liability Insurance For Off-Site Employees

10.3.4.1 All OCIP Participants shall provide Workers Compensation Insurance and Employers Liability Insurance covering the employees of the OCIP Participants who are not normally engaged in Work at the Policy Site and whose compensation is not part of the field payroll or who are otherwise excluded under the OCIP. The policy shall protect the OCIP Participants against all claims under applicable State Workers Compensation laws.

10.3.4.2 Policy limits shall be not less than:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Workers Compensation Employers Liability Primary Limits	Statutory
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

10.3.4.3 If the DCM's Scope of Services includes Services over or alongside any navigable waters, the DCMs or Contractors involved in this Work shall provide Workers Compensation coverage which shall include coverage under the U.S. Longshoremen and Harbor Workers Compensation Act, the Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.

10.3.5 Hazardous Transporters Pollution Liability

10.3.5.1 If the DCM's Work includes the transportation of hazardous or toxic chemicals, materials, substances, or any other pollutants the DCM or Contractors of any tier shall provide at their expense hazardous transporters pollution liability insurance appropriate to cover such activities in an amount not less than \$5,000,000 combined single limit per occurrence/aggregate for bodily injury, property damage and remediation, and will not contain more than a \$25,000 per claim deductible without the prior written consent of the City.

10.3.5.2 Claims Made policies will include a five (5) year extended claims discovery period applicable to this Agreement, if reasonably available.

10.3.5.3 The policy for this insurance shall include Contractual Liability coverage. Such policy shall be endorsed to specifically provide for Work and Services performed under the Agreement, and shall extend to all Contractors engaged in hazardous materials Work.

10.3.5.4 The DCM shall furnish to the City a policy or certificate of Hazardous Transporters Pollution Liability insurance in which the City, its elected officials, officers, employees, agents and representatives, are named as additional insureds. The policy or certificate shall also provide that thirty (30) calendar days written notice shall be given to the certificate holders before the insurance policy is canceled, non-renewed or materially reduced. The policy or certificate must plainly designate the name of the Project. This certificate must be

furnished to the City, evidencing compliance with the outlined requirements, prior to the DCM beginning its Work on the Project. Any failure to furnish this policy or certificate of insurance shall not relieve the DCM from its obligations under this section.

10.4 Adjustments to Insurance Limits

The City may request a proposal from DCM for adjusting insurance limits.

10.5 Insurance Compliance

The DCM shall not begin Work or Services under this Agreement until it has: a) obtained all policies required in this Section, b) provided copies of each such policy to the City, c) obtained City approval of each company or companies, d) confirmed that all policies contain the specific provision required in this Section, and e) enrolled in the City's OCIP program. The DCM shall not allow any Contractor or Design Subcontractor to begin Work or Services until all insurance required in this Section have been obtained.

10.6 Rating Requirements

All insurance required by express provision of this Section, shall be carried only by responsible insurance companies that have been given at least an "A&V" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City.

10.7 Specific Provisions Required

Each policy required under Section 10.3 (except Section 10.3.4 "Worker's Compensation and Employers Liability Insurance") shall expressly provide, and an endorsement shall be submitted to the City, that:

10.7.1 The City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's additional insured status must be reflected on additional insured endorsement form CG 20 10 (form CG 20 09 is unacceptable).

10.7.2 The policies are primary and contributing to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

10.7.3 The policies cannot be canceled or non-renewed except after thirty (30) calendar days prior written notice by the insurer to the City by certified mail, as reflected in an endorsement which shall be submitted to the City.

10.7.4 The aggregate limits of insurance shall be per project as reflected on endorsement form CG 25 04, or equivalent, which shall be submitted to the City.

10.8 Deductibles

All deductibles on any policy provided by the OCIP Participants shall be their responsibility.

Section 11: Safety

11.1 Safety Program - DCM shall assist in developing a Safety Program acceptable to City prior to commencement of any Work on Project Site. DCM shall be responsible for initiating, maintaining, enforcing and supervising all safety precautions and programs in connection with the Project. DCM shall require each Contractor of any tier to submit to the DCM an effective and appropriately written Safety Program compatible with all the Safety Program requirements in Section 3 of Project Procedure Manual.

11.2 Safety Laws and Regulations - DCM shall comply, and shall require each Contractor of any tier to comply, with the OCIP Safety Program and all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection.

11.3 Safety Representative - DCM shall designate, and require each Contractor of any tier to designate, a qualified and experienced safety representative at the Project Site whose duties and responsibilities shall be the prevention of accidents and the maintaining, enforcing and supervising of the OCIP Safety Program.

11.4 Safety Orders - DCM shall have at the Project Site as applicable, copies or suitable extracts of: construction safety orders, tunnel safety orders, and general industry safety orders issued by the State Division of Industrial Safety. DCM shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

11.5 Trench Shoring Plan - Before excavating any trench 5 feet or more in depth DCM shall prepare and submit to City a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for the workers' protection from the hazard of caving ground during the excavation of such trench. If the plan varies from the shoring

system standards, the plan shall be prepared by a California registered Civil Engineer. No excavation shall start until DCM has obtained from excavation Contractor a permit from the State Division of Industrial Safety. A copy of the permit shall be posted at the Project Site.

11.6 Use of Explosives - Explosives may be used only when authorized in writing by City, or as otherwise stated in the Construction Documents. Explosives shall be handled, used, and stored in accordance with all applicable regulations. City's approval of the use of explosives shall not relieve DCM from liability for claims caused by blasting operations.

11.7 Hazardous Communication Program

11.7.1 Notification to employees is required when materials that contain hazardous substances or mixtures are required on the Project. A Material Safety Data Sheet as described in Section 5194 of the California Code of Regulations shall be required by DCM to be provided by Contractors from the manufacturer of any hazardous product used.

11.7.2 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.

11.7.3 DCM 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 Project Site in accordance with laws or regulations, with copies to City.

11.7.4 DCM shall comply with all applicable requirements of California Occupational Health and Safety Act (Cal OSHA). DCM shall prepare for City approval, a Cal OSHA management plan which will provide procedures to ensure compliance with Cal OSHA.

11.8 Unsafe Products - DCM shall notify City if it considers a specified or required product or its intended usage to be unsafe.

11.9 Safety Measures In Bid - Safety measures shall be included in the prices bid by all Contractors of any tier.

Section 12: Inspection

12.1 City shall be responsible for Owner's inspection and Special Inspections, with reimbursement to be required from Contractors for any reinspections. The City shall either perform said inspection Services with its own forces or contract with third parties. It shall be the responsibility of DCM, however, to call for, coordinate, and schedule all inspections, as well as to monitor Special Inspections.

12.2 City, its consultants, Contractors, independent testing laboratories and governmental agencies with jurisdictional interests will have access at reasonable times for observation, inspecting and testing. DCM shall provide them proper and safe conditions for such access and advise them of DCM's safety procedures and programs so that they may comply.

12.3 City will make, or have made, such inspections and tests as the City deems necessary to see that the Work is being accomplished in accordance with the requirements of the Construction Documents. Unless otherwise specified, the cost of such inspection and testing will be borne by the City. In the event such inspections or tests reveal non-compliance with the requirements of the Construction Documents, DCM shall bear the cost of corrective measures deemed necessary by City, as well as the cost of subsequent reinspection and retesting. Neither observations by the City nor inspections, tests, or approvals by others shall relieve DCM from DCM's obligations to perform the Work in accordance with the Construction Documents. DCM shall give City timely notice of readiness of the Work for all required on and off-site inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. DCM shall give at least 24 hours notice for on-site inspection and five (5) working days notice for off-site inspection.

12.4 When DCM intends to purchase materials, fabricated products, or equipment from sources located more than fifty (50) miles from the City Administration Building, the costs of an inspector or accredited testing laboratory retained by the City shall be paid by the City. The inspector or representative of the testing laboratory shall judge the materials by the requirements of the plans and specifications used to solicit bids for construction and the DCM shall forward status reports to the City. No materials or equipment shall be shipped nor shall any processing, fabrication or treatment of such materials be done without prior inspection by the approved agent. Approval by said agent shall not relieve the DCM of responsibility for complying with the requirements of this Agreement.

12.5 DCM shall require all Contractors and vendors to assume responsibility for costs of tests or inspections due to the following;

12.5.1. Retesting because of failure of initial samples.

- 12.5.2. Failure to properly notify laboratory within a reasonable amount of time to perform necessary tests.
- 12.5.3. Changes in sources, lots, or suppliers of materials after original tests.
- 12.5.4. Changes in methods or materials of construction by DCM that require testing, inspection, or other related Services in excess of those required by the Construction Documents.

Section 13: Correction, Removal or Acceptance of Defective Work

13.1 Covering Work to be Inspected

- 13.1.1 Covered Work Prior to Inspection or Testing - If any Work (including the Work of others) that is to be inspected, tested, or approved is covered without written concurrence of City, it must, when requested by City, be uncovered for inspection. DCM shall bear all direct and indirect costs and damages of such uncovering, unless DCM has given City and/or agencies timely notice of DCM's intention to cover the same, and City has not acted with reasonable promptness in response to such notice.
- 13.1.2 Covered Work Contrary to Written Request - If any Work is covered contrary to the written request of City, it must, when requested by the City, be uncovered for City's observation and recovered. DCM shall bear all direct and indirect costs and damages of such uncovering.
- 13.1.3 City's Right to Direct That Work be Uncovered for Inspection or Testing
 - 13.1.3.1 If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, DCM, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Project in question, furnishing all necessary labor, material, and equipment.
 - 13.1.3.2 If it is found that such Work is Defective, DCM shall bear all direct and indirect costs and damages of such

uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including but not limited to fees and charges of engineers, architects, attorneys, and other professionals. However, if such Work is not found to be Defective, DCM shall be allowed an increase in the GMP or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction; based on the time and materials provisions as outlined in Section 15.

13.2 City May Stop the Work - If the Work is determined to be Defective by City, and DCM fails to immediately correct the Defect or DCM fails to perform Work in such a way that the completed Work will conform to the Construction Documents, City may order DCM to stop the Project, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Project shall not give rise to any duty on the part of City to exercise this right for the benefit of the DCM or any other party. DCM shall bear all direct and indirect costs and damages that result from this stop Work notice.

13.3 Correction, Removal or Acceptance of Defective Work

13.3.1 DCM's Responsibility - If required by City, DCM shall promptly, either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City, remove it from the Project Site and replace it with non-Defective Work. DCM shall bear all direct and indirect costs and damages of such correction or removal.

13.3.2 City Acceptance of Defective Work - If, instead of requiring correction or removal and replacement of Defective Work, City prefers to accept the Work, City may do so. DCM shall bear all direct and indirect costs attributable to City's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Construction Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the GMP, determined by City and charged through a deductive Change Order.

13.3.3 City May Correct Defective Work

- 13.3.3.1 If DCM fails within a reasonable time after written notice from City to correct Defective Work or to remove and replace rejected Work; if required by City, or in an emergency where delay would cause serious risk of loss or damage, or if DCM fails to perform the Work in accordance with the Construction Documents, or if DCM fails to comply with any other provision of the Construction Documents, City may, after five (5) working days written notice to DCM, correct and remedy any such deficiency.
- 13.3.3.2 In exercising the rights and remedies under this Agreement, City shall proceed expeditiously.
- 13.3.3.3 In connection with such corrective and remedial action, City may exclude DCM from all or part of the Project Site, take possession of all or part of the Work, and suspend DCM's Services related thereto, take possession of DCM's tools, appliances, construction equipment and machinery at the Project Site and incorporate in the Project all materials and equipment stored at the Project Site or for which City has paid DCM but which are stored elsewhere.
- 13.3.3.4 DCM shall allow City, City's representatives, agents and employees, City's other Contractors and City's consultants access to the Project Site to enable City to exercise the rights and remedies under this Agreement.
- 13.3.3.5 All Claims, costs, losses and damages incurred or sustained by City in exercising such rights and remedies will be charged against DCM and a deductive Change Order will be issued incorporating the necessary revisions in the Construction Documents with respect to the Project; and City shall be entitled to an appropriate decrease in the GMP, and, if the Parties are unable to agree as to the amount thereof, the City may unilaterally issue the Change Order.
- 13.3.3.6 Such Claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of

Work of others destroyed or damaged by correction, removal or replacement of DCM's Defective Work.

- 13.3.3.7 DCM shall not be allowed an extension of the Contract Time (or Milestones) because of any delay in the performance of the Project attributable to the exercise by City of its rights and remedies pursuant to this section.

Section 14: Compensation

14.1 Contract Amount shall be \$41,513,000. It shall be composed of the GMP and Reimbursable Costs. The GMP consists of the Fixed Fee and Hard Construction Costs.

14.2 Except as otherwise expressly provided in this Agreement, DCM shall be compensated ("Fixed Fee") in the amount specified in Exhibit 1.3.2, as full and complete compensation for performance of all Services and obligations under this Agreement. At the time the GMP is established, the DCM Fixed Fee shall be increased by an amount (Reference Footnote 1 - Exhibit 1.3.2) not to exceed 3.5 percent of the Hard Construction Costs. Unless otherwise expressly provided in this Agreement, the Fixed Fee shall include full compensation for all costs of any type incurred by DCM in performing all Services and obligations under this Agreement, including but not limited to the following:

- 14.2.1 Architectural, engineering and other professional consultants, including but not limited to structural, civil, mechanical, electrical engineers, communications, graphics landscape architects, and acoustical, lighting, and traffic consultants;
- 14.2.2 Estimating, value engineering and construction management;
- 14.2.3 Construction supervision and Project management personnel, including but not limited to superintendents, Project managers, Project secretaries, Project engineers, Project accountants, and all other DCM personnel wherever located;
- 14.2.4 All on-site and off-site equipment, supplies and facilities, including but not limited to, computers, estimating, dictating, communication and accounting equipment, office space, trailers and storage facilities;
- 14.2.5 All home-office and field overhead costs of any type including document control and retention;

- 14.2.6 All business license costs;
- 14.2.7 All profit DCM intends to earn under this Agreement.

14.3 DCM will also be reimbursed, without markup, for costs it incurs in contracting actual construction Work on the Project to others and for authorized self-performed Work and subcontracted General Conditions ("Hard Construction Costs"). Hard Construction Costs are understood to mean subcontracted directs and indirects as set forth in Exhibit 1.3.2 for costs incurred in the performance of the Work on the Project, and specifically do not include:

- 14.3.1 Costs associated with the design and construction management Services to be performed by DCM under this Agreement, or
- 14.3.2 Costs incurred due to DCM's negligence or failure to perform according to the terms of this Agreement, including, but not limited to, failure to adequately supervise the Project and use of materials which do not comply with the Construction Documents.

14.4 Subject to City approval, DCM shall be reimbursed, as specified in Sections 3.1.8.7, 3.1.10, 3.8, 5.5.10, 8.2, 9.5, 10.3.1, 23.5.6, 29.1.1, and 35.1 of the Agreement, for the following "Reimbursable Costs:"

- 14.4.1 DCM Reimbursable bond premiums;
- 14.4.2 Reimbursable insurance premiums, deductibles and broker fees required for the Project which are not covered by OCIP;
- 14.4.3 Reimbursable permit costs;
- 14.4.4 Reimbursable warranty extensions;
- 14.4.5 Reimbursable EOCP consultant;
- 14.4.6 Reimbursable utility specialist;
- 14.4.7 Reimbursable soils and hazardous materials remediation costs;
- 14.4.8 Reimbursable community relations consultant;

14.4.9 Reimbursable archeologist/palaeontologist consultant;

14.4.10 Reimbursable Additional Services;

14.5 Reimbursable Costs in Sections 14.4.1 through 14.4.4 shall be reimbursed without any mark-up. Reimbursable Costs in Sections 14.4.5 through 14.4.9 shall have a mark-up of six percent of amount invoiced by consultant. In no event shall the total Reimbursable Costs for each section exceed the amount indicated in Exhibit 1.3.2 for that category of Reimbursable Costs.

14.6 Under no circumstances will the sum of payments for the Fixed Fee, and Hard Construction Costs as set forth in Exhibit 1.3.2 exceed the GMP, unless otherwise authorized pursuant to the terms of this Agreement.

Section 15: Change of GMP

15.1 The GMP, once approved by City, may only be changed by written Change Order. In such event, the method for adjusting the GMP shall be determined as follows:

15.1.1 Hard Construction Costs included in the Change Order shall be determined by one of the methods described in Section 15.4;

15.1.2 DCM's compensation for any Change Order shall be in accordance with Section 8 (Additional Services) and DCM shall receive no other markup.

15.2 DCM shall incorporate the provisions of this Agreement into all contracts for Work.

15.3 Any request by DCM for a change in the GMP, unless otherwise noted, shall be based on written notice delivered by DCM to City promptly (but in no event later than ten (10) working days) after the occurrence of the event giving rise to the request and stating the general nature of the request. Notice of the extent of the request with supporting data shall be delivered within thirty (30) calendar days after such notice (unless the City allows an additional period of time to ascertain more accurate data in support of the request) and shall be accompanied by DCM's written statement that the adjustment requested is the entire adjustment to which DCM has reason to believe it is entitled as a result of the occurrence of said event.

15.4 Methods for Determining Adjustments in GMP for Hard Construction Costs

15.4.1 Contractor Costs - The methods to be used to determine an adjustment in Hard Construction Costs of the GMP necessitated by changes ordered or negotiated pursuant to the Agreement are limited to the following:

15.4.1.1 Where the Work involved is covered by lump sum prices in the Contractor's agreement: on the basis of a lump sum negotiation;

15.4.1.2 Where the Work involved is covered or is of the same character as unit price Work in the Contractor agreement: by application of those unit prices to the quantities of the items involved (subject to the provisions covering unit price Work);

15.4.1.3 Where the Work involved is not covered by either of the preceding methods: by mutual acceptance of a lump sum price negotiated on the basis of Contractor's itemized estimate of the anticipated cost of the Work involved, determined as specified in this Section;

15.4.1.4 Where the Work involved is not covered by either of the first two methods, and City and DCM cannot achieve agreement on the anticipated cost of the Work involved and City directs DCM to proceed with the Work: DCM shall proceed with the Work and payment shall be made for Hard Construction Costs in accordance with Section 15.5 and any DCM compensation for Additional Services in accordance with Section 8 of the Agreement.

15.4.2 Contractor's (not DCM) Overhead and Profit Limitation - For all negotiated Change Orders, the allowance for overhead and profit shall include full compensation for superintendence, insurance premiums, taxes, field office expense, extended overhead, home office overhead, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for in this Section. The allowance for Contractor's overhead and profit will not exceed the following schedule:

Overhead & Profit

Labor	=	20 percent
Materials	=	15 percent
Equipment	=	10 percent
Bond	=	1 percent

15.5 Cost of Work (Based on Time and Materials)

- 15.5.1 General - The term "Cost of Work" means the sum of all costs necessarily incurred and paid by the Contractor for labor, materials, and equipment in the proper performance of Extra Work. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the excluded costs itemized in this Section.
- 15.5.2 Labor - The costs of labor will be the actual cost substantiated by certified payroll for wages for each craft or type of workers performing the Extra Work at the time the Extra Work is done, plus employer payments of payroll taxes, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen shall be proportioned to all of their assigned Work and only that applicable to Extra Work shall be paid. Non-direct labor costs including the superintendent, Project manager, and other labor identified in Section 15.4.2 shall be considered part of the overhead markup identified in this Section.
- 15.5.3 Materials - The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project Site in the quantities involved, plus the cost of sales tax, freight, delivery and storage.
- 15.5.3.1 All invoices from Contractors shall be to the DCM and shall note the trade discounts or prompt payment discounts available. DCM shall immediately identify these discounts and Work with the City to provide prompt payment to take advantage of these discounts.

- 15.5.3.2 For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by City.
- 15.5.3.3 Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Extra Work items or the current wholesale price for such materials delivered to the Project Site, whichever price is lower.
- 15.5.3.4 If, in the opinion of City, the cost of material is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project Site less trade discount.
- 15.5.3.5 City reserves the right to furnish materials for the Extra Work and no Claim shall be allowed by the Contractor for costs and profit on such materials.

15.5.4 Rental Equipment - The DCM will be paid for the use of equipment at the rental rate listed for such equipment agreed upon by City and DCM but in no event shall those costs exceed the rates listed in the cost guide entitled, "Construction Equipment Ownership and Operating Expense Schedule - Region VII," published by the U.S. Army Corps of Engineers, in effect on the date this Agreement is executed. Such rental rate will be used to compute payments for equipment whether the equipment is under DCM's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to City for the total period of use. If it is deemed necessary by the DCM to use equipment not listed in the publication agreed upon by City and DCM, an equitable rental rate for the equipment will be established by City. The DCM may furnish cost data which might assist the City in the establishment of the rental rate.

- 15.5.4.1 All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.
- 15.5.4.2 Whenever possible, changed Work will be accomplished using equipment available on-site.

- 15.5.4.3 The rental time to be paid for equipment on the Project Site shall be the time the equipment is in productive operation on the Extra Work being performed and, in addition, shall include the time required to move the equipment to the location of the Extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the Extra Work, even though located at the Project Site of the Extra Work.
- 15.5.4.4 Rental time will not be allowed while equipment is inoperative due to breakdowns.
- 15.5.5 Special Services - Special Work or Services ("Special Services") are defined as those Services and/or Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
- 15.5.5.1 When City and DCM determine that a Special Service is required which cannot be performed by the forces of the DCM or those of any of its Contractors, the Special Service may be performed by an entity especially skilled in the Work. Invoices for Special Services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by City.
- 15.5.5.2 All invoices for Special Services will be adjusted by deducting all trade discounts offered or available whether the discounts were taken or not. In lieu of the allowances for overhead and profit specified in this section, an allowance of fifteen percent (15%) will be added to invoices for Special Services.
- 15.5.6 Excluded Costs - The term Cost of the Work shall not include any of the following costs:
- 15.5.6.1 Overhead Cost - Payroll costs and other compensation of DCM's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks and other personnel employed by the DCM whether at the Project Site or in DCM's

principal office, a branch office or material yard and shop for general administration of the Project or not specifically covered by this Section all of which are to be considered administrative costs covered by the DCM's allowance for overhead and profit.

- 15.5.6.2 Office Expense - Expenses of the DCM's principal and branch offices.
- 15.5.6.3 Capital Expenses - Any part of the DCM's capital expenses, including interest on the DCM's capital employed for the Project and charges against the DCM for delinquent payments.
- 15.5.6.4 Negligence - Costs due to the negligence of DCM, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 15.5.6.5 Other - Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this section.
- 15.5.6.6 Small Tools - Cost of small tools valued at less than \$500 and that remain the property of the DCM.
- 15.5.6.7 Administrative Costs - Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims.
- 15.5.6.8 Anticipated Lost Profits - Expenses of the DCM associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retainage.
- 15.5.6.9 Home Office Overhead - Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, Burden Fluctuation, or other similar methods.
- 15.5.6.10 Special Consultants and Attorneys - Costs of special consultants or attorneys, whether or not in the direct employ of the DCM, employed for services specifically related to the

resolution of a Claim, dispute, or other matter relating to the acceptability of the Project.

- 15.5.7 DCM's Extra Work Report - In order to be paid for Extra Work based on time and materials, the DCM must submit a daily Extra Work report on a form provided by City. The form must be completely filled out based on the provisions of this Section and signed by the DCM and the City at the end of each Work day. Failure to complete the form and obtain appropriate signatures by the next working day after the work was completed will result in DCM's costs for Extra Work being disallowed until such form is completed and agreed to by DCM. Delay in submitting the form beyond five (5) working days will result in City's records becoming the official record for payment purposes.
- 15.5.8 Costs Relating to Weather Damage - The DCM shall have no Claims against City for damages for any injury to Work, materials, or equipment, resulting from the action of the elements or weather. If, however, in the opinion of City, the DCM has made all reasonable efforts to protect the materials, equipment, and Work, the DCM may be granted a reasonable extension of Contract Time in accordance with Section 19 to make proper repairs, renewals, and replacements of the Work, materials, or equipment.
- 15.5.9 Written Justification Substantiating Adjustment
- 15.5.9.1 DCM Initiated Change - Any request by the DCM for a change in the GMP shall be based on written notice delivered by the DCM to City promptly (but in no event later than five (5) working days after the start of the occurrence or the event giving rise to the request for adjustment) and stating the general nature of the request.
- 15.5.9.2 Cost and Time Notice Requirement - Notice of the amount of the request for adjustment in cost and/or time with supporting data shall be delivered within ten (10) working days after notice unless City allows an additional period of time to ascertain more accurate data in support of the request
- 15.5.9.3 Proposal Form - The DCM's proposal shall be on forms acceptable to City. The DCM's proposal request shall certify in writing that the amounts included cover all direct, supplemental, indirect, consequential and cumulative costs and delays, as applicable, and that those costs and delays

would be or were necessarily incurred, despite the DCM's reasonable and diligent efforts to mitigate them. Mitigation efforts undertaken by the DCM should be described.

- 15.5.9.4 Proposal Content - Where the change in the Contract Amount is to be determined on the basis of the "cost of the work involved", the DCM's itemized estimates shall detail all applicable elements of cost, including, but not limited to, labor man-hours and payroll costs, quantities, crew mixes, production rates, material costs, subcontractor and supplier costs, equipment costs, and supplemental costs. Where the change in the Contract Amount arises from changes in the schedule of all or part of the Project, or where a change in Contract Time is sought, the submittal shall include analysis required by Section 19 of the Agreement. With respect to Work during other than normal hours, the labor charges associated with such Work shall consist of straight time wages and burden plus the appropriate overtime or shift premium with no additional burden (i.e., fringe benefits) on the premium portion.
- 15.5.9.5 Additions and Deletions - The submittal shall cover all aspects of the Work involved, whether relating to deleted, added, revised, or impacted items of Project. Amounts for Contractors' suppliers at any tier shall be similarly supported.
- 15.5.9.6 Requirements for Valid Proposal - No submittal for an adjustment in GMP or Contract Time shall be valid unless submitted in accordance with this Section.
- 15.5.9.7 Obligation of Surety - All Work performed hereunder shall be subject to all of the provisions of the Construction Documents and the DCM's sureties shall be bound with reference thereto as under the original Agreement. Copies of all amendments to surety bonds or supplemental surety bonds shall be submitted to City when requested.
- 15.5.9.8 Documentation - The DCM is required to comply with City's documentation requirements regarding format and level of detail for the Change Order process.
- 15.5.10 City Right to Direct Use of Competitive Bid - City reserves the right to direct DCM to solicit competitive bids for additional Work or Special

Services. If required by City, DCM shall obtain competitive bids from Contractors acceptable to DCM and shall deliver such bids to City, who will then determine, with the advice of DCM, which bids will be accepted.

- 15.5.11 Value Engineering - All proposed adjustments made pursuant to this Section shall be subject to value engineering.

Section 16: Phase Funding and Payment Terms

16.1 Phase Funding

- 16.1.1 Compensation Under Each Phase. Total compensation to be paid to DCM by the City for all Work performed under each Funding Phase of this Agreement shall not exceed the amount specified in the Phase Funding Schedule for each Funding Phase unless said amount is modified, in writing, by Change Order.
- 16.1.2 Work to be Performed Under Each Phase. The Work to be performed under this Agreement shall be performed during the separate and specific Funding Phases identified in the Phase Funding Schedule below.

FUNDING SCHEDULE

<u>Funding Phases</u>	<u>Dates</u>	<u>Funds Available</u>
1 a (Infrastructure)	7/1/99 - 1/31/00	\$ 5,200,000
b (Downtown Enhancement)		<u>1,190,000</u>
Subtotal		\$ 6,390,000
2	2/1/00 - 1/1/02 (or completion)	<u>\$ 35,123,000</u>
		\$ 41,513,000

- 16.1.3 Work and Compensation for Funding Phases. It is expressly understood by and between the City and DCM that the Work and Services for Funding Phases after Funding Phase 1 identified in the Phase Funding Schedule are subject to funds being appropriated and authorized by the San Diego City Council for said Services and Work.

The City's obligations and the DCM's obligations under this multi-phase Agreement are as follows:

- 16.1.3.1 Funds available for performance of Work are described in the Phase Funding Schedule. The amount of funds available at award is considered sufficient for the performance of Funding Phase 1 only. When additional funds are available for the full requirements of the next Funding Phase, the City Manager shall, not later than the date specified (unless a later date is agreed to), so notify DCM in writing. The City Manager may also modify the amount of funds available for Work as described in the Phase Funding Schedule. This procedure shall apply for each successive Funding Phase.
- 16.1.3.2 The City is not obligated to DCM for any amount over that specified in the particular Funding Phase of the Phase Funding Schedule for which funds have been authorized by the San Diego City Council.
- 16.1.3.3 DCM 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 Manager of an increase in the availability of funds. If so notified, DCM's obligation shall increase only to include Work specified for the additional Funding Phase as shown in the Phase Funding Schedule, for which funds are made available.
- 16.1.3.4 If the Agreement is terminated under Section 27, the Termination Settlement Proposal shall be determined pursuant to procedures established in Section 27. "Work under the Agreement," in that clause means the Work under specific Funding Phases for which funds have been made available. If the Agreement is terminated for default, the City's rights under this Agreement shall apply to all the remaining Funding Phases of the Agreement.
- 16.1.3.5 Notification to DCM of an increase or decrease in the funds available for performance of this Agreement under another clause (e.g., an "option" or "changes" clause), shall not constitute the notification contemplated by Section 16.1.3.1, above.

16.2 Payment Terms.

- 16.2.1 DCM shall provide all Design and Bidding Phase Services as described in Exhibit 6.1 A for Funding Phase One Fixed Fee.
- 16.2.2 Subject to Section 14, DCM shall provide all Construction and Start Up Phase Services for the Funding Phase Two Fixed Fee. DCM shall submit certificate and application for payment to City for each Funding Phase Services in accordance with Exhibit 1.3.2 (which is to be revised when the GMP is established.) The payments of the Fixed Fee shall be based upon the approved Schedule of Values (Exhibit 16.2.2) and the Parties reasonable estimate of the percentage of Work completed. The Schedule of Values must be provided and approved by City prior to any payment being made to DCM.
- 16.2.3 DCM shall develop and maintain an accurate system for tracking all Reimbursable Costs. Utilizing this system, DCM will submit for payment certificates and payment application for such Reimbursable Costs actually incurred by DCM.
- 16.2.4 DCM shall develop and maintain an accurate system for tracking all Hard Construction Costs it incurs on the Project. Utilizing this system, DCM will submit to City for payment certificates and application for payment for such Hard Construction Costs actually incurred by DCM. If the invoiced amount is not disputed by City, it shall pay DCM ninety percent (90%) of the invoiced amount within thirty (30) calendar days after receipt of the fully documented invoice. City will withhold the remaining 10% of Hard Construction Costs as security for DCM's full performance.
- 16.2.5 DCM shall separately submit to City certificate and application for payment on a monthly basis for any authorized Additional Services performed by DCM.
- 16.2.6 Subject to Sections 16.3 and 16.4, City shall pay DCM the ten percent (10%) retention being withheld pursuant to Section 16.2.4 as part of the "Final Payment" to DCM. Final Payment will be made within thirty-five (35) calendar days after Final Completion.
- 16.2.7 The DCM may submit invoices bimonthly, and payment shall be due upon presentation. Payment shall be made by wire transfer into an account designated by DCM. If there are disputed items and/or amounts on any invoice, then the balance of such invoice, after

deducting any disputed items, shall be paid in full. City shall not unreasonably dispute items and amounts. Disputed items and amounts shall be presented to DCM for resolution as soon as such disputed item have been determined by City.

16.2.8 City shall pay 1% interest per month as a late fee on any invoice not paid, excluding deposited amount, within ten (10) days of receipt.

16.3 At the point that the construction of the Project is at least seventy percent (70%) completed, upon consideration and authorization by the City Manager, the ten percent (10%) retention being withheld may be reduced to five percent (5%) for all past and future payments if, in the sole judgment of City, it is satisfied that the Project is progressing on time and within the GMP.

16.4 The City Manager will consider the release of the entire retention for DCM upon completion of the DCM's task and execution of a disclaimer and release by the DCM.

16.5 In lieu of withholding retention under this Agreement, at the election of DCM, City will deposit retention amounts into escrow and/or the substitution of securities for money as provided in California Public Contract Code section 22300.

Section 17: Project Cost Reduction Incentives

17.1 The City wishes to minimize the expenditure of funds for the design and construction of this Project on items that exceed the minimum criteria prescribed in the Criteria without a corresponding reduction in benefit to the City. The City also wishes to eliminate any excess quality levels or performance criteria included in the Criteria provided, however, such elimination does not alter the design, aesthetics, safety standards, or configuration of space, and does not increase future maintenance and operation costs.

17.2 The City and the DCM will work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project construction cost, and the resulting Contract Amount by amending and/or clarifying the minimum requirements set forth in the Criteria. Up until Work begins, the following procedures shall be followed to identify cost saving opportunities;

17.2.1 The DCM shall review with the City, alternative approaches to design and construction of the Project and identify opportunities that may require modification of the requirements of the Construction Documents. The DCM shall describe each of those alternative approaches and opportunities in narrative form, indicating the advantages and disadvantages of each, and

itemizing any resulting cost savings ("Cost Reduction Proposal" or "Proposals").

- 17.2.2 A comprehensive one (1) day review session will be held, at the time agreed upon by the City and the DCM, to review all Proposals and reach agreement on the resulting cost savings, if any, of each separate item. The session shall be attended by the DCM, the DCM Design Subcontractors, as appropriate, and the City.

17.3 The DCM may submit to the City, for its approval, any Proposals for modifying the Construction Documents or other requirements of this Agreement to reduce the total cost of construction. The Cost Reduction Proposal shall not impair, in any manner, the essential functions or characteristics of the Project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance or design, and safety standards or life cycle costs.

- 17.3.1 Cost Reduction Proposals shall contain the following information:

17.3.1.1 A description of both the existing Construction Document requirements for performing the Work and the proposed changes;

17.3.1.2 An itemization of the Construction Document requirements that must be changed if the Proposal is adopted;

17.3.1.3 A detailed estimate of the cost of performing the Work under the existing Agreement and under the Cost Reduction Proposal;

17.3.1.4 A statement of the time within which the City must make a decision; and

17.3.1.5 The items of Work affected by the proposed changes, including any quantity variation.

- 17.3.2 The provisions of this Section shall not be construed to require the City to consider any Cost Reduction Proposal which may be submitted hereunder; nor will the City be liable to the DCM for failure to accept or act upon any Cost Reduction Proposal submitted pursuant to this Section, nor for any delays to the Work attributable to any such Proposal.

- 17.3.3 If a Cost Reduction Proposal is similar to a change in the Construction Documents for the Project under consideration by the City at the time said Proposal is submitted, or if such a Proposal is based upon or similar to standard specifications, supplement amendments or standard drawings adopted by the City, the City will not accept such Proposal and the City reserves the right to make such changes without compensation to the DCM under the provisions of this Section.
- 17.3.4 The DCM shall continue to perform the Work in accordance with the requirements of this Agreement until an executed Change Order, incorporating the Cost Reduction Proposal, has been issued. If an executed Change Order has not been issued by the date upon which the DCM's Cost Reduction Proposal specifies that a decision thereon should be made, or such other date as the DCM may subsequently have specified in writing, such Cost Reduction Proposal shall be deemed rejected.
- 17.3.5 The City shall be the sole judge of the acceptability of a Cost Reduction Proposal and of the estimated net savings in Hard Construction Costs for the adoption of all or any part of such Proposal. In determining the estimated net savings, the right is reserved to disregard the Contract Amount if, in the judgment of the City Manager, such prices do not represent a fair measure of the value of Work to be performed or to be deleted.
- 17.3.6 The City reserves the right, where it deems such action appropriate, to require the DCM to share in the City's costs of investigating a Cost Reduction Proposal submitted by the DCM as a condition of considering such Proposal. Where such a condition is imposed, the DCM shall indicate its acceptance thereof in writing, and such acceptance shall constitute full authority for the City to deduct amounts payable to the DCM from any monies due, or that may become due, to the DCM under this Agreement.
- 17.3.7 If the DCM's Cost Reduction Proposal is accepted in whole or in part, such acceptance will be made by a Change Order or Field Order, which specifically states that it is executed pursuant to this Section 17. Such Change Order shall incorporate the change in the Construction Documents which are necessary to permit the Cost Reduction Proposal, or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the City's approval thereof is based, if the approval of the City is

conditional. The Change Order shall also set forth the estimated net savings in the cost of performing the Work attributable to the Cost Reduction Proposal effectuated by the Change Order, and shall further provide that the Contract Amount be adjusted by crediting the City with up to 50% of the net savings after deducting all design and management costs incurred to implement the savings. The City will consult with DCM, but the City is the sole determiner of the savings to be achieved.

17.3.8 Acceptance of the Cost Reduction Proposal and performance of the Work thereunder shall not extend the Contract Time, unless specifically provided for in the Change Order authorizing the use of the Cost Reduction Proposal.

17.3.9 The amount specified to accrue to the DCM in the Change Order which effectuates a Cost Reduction Proposal shall constitute full compensation to the DCM for the Cost Reduction Proposal and the performance of the Work thereof.

17.4 The City expressly reserves the right to adopt a Cost Reduction Proposal for general use on projects administered by the City when it determines that Proposal is suitable for application to other projects. When an accepted Cost Reduction Proposal is adopted for general use, only the DCM who first submitted such Proposal will be eligible for compensation pursuant to this Section, and in that case, only as to those contracts awarded to it prior to submission of the accepted Cost Reduction Proposal. Cost Reduction Proposals identical or similar to previously submitted Proposals will be eligible for consideration and compensation under the provisions of this Section, provided that the identical or similar previously submitted Proposals were not adopted for general application to other Projects administered by the City. Savings resulting from similar changes or changes that are required by or the result of other previously approved changes shall be considered as the same as the original change for purposes of determining the allocation of savings to DCM and the City.

17.4.1 Subject to the provisions contained herein, the City or any other public agency shall have the right to use all or any part of any submitted Cost Reduction Proposal without obligation or compensation of any kind to the DCM.

17.4.2 The DCM shall bear all costs to revise all bonds for the Project to include the Cost Reduction Proposal Work, and obtain additional bonding if required.

17.5 If required by the City, the DCM shall implement a program to share savings with Design Subconsultants, Contractors, and their employees.

17.6 As an incentive to the DCM to minimize costs and complete the Project for less than the GMP, the City will pay the DCM an additional Fixed Fee equal to 40 percent of the amount remaining in the Contingency Fund prior to utilizing the Contingency Fund for additional alternates (Incentive). Provided, however, that in no event shall the Incentive be more than \$1 million. Any Incentive due, shall be paid 90 days after Final Completion.

Section 18: Project Completion

18.1 Substantial Completion shall be that stage in the progress of the construction when all Work on the Project is sufficiently complete in accordance with the Construction Documents so that City can occupy and utilize the entire Project. Substantial Completion shall further mean that all goods and Services to be provided under the terms and conditions of the Construction Documents are in place and have been initially tested, and are operationally functional, subject to final testing, balancing and adjustments and normal Final Completion punchlist Work.

18.2 Final Completion shall be deemed to occur on the last to occur of the following events: (1) recordation of a Notice of Completion for the Project; (2) acceptance of the Project by the City; (3) if applicable, issuance of a final Certificate of Occupancy for the Project; (4) submission of all documents required to be supplied by DCM to City under this Agreement, including but not limited to as-built drawings, warranties, and operating manuals; and (5) delivery to City of a Certificate of Completion duly verified by DCM.

18.3 DCM shall provide City with a Certificate of Completion, certifying to City under penalty of perjury that the Project has been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.

18.4 DCM is to provide City final record drawing documents at the end of construction ("As-Built Drawings"). As-Built Drawings are to be accurate and legible records showing exact location by dimensions, and the exact depth by elevation of underground lines, valves plugged tees, wiring and utilities.

18.5 DCM shall provide a copy of, or make available before destruction, all records (which includes all writings as defined in Evidence Code section 250) related to the Project to the City upon receipt or generation, which shall include a copy of DCM's filing protocol.

Section 19: Contract Time

19.1 DCM acknowledges and agrees that the date of Substantial Completion set forth in Section 1.3.3 is critical to City. If Notice to Proceed for Construction Phase is issued by January 1, 2000, DCM agrees that the Project will be ready for occupation by the date of Substantial Completion, September 30, 2001, and that all Work under this Agreement will be completed by the Final Completion Date, December 17, 2001.

19.2 With regard to Contract Time and all Milestones and all time limits stated and/or established under this Agreement, "time is of the essence."

19.3 DCM must achieve the following Milestones:

Exhibit 6.1 A - March 1, 2000
Substantial Completion - September 30, 2001.

19.4 The Contract Time may only be changed by a Change Order. Any request by DCM for an extension of the Contract Time (or Milestones) shall be based on written notice delivered by DCM to City promptly (but in no event later than seven (7) calendar days) after the occurrence and discovery of the event giving rise to the request and stating the general nature of the request, unless otherwise noted. Notice of the estimated extent of the request with supporting data shall be delivered within fourteen (14) calendar days after such notice (unless City allows an additional period of time to ascertain more accurate data in support of the request) and shall be accompanied by DCM's written statement that the adjustment requested is the entire time adjustment to which DCM has reason to believe it is entitled as a result of the occurrence of said event. An increase in Contract Time does not necessarily mean that DCM is due an increase in GMP.

19.5 An extension in Contract Time will not be granted unless DCM can demonstrate through an analysis of the Critical Path Method Progress Schedule ("Construction Schedule") that the increases in the time to perform or complete the Project, or specified part of the Project, beyond the corresponding Contract Time arise from unforeseeable causes beyond the control and without the fault or negligence of both DCM and his Contractors or suppliers, and that such causes in fact lead to performance or completion of the Project, or specified part in question, beyond the corresponding Contract Time, despite DCM's reasonable and diligent actions to guard against those effects.

19.5.1 The Construction Schedule shall include all Phases of the Project. The DCM is responsible for developing, coordinating, and maintaining the Construction Schedule. The Construction Schedule shall contain the base schedule or monthly updated versions and shall reflect the DCM's plans for and status of the Work. The

Construction Schedule shall contain, at a minimum, the following information:

- 19.5.1.1 The Construction Schedule shall be in a precedence diagram format, shall be plotted on a time-scaled calendar, and shall expressly identify the Contract Time, the critical path(s) and all activities.
 - 19.5.1.2 Activities shall be shown on their early dates, with their total Float Time noted beside them.
 - 19.5.1.3 Connections between activities, whether on the same sheet or on different sheets, shall identify both predecessor and successor Work.
 - 19.5.1.4 The activity data shall include description of Work, activity costs (budget), activity duration and special costs.
- 19.5.2 The Construction Schedule shall show a breakdown of Work into activities and relationships to the extent required to effectively manage the Work. The Construction Schedule shall show the division of the Work into activities and specify the progression from the Notice to Proceed to the end of the Contract Time.
- 19.5.3 All Float Time belongs to the Project and shall be available to the City or the DCM to accommodate changes in the Work or to mitigate the effect of events which may delay performance or completion.
- 19.5.4 Since Float Time belongs to the Project, the DCM shall not be entitled to any extension in the Contract Time, or recovery for any delay incurred because of extensions in an early completion date, until all Float Time issued or consumed and performance or completion of the Work extends beyond the corresponding Contract Time.
- 19.5.5 All versions of the DCM's Construction Schedule, up to and including Construction Schedule revisions, shall be based solely on the Work as awarded, and shall exclude any substitute proposals, even if the DCM pursues a substitution in accordance with provisions of the Agreement.

19.5.6 The Construction Schedule shall reflect completion of all Work under this Agreement within the specified time, in accordance with the Construction Documents.

19.6 Delays attributable to and within the control of Contractor or supplier shall be deemed to be delays within the control of DCM. No time extension will be allowed for such delays.

19.7 To the extent DCM completes Work before the time provided on the critical path as set forth in the Construction Schedule, this saved time shall belong solely to the DCM in that it will not be used to adjust the Contract Time.

19.8 Construction Schedule shall include a total of twenty (20) working days allowance for weather days or Force Majeure Events affecting Work. Monitoring of this shall be in units of 1/4 days. Reports or claims requesting the use of days must be submitted to the City within two (2) working days of occurrence. DCM shall submit to the City a monthly summary report that depicts weather days consumed and weather days remaining available. The twenty (20) weather days allowed by City may be reduced by one day per month beginning with the Construction Phase Notice to Proceed.

Section 20: Early Completion

20.1 In addition to DCM's participation in cost savings generated by DCM through Cost Reduction Proposals, approved in accordance with the provision of Section 17, DCM shall be entitled to a bonus for early completion of Project. For early completion in advance of the Final Completion Day DCM may, at City's sole discretion, be paid a bonus from any funds remaining in the Hard Construction Cost allocation in the GMP. The bonus paid by City to DCM shall be based upon 50% of the average daily cost of City approved General Conditions, calculated over the life of the Construction Phase of the Project, for each day Project is completed in advance of the Final Completion Date.

Section 21: Right to Modify Work

21.1 Without invalidating the Agreement and without notice to any surety, City may at any time or from time to time, order additions, deletions, or revisions in the Project; these will be authorized by a written Change Order prepared and issued by City. Upon receipt of any such document, DCM shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Construction Documents (except as otherwise specifically provided).

21.2 When City desires a change in the Project, City will issue a Request for Proposal to DCM. DCM will be required to respond within the time indicated by City.

Section 22: Work By Others

22.1 City or Padres LP or its agents or contractors may perform other Work related to the Project at the Project Site by City's own forces, have other Work performed by utility owners, or let other direct construction agreements. If the fact that Work is to be performed by others was not noted in this Agreement, written notice thereof will be given to DCM ten (10) working days prior to starting any such other Work. If the DCM determines that the Work being performed by City or others may interfere with, or cause damages to, Work being performed by the DCM, the DCM shall so notify the City in writing. If, after such notice, damage or delay to the Work of DCM results, DCM may file a claim for compensation.

22.2 If the proper execution or results of any part of DCM's Work depends upon the Work of any such other contractor or utility owner (or City), DCM shall promptly inspect and report to City in writing any apparent delays, defects, or deficiencies in such other Work that render it unavailable or unsuitable for such proper execution and results. DCM's failure to report such delays, defects, or deficiencies in writing before commencement of the affected Work, will constitute an acceptance of the other Work as fit and proper for integration with DCM's Work except for latent defects and deficiencies in the other Work.

22.3 If DCM causes damage to the work, property, or person of any other contractor employed by City, or if any claim is made against DCM arising out of DCM's performance of the Work, DCM shall be responsible for promptly attempting to settle the dispute.

Section 23: Warranties and Guarantees

23.1 DCM warrants and guarantees to City that materials and equipment incorporated into the Project will be new unless otherwise specified and that all Work will be in accordance with the Construction Documents and will not be defective. Prompt notice of defects known to City shall be given to DCM. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Agreement. Defective Work may be rejected even if approved by prior inspection.

23.2 The warranty period shall commence when the Certificate of Substantial Completion is issued (irrespective of beneficial use by City prior to Substantial Completion) and extend one (1) year after that date, or whatever longer period may be prescribed by laws or regulations, or by the terms of any applicable special guarantee or specific provision of the Construction Documents.

23.2.1 DCM is to provide any extra material for maintenance at the completion of the Project, inventoried for items such as carpeting, base, floor tile, ceiling tile, paint, filters.

23.2.2 DCM is to provide City two (2) sets of operating and maintenance data manuals, fully bound and indexed, warranties, guarantees, and bonds.

23.3 Correction of Defective Work - If within the designated warranty period, or such longer period as may be required by laws or regulations, the Project or any part of the Project is discovered to contain Defective Work, DCM shall promptly, without any reimbursement or adjustment in the GMP, and in accordance with City's written instructions, either correct that Defective Work, or if it has been rejected by City remove it from the Project and replace it with Work which is not defective. If circumstances warrant it, including but not limited to, in an emergency, City or DCM may have the Defective Work corrected or the Defective Work removed and replaced. In that event, DCM shall not be allowed to recover any associated costs, and DCM shall reimburse City for all its direct and indirect costs, and City shall be entitled to an appropriate decrease in the GMP, to withhold a setoff against amount recommended for payment, or make a claim on DCM's bond if DCM has been paid in full. Where Defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced during the warranty period, the one year warranty period with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

23.4 If DCM completes the Project or portions thereof prior to this time, it shall preserve the equipment by developing and implementing a preventive maintenance program in compliance with manufacturer's recommendations to maintain the equipment.

23.5 With respect to all warranties, express or implied, from Contractors, manufacturers, or suppliers for Work performed and materials furnished under this Agreement, the DCM shall:

- 23.5.1 Obtain all warranties that would be given in normal commercial practice and as required by the City;
- 23.5.2 If so directed by City, require all warranties to be executed, in writing, for the benefit of City; and
- 23.5.3 If so directed by City, enforce all warranties for the benefit of City.
- 23.5.4 In the event DCM's warranty under Section 23.2 has expired, City may bring suit at its expense to enforce a Contractor's, manufacturer's, or supplier's warranty.
- 23.5.5 DCM shall assign all Contractor, supplier and manufacturer warranties including maintenance agreements from the installer for

specialized equipment, such as elevators, escalators, movable partitions, equipment etc., to cover the limited warranty period to City at the expiration of the one year warranty.

23.5.6 Any monetary cost for the extension of warranties as a result of City's beneficial use pursuant to Section 24.1 or the City requiring extensions shall be deemed a Reimbursable Cost for which the DCM will be reimbursed pursuant to Section 14.4, as an increase to the GMP. Such extension greater than one year shall be assigned to the City by DCM and City shall look solely to the Contractor or material supplier for enforcement of such warranties.

23.6 In compliance with Section 4551 of the California Government Code regarding antitrust claims, the DCM or Contractor, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code, arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the DCM, without further acknowledgment by the Parties.

23.7 Notwithstanding the above guarantee and warranty provisions, the DCM shall assign all guarantee and warranty obligations to the City remaining on the date of Final Completion (as defined in Section 18.2) and the DCM shall have no further duties or obligations for guarantees and warranties. During the Construction Phase, the City will be providing detailed inspection of the Work put in place, and shall satisfy itself that the Work is acceptable, prior to the DCM's final acceptance and close out, of each of the construction bid packages issued by the DCM.

Section 24: Use and Possession Prior to Completion

24.1 City shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, City shall furnish DCM a list of items of Work remaining to be performed or corrected on those portions of the Work that City intends to take possession of or use. However, failure of City to list any item of Work shall not relieve DCM of responsibility for complying with the terms of this Agreement. City's possession or use shall not be deemed an acceptance of any Work under this Agreement, nor relieve the DCM of any of its obligations under this Agreement.

24.2 While City has such possession or use, DCM shall be relieved of the responsibility for the loss of or damage to the Work resulting from City's possession or use. If prior possession or use by City delays the progress of the Work or causes additional expense to DCM, a Change Order will be issued to make an equitable adjustment in the GMP or the Contract Time.

Section 25: Personal Services and Non-Assignability

25.1 This is a personal services Agreement and, therefore, DCM shall not assign or transfer, voluntarily or involuntarily, any of its rights, duties or obligations under this Agreement except upon the prior written consent of City Council. Any such change, assignment or transfer without the prior written consent of the City Council shall be deemed null and void and constitute a material Default under this Agreement.

25.2 Essential personnel that DCM will use to perform the Services herein will include John Klepac as the project manager and two key superintendents whose names will be provided before the start of the Construction Phase. DCM agrees that it will not transfer or remove these individuals from the Project without the prior written permission or direction of City, which will not be unreasonably withheld.

Section 26: Indemnification

26.1 To the fullest extent permitted by the law, DCM shall indemnify, defend, protect and hold harmless City, Centre City Development Corporation, and San Diego Unified Port District, as well as the officials, agents, officers and employees of each of above entities (collectively herein the "Indemnitees"), from and against all claims, demands, causes of action, damages, injuries, liabilities, losses and expenses (including, without limitation, attorneys' and consultants' fees and expenses) of any kind whatsoever, other than damage to the Work itself which is covered by appropriate insurance, arising in whole or in part out of or resulting from DCM's performance of this Agreement, DCM's breach of this Agreement, or the negligent acts or omissions of DCM, its architects, engineers, other professionals and consultants, Contractors, suppliers or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable.

26.2 The obligations of the DCM for errors or omissions, including those of the Design Subcontractors, which arise from: the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specifications, or the giving of, or the failure to give, directions or instructions shall be limited to the amount of coverage provided for in the professional liability insurance policy.

26.3 DCM's obligation to indemnify under Section 26.1 shall not extend to such claims, demands, causes of action, damages, injuries, liabilities, losses and expenses, to the extent that a final judgment establishes that such is the result of the gross or sole

negligence or the willful misconduct of an Indemnitee. DCM's obligation to defend under Section 26.1, if not covered by the insurance to be provided on the Project, shall not extend to such claims, demands, causes of action, damages, injuries, liabilities, losses and expenses, or causes of actions, to the extent that such are alleged to be caused by the sole negligence or the willful misconduct of the Indemnitee, and from no other cause.

26.4 The City acknowledges that DCM is a corporation and agrees that any claim made by the City arising out of any act or omission of any director, officer or employee of the DCM, in the execution or performance of this Agreement, shall be made against DCM only and not against such director, officer or employee.

Section 27: Right to Terminate and Suspend Work

27.1 City may, at any time and without cause, suspend the Project or any portion thereof for a period of not more than ninety (90) calendar days by written notice to DCM. DCM shall resume the Project on receipt from City of a Notice of Resumption of Work. DCM may submit a request for a change in the GMP or of the Contract Time, or both, directly attributable to the suspension as provided in Sections 15 and 19.

27.2 Archaeological and Paleontological Discoveries - If a discovery is made of an archaeological or paleontological interest, DCM shall immediately cease operations in the area of the discovery and shall not continue until ordered by City. When resumed, operations within the area of the discovery shall be as directed by City.

27.2.1 Discoveries which may be encountered may include, but are not limited to, dwelling sites, stone implements or other artifacts, animal bones, human bones, fossils or any item with cultural significance.

27.2.2 DCM shall be entitled to an extension of Contract Time and GMP, including fixed fee, if appropriate, in accordance with the provisions of this Agreement.

27.3 Termination of Agreement by City for Cause - In the event of Default by DCM, City shall give fourteen (14) calendar days written notice to DCM of City's intent to terminate the Agreement and provide DCM with an opportunity to remedy the conditions constituting the Default.

27.3.1 DCM Default - It shall be considered a Default by DCM when DCM:

27.3.1.1 Declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due;

- 27.3.1.2 Fails to provide materials or workmanship meeting the requirements of the Agreement and fails to correct the Defective Work as required by City;
 - 27.3.1.3 Disregards or violates provisions of the Agreement;
 - 27.3.1.4 Fails to prosecute the Project according to the approved Construction Schedule;
 - 27.3.1.5 Fails to provide competent management and supervision, competent workmen, or materials or equipment meeting the requirements of the Agreement;
 - 27.3.1.6 Disregards laws or regulations of any public body having jurisdiction; or
 - 27.3.1.7 Commits continuous or repeated serious violations of approved or legislated Safety Program requirements.
- 27.3.2 If DCM fails to remedy the conditions constituting Default within the time allowed, City may then issue a Notice of Termination.
- 27.3.3 In the event the Agreement is terminated in accordance with this Section, City may take possession of the Project and may complete the Project by whatever method or means City may select. The cost of completing the Project shall be deducted from the balance which would have been due DCM had the Agreement not been terminated and the Project completed in accordance with this Agreement. If such cost exceeds the balance which would have been due, DCM shall pay the excess amount to City.
- 27.3.4 Rights of City Preserved - Where DCM's Services have been so terminated by City, the termination will not affect any rights or remedies of City against DCM then existing or which may thereafter accrue. Any retention or payment of moneys due DCM by City will not release DCM from liability.

27.4 Termination for Convenience by City - City may terminate this Agreement at its own discretion or when conditions encountered during the Project make it impossible or impractical to proceed, or when City is prevented from proceeding with the Agreement by act of God, by law, or by official action of a public authority or when the City Council does not appropriate sufficient funds to complete the Project.

- 27.4.1 Termination of DCM's Performance of Project - City may terminate, subject to the express terms and conditions set forth below, DCM's performance of Work under this Agreement, in whole or, from time to time, in part. The City Manager shall terminate on behalf of City by delivering to DCM a Notice of Termination, in writing, specifying the extent of termination and the effective date.
- 27.4.2 Notice of Termination - After receipt of a Notice of Termination, and except as otherwise directed by City Manager, DCM shall immediately proceed as follows:
- 27.4.2.1 Stop Work immediately or as specified in the Notice;
 - 27.4.2.2 Immediately place no further agreements for materials, services, or facilities, except as necessary to complete any authorized portion of the Agreement;
 - 27.4.2.3 Immediately terminate all subcontracts to the extent they relate to the Project terminated;
 - 27.4.2.4 With approval by the City Manager, settle all outstanding obligations arising from the termination of subcontracts; the approval of which will be final for purposes of this clause;
 - 27.4.2.5 As directed by the City Manager, transfer the title and deliver to City, completed or partially completed drawings, plans, calculations, specifications and any other documents and records that, if the Project had been completed, would be required to be furnished to City;
 - 27.4.2.6 Complete performance of the Project not terminated;
 - 27.4.2.7 Take any action that may be necessary, or that the City Manager may direct, for the protection and preservation of the property related to this Agreement that is in the possession of DCM and in which City has or may acquire an interest.
- 27.4.3 Removal of City Property - DCM may request City to remove City's property or enter into an agreement for its storage. Within sixty (60)

calendar days, City will accept possession of property and remove it or enter into a storage agreement.

- 27.4.4 Termination Settlement - After termination, DCM shall submit a Termination Settlement Proposal ("Proposal") to City Manager in the form and with the certification prescribed by the City Manager. DCM shall submit the Proposal promptly, but not later than two (2) months from the effective date of termination, unless extended in writing by the City Manager upon written request of DCM within this two (2) month period. However, if the City Manager determines that the facts justify it, a Proposal may be received and acted on after any extension. If DCM fails to submit the Proposal within the time allowed, City may make a good faith determination based on the information available, of the fair and reasonable amount, if any, due DCM as a result of the termination and pay the amount determined. If DCM does not agree that the amount determined by the City Manager is fair and reasonable, and if DCM gives notice of such disagreement to City in accordance with this section of the Agreement within thirty (30) calendar days of receipt of payment, then the amount due shall be as later determined by arbitration, if City and DCM agree thereto, or as fixed in a court of law.
- 27.4.5 Payment to DCM Due to Termination - Subject to the above section, DCM and the City Manager may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable and proportionate allowance for profit on Work done. However, the agreed upon amount, exclusive of costs shown in Section 27.4.9 below, may not exceed the total dollar amount authorized by City as reduced by (1) the amount of payments previously made; and (2) the GMP for Work not terminated. If termination occurs during a particular Funding Phase, DCM shall only be entitled to funds appropriated for that particular Funding Phase, or a portion thereof, and shall have no entitlement to the funds allocated for any other Funding Phase Work or Services. This Agreement shall be amended to reflect the agreed upon amount. Section 27.4.9 below shall not limit, restrict, or affect the amount that may be agreed upon under this Section.
- 27.4.6 Failure to Agree on Payment - If DCM and City fail to agree on the whole amount to be paid because of the termination of Project, City shall pay DCM the fair and reasonable amounts determined in good faith by City as follows, but without duplication of any amounts agreed to above:

- 27.4.6.1 The price for completed Services accepted, including any retention, by City not previously paid for;
- 27.4.6.2 The costs incurred in the performance of the Project terminated, including initial costs and preparatory expense allocable thereto. These costs are only for Work completed and accepted by the City based on an audit of all Contractors' bills of materials and the timecards for Work actually performed;
- 27.4.6.3 The fair and reasonable cost of settling and paying Termination Settlement Proposals as contained in subcontracts, and agreed to, by Contractors under terminated agreements that are properly chargeable to the terminated portion of the Project; and
- 27.4.6.4 A portion of the Fixed Fee (overhead and profit) based on the percentage of Work completed on the Project; however, if it appears that DCM would have sustained a loss on the entire Project had it been completed, City shall allow no profit under this section and shall reduce the settlement to reflect the indicated rate of loss.
- 27.4.6.5 DCM and Contractor Services through the date of termination shall be paid based on actual time spent as documented on timecards. Expenses shall be paid based on invoice and receipts provided by DCM.
- 27.4.6.6 The reasonable costs of settlement of the Project terminated, including:
 - 27.4.6.6.1 DCM staff time for Project management, accounting, clerical, and other expenses reasonably necessary for the preparation of Termination Settlement Proposals, amounts due Contractors, disposal of supplies materials, and supporting data;
 - 27.4.6.6.2 The termination and settlement of subcontracts (excluding the amounts of such settlements); and

27.4.6.6.3 Storage, transportation, and other costs incurred, reasonably necessary for preservation, protection, or disposition of property in which City has or may acquire an interest.

27.4.6.6.4 If the Project is terminated prior to 50% completion and at the sole discretion of the City Manager, employee relocation, job placement, and demobilization costs, based on the calculations in Section 27.4.6.4.

27.4.6.7 Under no circumstances will City include any consideration for lost profit or lost opportunity costs.

27.4.7 Arbitration of Payment - If DCM does not agree that the amount determined by the City Manager is fair and reasonable and if DCM gives notice of such disagreement to City within thirty (30) calendar days of receipt of payment, then the amount due shall be as later determined by arbitration, if City and DCM specifically agree thereto, or as determined in a court of law.

27.4.8 Payment for Property Destroyed, Lost, Stolen or Damaged - Except to the extent that City expressly assumed the risk of loss, the City Manager shall exclude from the amounts payable to DCM under this section, the fair value, as determined by the City Manager, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to City.

27.4.9 Deductions - In arriving at the amount due DCM under this section, there shall be deducted:

27.4.9.1 All unliquidated advance or other payments to DCM under the terminated portion of this Agreement;

27.4.9.2 Any claim which City has against DCM under this Agreement; and

27.4.9.3 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by DCM or

sold under the provisions of this clause and not recovered by or credited to City.

- 27.4.10 Partial Termination - If the termination is partial, DCM may file a proposal with the City Manager for an equitable adjustment of the Contract Amount of the continued portion of the Agreement. City shall make any equitable adjustment agreed upon. Any proposal by DCM for an equitable adjustment under this clause shall be requested within ninety (90) calendar days from the effective date of termination unless extended, in writing, by the City Manager.
- 27.4.11 Partial Termination Payment - City may, under the terms and conditions it prescribes, make partial payment and payments against costs incurred by DCM for the terminated portion of the Project if the City Manager believes the total of these payments will not exceed the amount to which DCM will be entitled. If the total payments exceed the amount finally determined to be due, DCM shall repay the excess to City upon demand, together with interest. Interest shall be at a rate of nine percent (9%) per annum compounded daily and shall be computed for the period from the date the excess payment is received by DCM to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in DCM's Termination Settlement Proposal because of retention or disposition, or a later date determined by the City Manager because of the circumstances.
- 27.4.12 Records and Documents Relating to Termination - Unless otherwise provided in the Agreement or by statute, DCM shall maintain all records and documents relating to the terminated portion of this Agreement for three (3) years after final settlement. This includes all books and other evidence bearing on DCM's costs and expenses under this Agreement. DCM shall make these records and documents available to City, at DCM's office, at all reasonable times, without any direct charge. If approved by the City Manager, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

27.5 Termination of Agreement by DCM -

27.5.1 DCM may terminate the Agreement upon ten (10) working days written notice to City, whenever:

27.5.1.1. the Project has been suspended under the provisions of Section 27.1 or 27.2, for more than ninety (90) consecutive days through no fault or negligence of DCM, and notice to resume Work or to terminate the Agreement has not been received from City within this time period; or,

27.5.1.2 City should fail to pay DCM any monies due it in accordance with the terms of this Agreement and within ninety (90) calendar days after presentation to City by DCM of a request therefor, unless within said 90-day period City shall have remedied the condition upon which the payment delay was based.

27.5.2 In the event of such termination, DCM shall have no claims against City except for those claims specifically enumerated in Section 27.4.6, and as determined in accordance with the requirements of said Section.

Section 28: Prevailing Wage Requirement

If the Parties mutually agree, certain portions of this Project may be prevailing wage.

Section 29: Equal Employment Opportunity Program

29.1 DCM shall be responsible for monitoring and ensuring that all Contractors comply with City's Equal Employment Opportunity Program ("Program"). DCM shall assist in the implementation of City's Program by conducting job fair(s), pre-bid and pre-construction briefings, and utilizing bid packaging to attempt to maximize involvement of small businesses in the Project. DCM shall monitor Contractor compliance with City's Program, including but not limited to submitting monthly reports.

29.1.1 DCM may retain a consultant to assist it in complying with the DCM's obligation under this section. The EOCP consultant shall develop a comprehensive outreach program that complies with the City's current contracting/subcontracting policy to maximize emerging business participation; develop material for and participate in pre-bid and pre-construction phases; collect and analyze monthly

utilization reports, notify DCM and EOCP of deficiencies found, review certified payroll reports, procedures, and conduct interviews as required; monitor subcontractor reports, payments, and report on findings. These costs shall be a Reimbursable Cost to be paid pursuant to Section 14.4.

29.2 Equal Employment Opportunity Program Requirements

29.2.1 Introduction - Proposal Requirements and Conditions - The City Council adopted an Equal Employment Opportunity Program which contains a variety of race/gender neutral strategies that the City will employ to provide equal access to City agreements for all businesses. The goals of the Project's Equal Opportunity (EO) Initiative are consistent with the policy objectives addressed in the City's Interim EO Program. City encourages DCM's recognition of and participation in its Interim EO Program. Although there are no mandatory numerical attainment goals, DCM has agreed to voluntary Minimum Participation Levels ("MPL"). City will gather relevant data to monitor DCM's participation. DCM's attention is directed to the provisions for the requirements and conditions set forth in the Request for Proposals which must be observed.

29.2.2 Business Opportunities

29.2.2.1 City strongly encourages DCM to utilize the Services of competent, capable and competitive local small businesses (LSB), minority-owned business enterprises (MBE), women-owned business enterprises (WBE), disadvantaged business enterprises (DBE) and disabled veteran business enterprises (DVBE). It should be understood that DCM's efforts to utilize these firms will not be subject to a good faith analysis. City will not contract with any bidder that has been found to discriminate in the contracting process.

29.2.2.2 DCM should be fully informed regarding the requirements of City's EO Program which, because this Project will have a significant economic impact in our community, will be administered as a demonstration effort designed to: (1) encourage proactive and voluntary compliance with EO Program elements during each phase of the design/ build process, i.e., the design phase, construction phase, and in the purchases of

material and supplies; (2) demonstrate the City's commitment to Equal Employment Opportunity by ensuring compliance with the City's EEO Ordinance during each phase of the design/build process; and (3) maximize the use of historically underemployed individuals and provide employment training opportunities targeting economically disadvantaged and underemployed individuals where feasible.

- 29.2.2.3 "Minority Business Enterprise" (MBE) means a business which is at least fifty-one percent (51%) minority-owned and operated by one or more minorities. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be minority-owned and the business must be operated by minorities;
- 29.2.2.4 "Women-Owned Business Enterprise" (WBE) means a business which is at least fifty-one percent (51%) women-owned and operated by one or more women, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated by a woman or women;
- 29.2.2.5 "Disadvantaged Business Enterprise" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by socially and economically disadvantaged individuals.
- 29.2.2.6 "Disabled Veteran Business Enterprise" (DVBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more Veterans with a service related disability. The firm must be certified with the State of California's Department of General Services, Office of Small and Minority Business.
- 29.2.2.7 "Local Small Business" (LSB) means a business that meets the size standards established by the U.S. Small Business Administration and is located in San Diego County.

29.2.2.8 An MBE, WBE or DBE qualifies as such by any of the following methods:

29.2.2.8.1 Current certification by City as a Disadvantaged, Minority or Women-Owned Business Enterprise.

29.2.2.8.2 Current certification by the State of California Department of Transportation (CALTRANS).

29.2.2.8.3 Current MBE, WBE or DBE interim certification by any member agency of the San Diego Joint Agency Contracting Opportunities (JACO) (County of San Diego, San Diego County Water Authority, San Diego City Schools, San Diego Association of Governments, Metropolitan Transit Development Board, or the City of San Diego).

29.2.2.9 These firms may participate as a prime Contractor, subcontractor, joint venture partner with a prime or subcontractor, or as a vendor of materials or supplies. Only those subcontractors and suppliers contracting directly with or to be paid by the prime contractor may be credited toward the goals.

29.2.2.10 A joint venture partner must be responsible for a clearly defined scope of Work detailed separately from the Work to be performed by the other partner. In addition, an agreement signed by all parties, identifying the extent to which each joint venture partner shares in the ownership, control, management, risk and profits of the joint venture must be submitted.

29.2.2.11 DCM is also encouraged to utilize services offered by banks owned and controlled by these firms.

29.2.3 Outreach Activities

29.2.3.1 Aggressive outreach is essential to the Pilot EO Initiative. In accordance with the Request for Proposals

(RFP), an Outreach Plan shall be developed by DCM and approved by City's Equal Opportunity Contracting Program ("EOCP"), which includes the identification of Architect and Engineering (A&E) firms, other professional services/consultants, construction firms, suppliers/ vendors, and non-professional service firms. The City EOCP and the City Representative will provide information helpful in assessing the "universe" of available and capable firms by relevant work category, i.e., discipline, craft, supplier type, etc. The Outreach Plan shall undertake the following activities to address this component of the City's Program:

- 29.2.3.1.1 Proactively, and in sufficient time to ensure familiarity with their capabilities, identify LSB/MBE/WBE/DBE/DVBE, to participate in each phase of the design/build process;
- 29.2.3.1.2 Encourage joint ventures with LSB/MBE/WBE/DBE/DVBE firms.
- 29.2.3.1.3 Provide timely information regarding procurement and Project schedules to interested LSB/MBE/WBE/DBE/DVBE firms, identify contracting opportunities in the pre-design, design and construction phases and disseminate the information to interested firms, and participate in pre-proposal and pre-construction meetings and networking seminars;
- 29.2.3.1.4 Conduct outreach activities designed to identify firms familiar with City regulations, policies and procedures, and local environmental and geotechnical conditions to participate in the Project;
- 29.2.3.1.5 Document outreach efforts undertaken to secure LSB/MBE/WBE/DBE/DVBE participation and their results;

29.2.4.3 The voluntary minimum participation level (MPL) is a part of the City's Program. The elements of the program have been "tailored" to maximize the participation of LSB/MBE/WBE/DBE/DVBE firms in the Project's procurement process. The MPL strategy employed includes:

29.2.4.3.1 A voluntary MPL of 15% for A&E firms and other professional Services/consultants for agreements valued at \$25,000 or more with a commitment by DCM to a goal of a 15% participation level;

29.2.4.3.2 A voluntary MPL of 20% for construction firms for agreements valued at \$50,000 or more with a commitment by DCM to a goal of a 20% participation level;

29.2.4.3.3 A voluntary MPL of 15% for vendors with a commitment by DCM to a goal of a 15% participation level;

29.2.4.3.4 Voluntary MPL's can be met by contracting with certified firms included in the Project-specific definition;

29.2.4.4.5 If the identified MPL's are not achieved, documentation delineating efforts undertaken by DCM to meet voluntary MPL's will be submitted to the City.

29.2.4.4 The City's EOCP and the City Representative will provide forms for the requisite documentation. The information submitted will be reviewed during the procurement process.

29.2.4.5 It is understood, and DCM agrees that, in anticipation of Council's adoption of an Equal Employment Opportunity Program (EEOP) Ordinance prior to the construction phase of the Project, the following program guidelines as set forth in the RFP are hereby incorporated in the Agreement:

29.2.4.5.1 The City will not do business with any employer who discriminates on the basis of race, religion, color, gender, ancestry, disability, medical condition, age, sexual orientation or national origin, against any employee of, or applicant for employment with such Contractor.

29.2.4.5.2 This EEOP applies to all construction firms, consultants, vendors, grantees, lessees, banks and independent corporations under contract with the City with the following exceptions:

29.2.4.5.2.1 Contractors who do less than a total of \$10,000 worth of business with the City during the preceding 12 months and/or have less than a total of fifteen (15) employees;

29.2.4.5.2.2 Contracts to which any city (other than the City of San Diego), county, municipal corporation, district or other political subdivision, or any joint powers authority created under the authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party, provided, however, that the City Manager, before entering into such agreement may determine that the provisions of this EEOP shall be applicable;

29.2.4.5.2.3 Charitable, educational, or religious associations or

corporations not organized for private profit may apply for exemption; and

29.2.4.5.2.4 In the event that a City agreement is entered into on an emergency basis pursuant to the Implementation Procedures of the City, only those requirements as they relate to post award compliance shall be applicable.

29.2.4.5.3 The City's EOCP staff is responsible for implementing the EOCP.

29.2.4.5.4 EOCP staff has the responsibility of monitoring DCM's compliance with the City's policy of non-discrimination by: reviewing Contractor work forces; county labor force availability data; monthly utilization reports and any other reports necessary to determine whether a Contractor is discriminating, on the basis of race, religion, color, gender ancestry, disability, medical condition, age, sexual orientation or national origin, against any employee or applicant for employment.

29.2.4.5.5 EOCP staff will conduct on-site reviews to further determine whether DCM is practicing discrimination.

29.2.4.5.6 EOCP staff will work out conciliation agreements with DCM if it is unable to disprove, through due process, staff's findings of discriminatory practices in the work place.

29.2.5 Contract Sizing and Packaging

29.2.5.1 Contract sizing and packaging are proven strategies employed to create and/or enhance opportunities for LSB/MBE/WBE/DBE/DVBE participation. DCM will submit a "*Contract Sizing & Packaging Plan*" that demonstrates an understanding of the impacts of contract sizing and packaging as a tool to maximize participation. DCM must identify, in general terms, the resources it will use and the process to be employed in its analysis of sizing and packaging issues.

29.2.5.2 The "*Contract Sizing & Packaging Plan*" should at a minimum, demonstrate DCM's familiarity with the capabilities of available firms. It should identify the methodology to be employed in reviewing Project elements and "matching" these work elements with competent and competitive firms. The plan will be reviewed and assessed by the City's EOCP and the City Representative during the procurement process. The plan will include the following:

29.2.5.2.1 A summary of the experiences respondents have had in using contract sizing and packaging to promote participation among firms included in the project-specific LSB/MBE/WBE/DBE/DVBE definition;

29.2.5.2.2 A list of sources used, or planned for use in identifying interested LSB/MBE/WBE/DBE/DVBE, their capabilities, technical assets and experience;

29.2.5.2.3 The strategies proposed by DCM to address potential barriers that undermine participation;

29.2.5.2.4 The process to be employed by DCM in conducting the analysis necessary to match project elements with the capabilities of available and interested firms;

29.2.5.2.5 A summary of the technical, contractual and cost issues to be considered in an analysis of contract sizing and packaging issues; and

29.2.5.2.6 A list of potential opportunities for LSB/MBE/WBE/DBE/DVBE participation in each aspect and phase of the design/build process, i.e., pre-design, design, construction and purchases of material and supplies.

29.2.6 Submittals

29.2.6.1 DCM on this Project must submit the following to City's Equal Opportunity Contracting Program within five (5) working days after each bid opening:

29.2.6.1.1 A list of the crafts or trades which will perform Work under DCM and each Contractor;

29.2.6.1.2 The name, business address and telephone number of each Contractor and specific dollar amount of each agreement;

29.2.6.1.3 One (1) copy of the EEO Plan for the DCM and each Contractor. If a plan is submitted in format which is determined to be unacceptable, the DCM and/or Contractor(s) shall have five (5) working days after notification to correct the plan as necessary to receive approval.

29.2.6.1.4 One (1) copy of the Work Force Report for the Contractor's administrative office.

29.2.6.2 DCM and Contractor are encouraged to submit their EEO Plans to the Equal Opportunity Contracting Program during the bidding period and to obtain approval prior to the bid opening. Approved EEO Plans should be kept current to expedite the contract award process.

29.2.7 Violation or Breach of Requirements - If at any time during the course of the Agreement there is a violation of the Nondiscrimination/Equal Employment Opportunity requirements by DCM and Contractors, City will notify DCM of the breach. City may withhold any further progress payments to DCM until City is satisfied that DCM and Contractors are in full compliance with these requirements, suspend DCM from bidding on future agreements for a specified period of time, or terminate the Agreement.

29.2.8 Required Records and Reports - The following records and reports shall be submitted as indicated herein by each Contractor. DCM shall be responsible for collecting and submitting reports for all Contractors.

29.2.8.1 LSB/MBE/WBE/DBE/DVBE Contractors Suppliers and Joint Venture Partners

29.2.8.1.1 DCM shall maintain records of all joint venture participation, agreements entered into with listed and certified Contractors, and records of materials and services purchased from listed and certified suppliers. Such records shall show the name and business address of each joint venture partner, Contractor, or supplier and the total dollar amount actually paid to each.

29.2.8.1.2 Within thirty (30) calendar days of completion of the Agreement, a summary of these records shall be prepared and certified correct by the Contractor, or other authorized representative, and shall be submitted to the City of San Diego Equal Opportunity Contracting Program.

29.2.8.2 City of San Diego Reporting Requirements

29.2.8.2.1 Monthly Employment Utilization Report.

29.2.8.2.2 Report of Current Contracts in San Diego County.

29.2.8.2.3 Monthly Report of Current Work Force.

29.2.8.2.4 Weekly Certified Payroll Report.

29.2.8.2.5 Construction Monthly Invoicing Status Report for LSB/MBE/WBE/DBE/DVBE Participation.

29.2.8.3 Records of Nondiscrimination - For the purposes of evaluating a Contractor's compliance with Equal Employment Opportunity requirements, Contractors shall document and retain all action steps taken.

29.2.8.4 Any other reports as City may deem necessary for reviewing compliance of DCM or a Contractor.

29.2.9 Subcontracting - The "Subletting and Subcontracting Fair Practices Act" (The Act) (Government Code Section 4100-4113, inclusive) requires that subcontractors receiving in excess of one-half ($\frac{1}{2}$) of one percent (1%) of the total bid amount be listed in the Contractor's bid; prohibits the substitution of subcontractors, except as therein authorized; and provides for penalties for violation of the act.

Bidders must list all subcontractors receiving in excess of one-half ($\frac{1}{2}$) of one percent (1%) of the total bid amount and are encouraged to list suppliers on the bid forms.

Section 30: Independent Contractor

30.1 With the exception of fulfilling the requirements to conduct competitive bidding, in which case DCM shall act as the agent of City, DCM and any Contractor, Design Subcontractor, agent or employee of DCM, shall act as an independent contractor and not as an agent, officer or employee of City. Except as expressly provided in this Agreement, City assumes no liability for DCM's actions and performance; in particular, but without limitation, City assumes no responsibility for paying any taxes, bonds, payments or other commitments, implied or explicit, by or for DCM. DCM acknowledges that it is aware that because it is an independent contractor, City is making no deductions from the fees for Services being paid to DCM and that City is not contributing to any fund on behalf of DCM. DCM disclaims the right to any type of additional fee or benefits.

Section 31: Independent Judgment

31.1 Unless otherwise directed in writing by City, DCM shall, in providing the Professional Services required by this Agreement, arrive at conclusions with respect to the rendition of information, advice and recommendations, independent of the control and direction of City, other than normal contract monitoring; DCM, however, shall possess no authority with respect to any City decision beyond rendition of such information, advice and recommendations. Except as to requirements of Section 4, DCM shall not have the authority to act as an agent on behalf of City unless specifically authorized to do so by City in writing.

Section 32: Maintenance of Records and Accounting

32.1 DCM shall maintain, during the Project and for a period of five (5) years after completion of the Project, accurate and organized records of all costs of any type and all Services performed under this Agreement. City will have the right at any time to audit and copy all such records.

Section 33: Ownership of Documents

33.1 Any and all materials and documents, including but without limitation all drawings, specifications, computations, technical data, designs, plans, investigations and reports, as well as all information and data contained on electronic or magnetic media, prepared by DCM pursuant to this Agreement, shall be the property of City, and DCM shall deliver such materials and documents to City whenever requested to do so by City. However, DCM shall have the right, at its own expense, to make duplicate copies of such materials and documents for its own files, or other purposes as may be expressly authorized in writing by City. No such authorization need be obtained for DCM to show a potential client these documents, however, any other use must be authorized by City. Said materials and documents prepared or acquired by DCM pursuant to this Agreement (including any duplicate copies kept by DCM) shall not be shown for a period of five (5) years after completion of this Project to any other public or private person or entity, except as authorized in writing by City. DCM shall not disclose to any other public or private person or entity any information regarding the activities of City, except as expressly authorized in writing by City.

33.2 City acknowledges DCM's Construction Documents as instruments of professional service. Nevertheless, the Construction Documents prepared under this Agreement shall become the property of the City upon completion of the Work and payment in full of all monies due to the DCM. The City agrees, to the fullest extent permitted by law, to indemnify and hold the DCM harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the Construction Documents by the City or

any person or entity that acquires or obtains the Construction Documents from or through the City without the written authorization of the DCM.

Section 34: Force Majeure

34.1 Any party to this Agreement may be excused for any delay or failure to perform its duties and obligations under this Agreement, except for obligations to pay money, to the extent that such failure or delay is caused by an Event of Force Majeure as set forth in Section 34.2. If an Event of Force Majeure set forth in Section 34.2 causes a delay or failure in performance of only a portion of the obligations of a Party under this Agreement, then only that portion of performance which was delayed or prevented by such cause shall be deemed excused, and the performance of all other obligations of a Party not so delayed shall not be excused by an Event of Force Majeure. Delay or failure in performance of all other obligations of a Party not so delayed shall not be excused by such Event of Force Majeure. Delay or failure in performance by a Party which is the result of an Event of Force Majeure set forth in Section 34.2 shall be deemed excused for a period no longer than the delay or failure in performance caused by such Force Majeure Event.

34.2 An Event of Force Majeure means an occurrence beyond the control and without the fault or negligence of a Party, including but not limited to unusually severe weather, flood, earthquake, fire, lightning, and other natural catastrophes; acts of God or the public enemy, war, riot, insurrection, civil disturbance or disobedience, strike, labor dispute, expropriation or confiscation of facilities, changes of applicable law, or sabotage of facilities, so long as such Party makes good faith and reasonable efforts to remedy the delays or failures in performance caused thereby.

34.3 A Party shall give written notice to the other Party as soon after becoming aware of the delay or failure in performance caused by an Event of Force Majeure as is reasonably possible, but in any event within ten (10) working days after Party becomes aware of such delay or failure.

34.4 If the delay or failure in performance is caused by the failure of a Contractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both DCM and Contractor, and without the fault or negligence of either, DCM shall be deemed excused, unless: 1) the contracted supplies or Services were reasonably obtainable from other sources; 2) City ordered DCM in writing to purchase these supplies or Services from the other source; and 3) DCM failed to comply reasonably with this order.

34.5 Upon request of DCM, City shall ascertain the facts and extent of the failure. If City determines that any failure to perform results from one or more of the causes above, the Construction Schedule shall be revised, subject to the rights of City under Section 27 of this Agreement.

34.6 No Event of Force Majeure shall be a basis for monetary adjustment to the Fixed Fee. Hard Construction Costs incurred by the DCM as a result of a Force Majeure Event will be reimbursed according to the terms of this Agreement from the Contingency Fund.

34.7 No adjustment will be made to the Contract Time if the delay caused by Force Majeure Event did not occur during a time when the Project was proceeding on a critical path task as shown on the latest approved Construction Schedule or if there is more Float in the Construction Schedule than when initially approved by the City, available to absorb the Force Majeure Event delay.

34.8 A Force Majeure Event may not be cause for a Construction Schedule adjustment if, at Substantial Completion, the Construction Schedule has been charged with less than twenty (20) days of weather days. In this instance each Force Majeure day shall be offset on a one for one basis against unused weather days until all allowable weather days have been used.

Section 35: Hazardous Materials

35.1 Upon receiving City direction to do so, DCM shall perform hazardous materials assessment and remediation as described in Section 6.3.34.3 of the Scope of Services (Exhibit 6.1) which shall be paid as a Reimbursable Cost under provisions of Section 14.4 in an amount not to exceed the amount shown in Exhibit 1.3.2.

35.2 Except as to any alleged liability related to the Services specified in the Scope of Services (Exhibit 6.1), the City agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the DCM, its officers, partners, employees, agents and consultants from and against any and all claims, suits, demands, liabilities, losses, or costs, including reasonable attorney's fees and defense costs, resulting or accruing to any and all persons, firms, and any other legal entity, caused by, arising out of or in any way connected with the detection, presence, abatement, capping, subsequent migration of, or disposal of any hazardous or toxic substances, products or materials that exist below the surface at the jobsite, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action.

Section 36: Disputes

36.1 Disputes between DCM and City shall be resolved in accordance with this Section. DCM may incorporate these provisions in its agreements.

36.2 General

- 36.2.1 All Claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Agreement or the breach thereof shall be processed in accordance with the provisions of this section and are subject to audit by City's internal audit staff.
- 36.2.2 DCM shall carry on the Work and maintain the Construction Schedule for each Phase during any dispute proceedings and City shall continue to make payments in accordance with this Agreement.

36.3 Requests for Change

- 36.3.1 DCM's Right To Request a Change - In accordance with Sections 15 and 19, DCM may request a change in the GMP or an extension of the Contract Time. Such a request shall be in writing, and shall be delivered to City within the time periods outlined in Sections 15.3 and 19.4.
- 36.3.2 Initial Determination - City shall make an Initial Determination on DCM's request in writing, within thirty (30) calendar days of receipt of DCM's request and its supporting data. City may in good cause extend this thirty (30) calendar day period to sixty (60) calendar days.
- 36.3.3 DCM Appeal - Should DCM disagree with City's Initial Determination, DCM may request a Final Determination from City. Such a request shall be in writing, and shall be delivered within thirty (30) calendar days after receipt of the City's initial determination.
- 36.3.4 Final Determination - City shall make a Final Determination in writing within thirty (30) calendar days after receipt of DCM's written request for a Final Determination.
- 36.3.5 Claim - Should DCM disagree with City's Final Determination, DCM may file a Claim with City in accordance with the procedures outlined below.
- 36.3.6 Waiver Of Rights - Failure of DCM to notify City and deliver supporting data in accordance with the time periods outlined in Sections 19.4 and 15.3, or failure to respond to City's Initial Determination within the time period outlined in this Section, shall

be deemed to be a waiver of objection or right to further Claim of the instant matter.

36.4 Claims

- 36.4.1 Definition of Claim - A Claim means a written demand by DCM seeking an adjustment in GMP and payment of monies so due, an extension or shortening in Contract Time, or other relief arising under or relating to the Agreement following denial of a request for Change Order. A written demand by DCM seeking the payment of money or an extension of time is not a Claim under this Section until certified as required below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted, is not a Claim under this Section.
- 36.4.2 Claim Arising Under the Agreement - A Claim arising under this Agreement, means one that can be resolved under an Agreement provision that provides for or excludes the relief sought by the Claimant. Such Claims shall be resolved under the applicable provisions of this Agreement.
- 36.4.3 Period of Claim - For any Claim under this Section to be valid, it shall be based upon written notice delivered by DCM to City promptly, but in no event later than thirty (30) calendar days, after receipt of City's Final Determination as outlined in Section 36.3.4. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 36.4.4 Claim Certification Requirements - For all DCM Claims seeking an increase in GMP or Contract Time, DCM shall submit with the Claim an affidavit certifying that:
- 36.4.4.1 Claim Made In Good Faith - The Claim is made in good faith, and the amount claimed accurately reflects the adjustments in GMP or Contract Time for which DCM believes City is liable, and covers all costs and delays to which DCM is entitled as a result of the occurrence of the Claimed event;
- 36.4.4.2 Cost And Pricing Data - Supporting cost and pricing data are current, accurate, complete and represent the best of DCM's knowledge and belief; and,

36.4.4.3 DCM's Agent - The affidavit shall be executed by a senior company official in charge at DCM's plant or location involved, or a responsible officer or general partner of DCM.

36.4.5 Progress Schedule Analysis - All Claims for time shall be supported by an analysis of the most recently approved Construction Schedule detailing the impact of the Claimed Work on specific impacted Construction Schedule activities.

36.5 Claim Resolution Process

36.5.1 DCM Claim - DCM must submit his Claim to City within thirty (30) calendar days of receipt of City's Final Determination.

36.5.2 Settlement Meeting - Within fifteen (15) working days of receipt of DCM's Claim, City will schedule a Settlement Meeting between DCM's representative and City Manager. This meeting will be an opportunity for the DCM to explain its Claim to senior management at City. If a settlement agreement cannot be reached, City will proceed to make its written determination.

36.5.3 City Written Determination - City shall make a written determination within thirty (30) calendar days after receipt of DCM's Claim and supporting data. City's determination shall be final and binding on DCM unless DCM notifies City in writing of its objection within thirty (30) calendar days after receipt of City's determination. Failure to give notice of objection within said thirty (30) calendar day period shall be deemed to be a waiver of its right to pursue the Claim.

36.5.4 Project Neutral Mediation - Mediation shall occur if settlement is not reached at the Settlement Meeting between DCM and City Manager. Mediation will be conducted as follows:

36.5.4.1 Mediation shall be mandatory for both Parties if either one wishes to pursue an unresolved dispute subsequent to the results of a Settlement Meeting between DCM and City Manager. Mediation shall be a prerequisite to both Parties requesting a Dispute Review Board hearing or to either Party in proceeding to litigation.

36.5.4.2 After the failure of the Settlement Meeting to resolve a dispute, Mediation will occur within forty-five (45) working days after the filing of a Request for Mediation by either Party. Such request shall be filed within five (5) working days, unless both Parties mutually agree to an extension of time beyond that period.

36.5.4.3 Mediation shall be conducted in accordance with the City's Alternative Dispute Resolution Process, utilizing a mediator skilled in mediation and having expertise in construction. The selection process shall be administered by the American Arbitration Association or any other such neutral organization selected by the City, (hereinafter called the "Administrator"). To initiate Mediation, the initiating Party shall serve a request for Mediation upon the opposing Party. At the same time, the initiating Party shall file with the Administrator the following: three (3) copies of the request for Mediation along with the appropriate filing fees; a copy of the list of mediators marked in preference order, after striking any mediators to which it has any factual objection; and, a copy of the calendar form designating the initiating Party's availability for the Mediation hearing.

Within two (2) working days from receipt of the initiating Party's request for Mediation, the opposing Party shall file the following: a copy of the list of the mediators listed in preference order, after striking any mediators to which it has any factual objection; and, a copy of the calendar form designating its availability for the Mediation hearing.

The Administrator will appoint the highest, mutually preferred, mediator from the individual Parties' lists who is available to serve within the designated time frames above.

36.5.4.4 Any resultant agreements from Mediation shall be documented in writing by both Parties and may be used as the basis for a Change Order or other directive as appropriate. 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.

- 36.5.4.5 Mediation hearings shall be informal and discovery shall not be permitted. Discussions or admissions during Mediation discussions shall be considered as part of privileged settlement discussions, without prejudice to any Party's legal position.
- 36.5.4.6 Spokespersons shall be limited to City staff and DCM personnel, except that, at its option, DCM may have an attorney present, (as a consultant), in which event City may then also have its attorney present, (as a consultant). Outside experts, including attorneys, may address their specialty if approved by both Parties.
- 36.5.4.7 Each Party may present its views and supporting information, including documents, drawings, or other pertinent material. All such evidence and displays shall be considered confidential and shall be retained by the presenting Party.
- 36.5.4.8 If no settlement is reached as a result of the Mediation hearing, both Parties may mutually agree to attempt settlement through a Dispute Resolution Board. If either Party disagrees, DCM must then file a formal claim with Risk Management, who will forward said claim to the City Attorney for settlement by litigation.
- 36.5.4.9 All costs of Mediation, including those of the institution furnishing the mediator shall be shared equally by both Parties. Fees shall be jointly negotiated by both Parties directly with the Administrator. Unless otherwise mutually agreed upon, mediation costs for Claims up to \$60,000 shall not exceed \$1,500 and costs for Claims over \$60,000 shall not exceed \$3,000.
- 36.5.4.10 The mediator may be retained for on-going problems during the life of the Agreement if mutually agreed upon by both Parties.

36.5.5 Dispute Resolution Board - A Dispute Resolution Board (DRB) may be convened, if both Parties agree, after a mediation hearing has failed to achieve a settlement. The availability of the DRB process is not a constraint for either Party to directly proceed to litigation. DRB hearings will be conducted as follows:

36.5.5.1 If requested by both Parties after the failure of a mediation hearing, a DRB hearing will occur within twenty (20) working days for Claims involving \$60,000 or less and within thirty (30) working days for Claims involving more than \$60,000.

36.5.5.2 The DRB process shall be conducted in accordance with City's Alternative Dispute Resolution Process, utilizing board members who are individuals who have expertise in construction. The selection process shall be administered by the American Arbitration Association, or any other such neutral organization selected by the City, hereinafter called Administrator. Claims made for \$60,000 or less shall be heard by one DRB member and Claims for more than \$60,000 shall be heard by three DRB members.

36.5.5.3 To initiate the DRB procedures, the Parties shall jointly execute and file a Submission to Dispute Resolution Board Procedures request with the Administrator. Upon receipt by the Administrator of the submission form, the Administrator shall furnish to the Parties a list of individuals skilled in dispute resolution and having expertise in construction from which to select the Dispute Resolution Board. Within five (5) working days from the date the list is sent to the Parties, the Parties shall return the list to the Administrator, striking any individuals to which the Parties have any factual objections and numbering the remaining in preference order. The Administrator shall appoint the highest mutually preferred individuals to the DRB that are available to serve in the time frame designated in Section 36.5.5.1.

36.5.5.4 Any resultant agreements from a DRB Hearing shall be documented in writing by both Parties and may be used as the basis for a Change Order or other directive as

appropriate. All DRB 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. DRB members shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

- 36.5.5.5 Discussions or admissions during DRB discussions shall be considered as part of privileged settlement discussions, without prejudice to any Party's legal position.
- 36.5.5.6 DRB hearings shall be informal and discovery shall not be permitted. Each Party shall have a maximum of two (2) hours for presentation, unless otherwise agreed upon. Spokespersons shall be limited to City staff and DCM personnel, except that, at its option, DCM may have an attorney present, (as a consultant), in which event City may then also have its attorney present, (as a consultant). Outside experts, including attorneys may address their specialty if approved by both Parties.
- 36.5.5.7 Each Party will be given full opportunity to present its views and supporting information, including documents, drawings, or other pertinent material. All such evidence and displays shall be considered confidential and shall be retained by the presenting Party.
- 36.5.5.8 Within five (5) working days after the hearing, the DRB will make its recommendation in writing for resolution of the dispute to all Parties. The DRB will strive for consensus and unanimity in its decision making. If such is unattainable, however, separate written recommendations may be made as majority or minority reports.
- 36.5.5.9 If either Party rejects the decision of the DRB, the DCM may then file a formal claim with Risk Management who will forward it to the City Attorney for settlement by litigation.

36.5.5.10 All costs of DRB Hearings, including those of the institution furnishing DRB members, shall be shared equally by both Parties. Fees shall be jointly negotiated by both Parties directly with the DRB Administrator. Unless otherwise mutually agreed upon, costs for Claims up to \$60,000 shall not exceed \$1,500 and costs for Claims over \$60,000 shall not exceed \$3,000.

36.5.5.11 DRB members may be retained for on-going problems during the life of the Agreement if mutually agreed upon by both Parties.

36.5.6 DCM Obligation to Proceed - Pending final resolution of any Claim, including litigation, DCM shall proceed diligently with performance of the Project, and comply with any direction of City.

Section 37: Drug Free Work Place Requirements

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

37.2 Definitions

37.2.1 Drug-Free Workplace - A site for the performance of Work done in connection with an agreement 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.

37.2.2 Controlled Substance - A controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

37.3 City Contractor Requirements

37.3.1 Every person or organization awarded an agreement or grant by the City of San Diego for the provision of Services shall certify to the

City that it will provide a drug-free workplace by doing all of following:

- 37.3.1.1 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.
 - 37.3.1.2 Establishing a drug-free awareness program to inform employees about all of the following:
 - 37.3.1.2.1 The dangers of drug abuse in the workplace.
 - 37.3.1.2.2 The person's or organization's policy of maintaining a drug-free workplace.
 - 37.3.1.2.3 Any available drug counseling, rehabilitation, and employee assistance programs.
 - 37.3.1.2.4 The penalties that may be imposed upon employees for drug abuse violations.
 - 37.3.1.3 Posting the statement required by subdivision (1) in a prominent place at DCM's and Contractor's main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.
- 37.3.2 DCM and Contractors shall include in each agreement language which indicates the obligation to abide by the provisions of Sections 37.3.1.1, 37.3.1.2 and 37.3.1.3 above. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.
- 37.3.3 Additionally, DCM and Contractors shall submit the signed form included as Exhibit 37.3.3 as required by San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace.

Section 38: Americans with Disabilities Act (ADA) Requirements

38.1 General - All City projects are now subject to City of San Diego Resolution No. R-282153 adopted on June 4, 1993. DCM should be aware of the provisions of Council Policy 100-04 which was established by the above numbered resolution. The policy applies equally to DCM and all Contractors. The elements of the policy are outlined below.

38.2 Background - The issue of accessibility, both architecturally and programically by people with disabilities, to public and private entities has been addressed by Section 504 of the Rehabilitation Act of 1973, and most recently by the Americans with Disabilities Act (ADA) of 1990. This broad reaching legislation addresses the right of people with disabilities to obtain equal access to services, programs, buildings, facilities, and employment.

38.3 Purpose - It is the intent of the City Council that the City of San Diego take a leadership role in addressing compliance with the ADA in the workplace. It is the purpose of this policy to establish the requirement that all City contractors, including but not limited to construction contracts, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the ADA.

38.4 Definitions - "Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

38.5 City ADA Requirements

38.5.1 Every person or organization entering into a contractual Agreement with or receiving a grant from the City of San Diego shall certify to the City of San Diego that it will comply with the ADA by adhering to all of the provisions of the ADA listed below:

38.5.1.1 Title I. Employment Mandates - "No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment."

38.5.1.2 Title II. State and Local Government - "No qualified individual with a disability may be excluded on the basis

of disability, from participation in, or be denied the benefits of services, programs, or activities by contractors or subcontractors providing services for the City."

38.5.1.3 Post a statement addressing the requirements of the ADA in a prominent place at the worksite.

38.5.2 DCM and Contractors shall include in each agreement, language which indicates the obligation to abide by the provisions of subdivisions (1) through (3) inclusive of Section 2A. DCM and Contractors shall be individually responsible for their own ADA employment programs.

Section 39: Notices

39.1 All notices, demands or other communications hereunder shall be given or made in writing and shall be delivered personally or sent by courier or registered or certified mail, return receipt requested, postage prepaid, addressed to the Party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such Party:

(i) To CITY:

City Clerk Charles Abdelnour
202 C Street, 2nd Flr.
San Diego, CA 92101
Tel: (619) 533-4040
Fax: (619) 533-4045

Bruce Herring
c/o City Manager's Office
202 C Street, 9th Flr.
San Diego, CA 92101
Tel: (619) 236-5947
Fax: (619) 236-6067

Deborah L. Berger
City Attorney's Office
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Tel: (619) 533-5800
Fax: (619) 533-5856

(ii) To: Sverdrup Civil Inc.
675 Anton Blvd, Suite 400
Costa Mesa, CA 92626
Attention: Doug Peters
Tel: (714) 549-5050
Fax: (714) 549-5800

with a copy to:

Sverdrup Civil, Inc.
13723 Riverport Drive
Maryland Heights, MO 63043
Attention: Gary Brassler
Tel: (314) 436-4600
Fax: (314) 770-5130

Any notice, demand or other communication given or made solely by mail in the manner prescribed in this Section shall be deemed to have been given and to be effective three (3) days after the date of such mailing; provided, however, that any notice, demand or other communication which would otherwise be deemed to have been given on a day which is not a working day shall be deemed to have been given on the next subsequent working day.

Section 40: Miscellaneous Terms

40.1 Representations: Each Party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each Party further declares and represents that this Agreement is being made without reliance upon any statement or representation of any other Party not contained herein, or any representative, agent or attorney of any other Party.

40.2 Severability: If any term or condition of this Agreement is held to any extent to be invalid or unenforceable, all the remaining terms and conditions shall be enforceable to the fullest extent permitted by law.

40.3 Entire Agreement: This Agreement contains the entire agreement, between the Parties and supersedes all prior negotiations, discussions, obligations and rights of the Parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the Parties. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

40.4 Drafting Ambiguities: The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. 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.

40.5 Applicable Law: The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for mediation, arbitration and/or actions arising out of this Agreement shall be in the City of San Diego, California.

40.6 Waiver: Unless otherwise expressly provided herein, no delay or omission by the Parties hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy, nor shall it be construed as a bar to or a waiver of any such right or remedy on any future occasion.

40.7 Effect of Headings: Headings appearing in this Agreement are inserted for convenience of reference only, and shall in no way be construed to be interpretations of the provisions hereof.

40.8 Amendments: This Agreement may be modified, amended or supplemented only by the mutual written Agreement of the Parties hereto.

40.9 Authorization and Compliance: Each Party represents that it is duly authorized to execute and carry out the provisions of this Agreement.

40.10 Further Assurances: The Parties agree to do such further acts and things and execute and deliver such additional Agreements and instruments as the other may reasonably require to consummate, evidence or confirm the Agreements contained herein in the manner contemplated hereby.

40.11 Counterparts: This Agreement may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The facsimile signatures of the Parties shall be deemed to constitute original signatures, and facsimile copies hereof shall be deemed to constitute duplicate original counterparts.

40.12 Exhibits, and Glossary of Terms: All exhibits, and Glossary of Terms are incorporated herein by reference.

40.13 Third Party Beneficiary: Nothing within this Agreement shall create a contractual relationship between the City and any third party; however, it is understood and agreed that the City, to the extent permitted by law, is an intended third party beneficiary of all subcontracts, purchase orders and other Agreements between the DCM and third parties except those with design and engineer services. The DCM shall

incorporate the obligation of this agreement into its respective agreements, supply agreements and purchase orders.

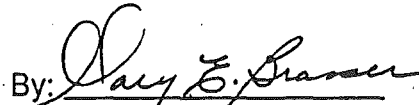
DATED: _____

CITY OF SAN DIEGO
Bruce Herring


Its: Deputy City Manager

DATED: _____

Sverdrup Civil, Inc.
a corporation

By: 
Gary Brassler
Its: Senior Vice President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 16 day
of 12, 1999.

CASEY GWINN, City Attorney

By: 
Deborah Berger
Deputy City Attorney

GLOSSARY OF TERMS

The following Glossary of Terms is designed to provide in a single location the defined terms used in the Agreement. In the event of any conflict between the following and the definitions set forth in the Agreement, those in the Agreement shall take preference.

Additional Services. Services which the City has authorized the DCM to perform and which are beyond the Scope of Services as set forth in Exhibit 6.1.

Agreement. The Design/Construction Manager Agreement, Exhibits, and Glossary of Terms between City and DCM.

Agreement Documents. Those documents listed in Section 7.1, which are incorporated by reference and therefore are a part of this Agreement.

Ballpark District Urban Design Theme. Document to be provided to DCM depicting the overall design theme for the area including the Project Site which will include standards for all streets, streetscape, landscape, street furniture, lighting, design standards, and graphics.

Ballpark Project. Means (1) construction of the ballpark which is an open-air, natural grass, state-of-the-art baseball facility, with multiple uses, and with approximately 42,000 seats and the outfield park, and consisting of the ballpark structure itself, all fixtures and systems, the outfield park, and the grounds and walkways immediately surrounding the ballpark structure; (2) the outfield park retail parcels; (3) infrastructure project which is the subject of this Agreement; and (4) parking facilities.

Ballpark Team. Padres LP and its designated agents or contractors responsible for the design and construction of the Ballpark Project.

Bidding Phase. The second Phase of Services shown in the Scope of Services which includes tasks and activities DCM must perform to obtain bids and award contracts for all Work to be performed on this Project, other than authorized self-performed Work or General Condition activities.

Certification of Completion. The document, by which DCM certifies that the Project has been fully completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.

Certificate of Occupancy. The document issued by City authorizing occupancy of the entire Project.

Certificate of Substantial Completion. The document issued by City after it reasonably determines the Project has achieved Substantial Completion as defined in Section 18.1 of the Agreement.

Change Order. A written amendment to the Agreement executed by City and DCM modifying the terms of the Agreement pursuant to the terms of Sections 15, 19 and 21.

City. City shall refer to the City Representative and/or City Inspection Representative.

City Representative. Patti Boekamp shall be the initial City Representative. The City Manager will notify DCM in writing of the name of any successor City Representative and DCM shall be entitled to rely upon the directions of the current City Representative until receipt of said written notice. The City Representative shall act on behalf of the City with respect to this Agreement unless the Agreement provides otherwise.

Claim. A written demand by DCM seeking an adjustment in the GMP and/or Contract Time following denial of a Change Order. This is a contractual procedure pursuant to Section 36, as distinguished from a Government Code claim.

Construction Documents. DCM's architectural, civil, structural, mechanical, electrical, plumbing plans and details as well as the plans showing installation of major systems, equipment, fixed furnishings and graphics, the technical specifications and all other technical drawings, schedules, diagrams and specifications, necessary to set forth in detail the requirements for construction of the Project.

Construction Management Plan. The document prepared by the DCM that describes the procedural plan for the DCM to manage the design and construction process for the development of the Project which shall include staff assignments, schedules, budget, procedures, and detailed person power loading schedules.

Construction Phase. The third Phase of Services and Work shown in the Scope of Services which includes those tasks and activities DCM is to perform between issuance of the Notice to Proceed with construction of the Project through Substantial Completion.

Construction Schedule. DCM prepared and City approved Critical Path Method schedule showing all major Milestones, including design submittals, permits and approvals, GMP and cost estimate submittals, bid dates for major bid packages, commencement of construction, sequence of construction, completion of structural

elements, completion of the Project, which shall conform with the dates of Substantial Completion and Final Completion of Project. DCM shall update the Schedule as required by the Agreement.

Contingency Fund. The funds designated in Exhibit 1.3.2 which may be used with City approval for all costs included within the GMP subject to Section 6.3.2.

Contract Amount. The dollar amount authorized by the San Diego City Council to be paid to the DCM as consideration for full performance under the terms of this Agreement which includes the GMP and Reimbursable Costs.

Contract Time. The time within which DCM has to complete all Work and Services under the Agreement, which commences with the execution of the Agreement and ends with the Final Completion Date.

Contractor. Any person or entity with whom the DCM contracts or subcontracts for construction of the Project.

Cost of Work. The construction costs for Work on the Project as set forth in Section 15.

Cost Reduction Proposals. Proposal from DCM pursuant to Section 17 of this Agreement, which sets forth suggestions for reducing the costs of constructing the Project.

Default. A material breach of the terms of this Agreement by DCM as set forth in Section 27.3.1.

Defective Work. Work on the Project which is not in compliance with the Construction Documents.

Design Construction Manager ("DCM"). The Party with whom the City contracts to design and construct the Project which is the subject of this Agreement.

Design Criteria and Performance Specifications ("Criteria"). Document provided by City to DCM describing the minimum requirements for the design and construction of the Project, which is included as Exhibit 1.3.1.

Design Phase. The first Phase of Services shown in the Scope of Services which includes those tasks and activities which the DCM must perform after issuance of the Notice to Proceed with this Agreement through preparation and finalization of documents appropriate to secure construction permits and solicit bids for construction of the Project.

Design Subcontractors. The architects, engineers and other design professionals contracting with the DCM to perform design Services for the Project .

Event of Force Majeure. The type of event defined in Section 34 of this Agreement.

Extra Work. Any Work on the Project which is outside the scope of Work contained in the Construction Documents and this Agreement.

Final Completion. The date provided in the Construction Phase Notice to Proceed when the last of the following events occurs: (1) recordation of a Notice of Completion for the Project; (2) acceptance of the Project by the City; (3) if applicable, issuance of a final Certificate of Occupancy for the Project; (4) submission of all documents required to be supplied by DCM to City under this Agreement, including but not limited to as-built drawings, warranties, and operating manuals; (5) and delivery to City of a Certification of Completion duly verified by DCM.

Final Completion Date. The date of December 17, 2001 when DCM is obligated to finish all Work on the Project as provided in this Agreement.

Final Determination. City's final written determination on Change Order pursuant to Section 36.3.4.

Final Payment. Payment to DCM 35 calendar days after date of Final Completion as set forth in Section 16.2.6.

Fixed Fee. The negotiated fixed sum which DCM shall receive as full compensation for performance of all Services, Work and obligations under this Agreement, including all costs of any type incurred by DCM for design, construction and management of the Project as more specifically provided in Section 14.2; but not including (1) Hard Construction Costs, and (2) Reimbursable Costs.

Float Time. Days within the Construction Schedule allocated for Project components or tasks that are not on the critical path leading to completion of Project within the Contract Time.

Funding Phase. The separate portions of the Contract Time set forth in Section 16.1.2 of this Agreement which will be funded incrementally in the amounts indicated.

General Conditions. Those tasks and incurred costs to provide support to the construction of the Project which includes such items as clean up, temporary utilities, security, safety, hoisting, facilities, and general support to construction activity.

Guaranteed Maximum Price (GMP). The guaranteed maximum price (herein "GMP") which DCM shall be paid by City for all Hard Construction Costs and the Fixed Fee as set forth in of Exhibit 1.3.2 for the complete design and construction of the Project as specified in the Agreement.

Hard Construction Costs. All costs DCM incurs in either contracting for Work on the Project by others or self performed with approval of City, which shall include a Contingency Fund, as set forth in of Exhibit 1.3.2 ; but specifically does not include: (1) costs associated with the design and construction management Services to be performed by DCM under this Agreement or (2) costs incurred due to DCM's negligence or failure to perform according to the terms of this Agreement, including, but not limited to, failure to adequately supervise the Project, or use of materials which do not comply with the Construction Documents.

Initial Determination. City's initial determination on a Change Order pursuant to Section 36.3.2.

Milestones. Dates shown on Construction Schedule when DCM must complete major tasks either during design or construction of the Project.

Notice of Acceptance. Written notice of Final Completion by City indicating that the DCM has completed the Project as required by the terms of this Agreement.

Notice of Completion. City document issued after San Diego City Council formally accepts the Project.

Notice to Proceed. The written notice provided by the City authorizing the DCM to proceed with each of the Phases of the Project as described in the Scope of Services (Exhibit 6.1).

Notice of Termination. A written notice provided by the City to DCM indicating that the Agreement is to be terminated pursuant to Section 27 of this Agreement.

OCIP Administrative Broker. The City of San Diego's authorized insurance representative for the administration of the City Controlled Insurance Program.

OCIP Participants. The City of San Diego, DCM, Contractors and Design Subcontractors of any tier who are eligible and enrolled as insureds for insurance coverages provided by the City.

Party. The Parties to this Agreement, The City of San Diego ("City"), and Sverdrup, Civil, Inc. ("DCM").

Policy Site. The areas indicated in the OCIP policies which are entitled to coverage.

Project. The demolition of existing structures, relocation of utility infrastructure and construction of parking lots, parking structures, new streets, streetscape and landscaping to support Ballpark Project .

Project Site. All areas where Work is to be performed pursuant to this Agreement as shown in Attachment A to Exhibit 1.3.1.

Reimbursable Costs. Costs incurred by DCM to be reimbursed by City in the amounts specified in Exhibit 1.3.2 for: (1) premiums for performance bond and payment bond furnished by DCM pursuant to Section 9.5 of this Agreement; (2) the net premiums (less any premium returns) for the insurance, including costs for insurance brokers, deductibles, Safety Program and consultants which DCM is required to purchase and maintain pursuant to Section 10.3.1 of the Agreement; (3) the cost of all necessary permits obtained by DCM for the Project pursuant to Section 3.1.10 of the Agreement; (4) costs for extension of warranties pursuant to Section 23.5.6 of the Agreement; (5) soils and hazardous material remediation costs pursuant to Section 35.1; (6) costs of EOCP consultant pursuant to Section 29.1.1; (7) costs of utility specialist pursuant to Section 5.5.10; (8) costs of community relations consultant pursuant to Section 3.8; (9) costs of archeologist/ paleontologist consultant pursuant to Section 3.1.8.7; and (10) Additional Services authorized pursuant to Section 8.2.

Safety Program. DCM document outlining the safety plan for the Project as required in Section 11 which describes procedures, responsibility, standards, purpose and scope of a coordinated safety and health plan setting forth requirements for the DCM and Contractors to be in compliance with the requirements of Section 3 of the Project Procedures Manual.

Scope of Services. Professional Services, including design and management of Project, ("Services") and construction Work necessary for DCM to provide a complete Project as provided for in this Agreement and as more particularly described in Exhibit 6.1.

Settlement Meeting. First step as described in Section 36.5.2 in the Claim resolution process.

Special Inspections. Any inspection performed by an entity other than the City with City's approval.

Special Services. Work or Services which are so extraordinarily complex, sophisticated or innovative that they are deemed unique within the construction industry.

Start Up Phase. The fourth and final Phase of the Scope of Service which includes those tasks which DCM must perform from Substantial Completion through Final Completion as described in the Scope of Services.

Substantial Completion. The date on which all Work on the Project is sufficiently complete in accordance with the Construction Documents so that City can occupy and utilize the entire Project

Termination Settlement Proposal. DCM's proposal pursuant to Section 27.4.4 for final compensation following termination.

Work. All services, labor, materials, supplies, and equipment necessary for DCM, and/or Contractors to construct the Project.

EXHIBIT LIST

Exhibit 1.3.1	Criteria
Exhibit 1.3.2	Guaranteed Maximum Price
Exhibit 2.1.2	Construction Schedule
Exhibit 5.2.1	List of Geotechnical Reports and Documents
Exhibit 6.1	Scope of Services
Exhibit 6.1 A	Phase 1 Scope of Services
Exhibit 6.8	Preliminary Provisions for Project Procedures Manual
Exhibit 37.3.3	City's Drug-Free Workplace Agreement

**EXHIBIT 1.3.1
CRITERIA**

**BALLPARK INFRASTRUCTURE PROJECT
Contemplated Construction Components**

1. Utility Relocation - Water/Sewer

See Water/Sewer Planning Study for additional information (RFP Attachment A - Item I.5). To facilitate the abandonment of existing water and sewer services in the Ballpark footprint area, the City is proceeding with the early design of water and sewer system by-pass improvements. These improvements will allow the pipelines underlying the Ballpark footprint to be removed from service as appropriate during demolition. These plans will be fully developed and provided on CADD to the DCM. The DCM may need to design and construct additional water and/or sewer improvements beyond the plans provided by the City for the by-pass.

2. Utility Relocation - Electric, Gas, Telephone, Cable

Private utilities are responsible for relocation of their service and have begun planning/design on portions of their work. DCM is responsible for coordination only.

3. Demolition

Demolish and remove vacated streets' pavement, curbs, gutters, sidewalks, abandoned rails, etc. Do the same for existing rights of way underlying new street pattern. Salvage and re-use (as appropriate) existing street lights.

Demolish and remove existing buildings (including materials abatement), slabs, basements, and miscellaneous materials left on properties, as follows (except as noted on RFP Attachment A - Item 3 as "building to remain"):

Ballpark/Outfield Park/Retail Footprint: 535-352
535-353
535-361
535-355
535-354
535-366
535-561
535-562
535-591
535-570

Parking Lots P1, P5, P6, P7*, P8* (*B2, B3 alternate-blocks)

Parking Lots D-1 and D-2 are currently owned by SDG&E. SDG&E is remediating the property and will remove most structures during that process.

Classify and reuse materials as appropriate and practical and dispose of the remainder properly. See scope of work in draft contract regarding soils mitigation.

4. Parking Garage

On parcel designated as P-1, provide 1,000 space parking structure with appropriate fixtures and equipment. Such parking structure design should facilitate it's use for Ballpark events as well as non-game day use. Structure to be designed in compliance with CCDC's Planned District Ordinance which may include ground floor retail and/or decorative cladding compatible with surrounding residential and commercial uses. Parking structure must comply with ADA requirements.

5. Surface Parking Lots

Parcels D-1, D-2, P5, P6, P7*, and P8* (*B2 and B3 are possible alternate blocks to P7 and P8) are to be developed as surface parking lots. Lots should be designed to include as many parking spaces as possible, with the following as minimums:

P5, P6, P7*, P8* (*B2, B3 alts.) - total of 800 spaces combined
D-1, D-2 - total of 588 spaces combined

Parking lots to be graded, paved, striped (including ADA requirements), including signage, appropriate levels of lighting and possible landscaping (budget dependent). Parking layout, equipment and driveways to support game day as well as non-game day use. Parking lot frontage sidewalks to be installed/repaired/replaced as required based on condition.

6. New Streets

Design and construct new Park Boulevard diagonal, un-named frontage road on west side of site, reconfiguration of 10th and 11th Avenues (to their termini at new Park Boulevard). The new Park Boulevard diagonal includes reconfiguration of the intersection at Harbor Drive (old 8th Avenue intersection with Harbor Drive) including consideration of railroad equipment (such as gates, signals, rail switches) and configuration of the new intersection at 12th Avenue (which requires design considerations for the San Diego Trolley operating through that intersection).

Items of work include (but are not limited to) grading, storm drains, inlets/cross gutters as appropriate, curbs, gutters, sidewalks, medians, landscaping, irrigation, water meters, backflow assembly, tree grates, traffic signals, street lights, other streetscape elements (see "Streetscapes" also), pedestrian ramps, driveways (as appropriate), signing, striping, and water/sewer facilities needed within the public right-of-way to serve the Ballpark (beyond by-pass design noted above and not including facilities within the Ballpark site itself).

7. Existing Streets to Remain (shown "green" on RFP Attachment A - Item 3)

Resurface/slurry (as appropriate), including restriping, to restore the look of adjacent streets anticipated to be damaged during construction and which the City/CCDC/Padres would like to look "fresh" on opening day. Include cold planing as appropriate.

8. Streetscapes

The streetscape elements should be integrated thematically with the Ballpark and Ancillary Development to provide an overall District "look" of elements including landscaping, paving, street furnishings (such as benches and trash receptacles), lighting, signage, etc.

9. 12th Avenue Enhancement

12th Avenue between K Street and Imperial Avenue to be pedestrianized - sidewalk improvements, narrowed roadbed (leaving the trolley operation without adjacent vehicle lanes), lighting, and landscaping (District theme). These improvements to be planned in cooperation with MTDB as well as the City/CCDC due to trolley operations. Construction to be planned so as not to interfere with normal trolley operations.

10. Traffic Signals

Traffic Signal locations required will be identified through the traffic studies for the EIR and may include existing intersections beyond the new intersections shown on RFP Attachment A - Item 3. This information will be provided when available.

11. Traffic Control

Traffic control should be planned and staged to facilitate construction as well as the public's access through the area and access to adjacent properties. This may include coordination of traffic control with other contractors for the Ballpark, Ancillary Private Development, and others as needed due to concurrent construction schedules (such as possible overlapping construction timeframes with the Convention Center Expansion project and other planned projects).

12. ADA Requirements

Consultant is responsible for designs to meet ADA requirements.

Possible Additive Alternates

"K" Street remnant right-of-way to be developed as a public plaza with sidewalks and modest landscaping (again in concert with the "theme" for the District).

Coaster Station.

Parking Structure Upgrades (facade enhancements, escalator.)

EXHIBIT 1.3.1

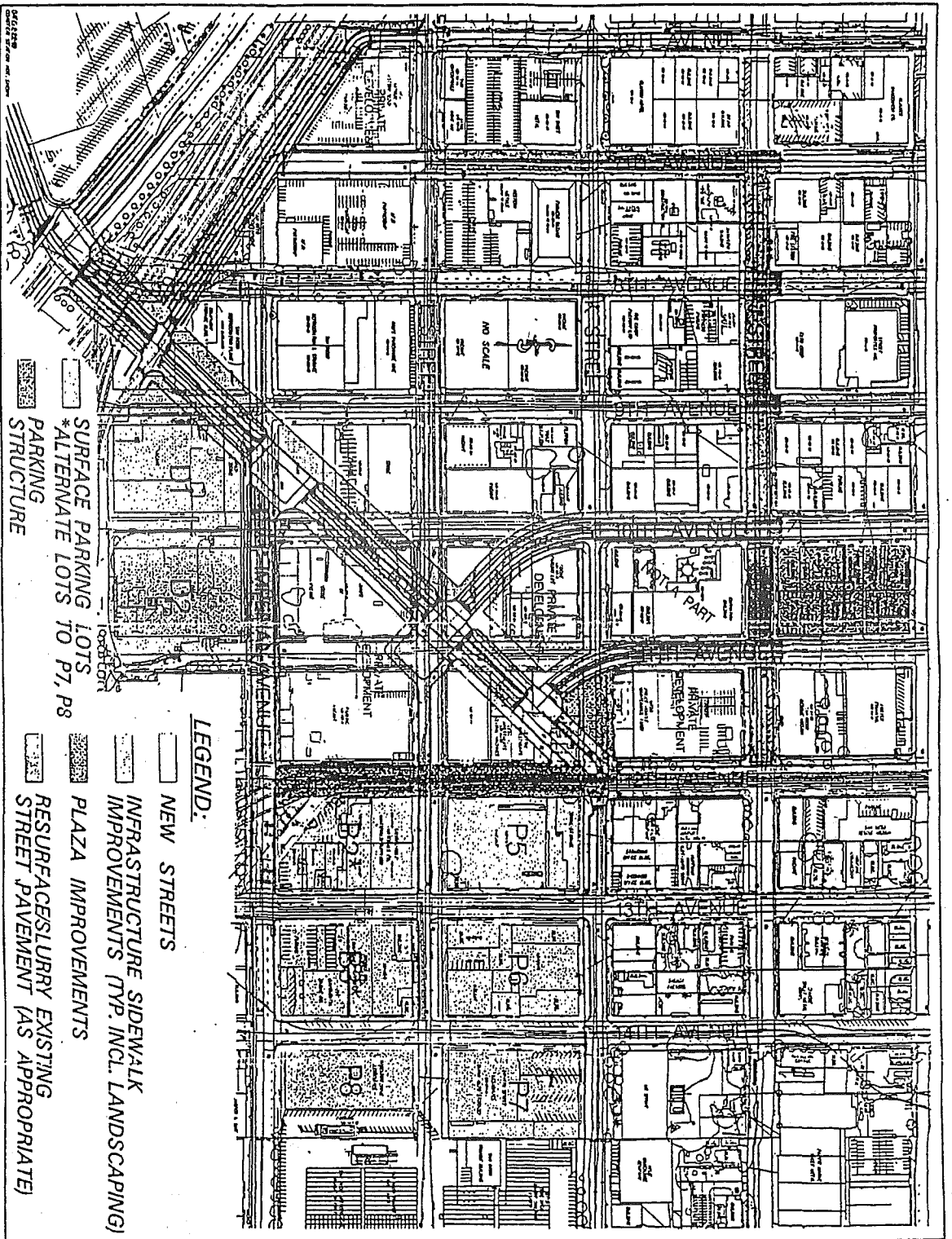


EXHIBIT 1.3.2

BALLPARK INFRASTRUCTURE

	Phase 1			Phase 2	Total
	Phase 1a	Phase 1b Downtown Enhancement	Phase 1 Total		
1. Hard Construction Costs:					
2. Construction Cost Estimate	\$2,175,185	\$1,035,000	\$3,210,185	\$28,340,037	\$31,550,222
3. Contingency Fund	99,815	155,000	254,815	2,232,523	2,487,338
4. Hard Construction Cost Subtotal	\$2,275,000	\$1,190,000	\$3,465,000	\$30,572,560	\$34,037,560
5. DCM Fixed Fee: ⁽¹⁾	\$2,054,270	0	\$2,054,270	\$3,910,430	\$5,964,700
6. GMP:	\$4,329,270	\$1,190,000	\$5,519,270	\$34,482,990	\$40,002,260
7. DCM Reimbursable Costs:					
8. Permit Allowance	\$54,000	0	\$54,000	\$196,000	\$250,000
9. EOCP Consultants	45,000	0	45,000	34,500	79,500
10. Community Relations Consultant	0	0	0	0	0
11. Utility Specialist Consultant	12,000	0	12,000	41,000	53,000
12. Archeologist	45,130	0	45,130	12,110	57,240
13. DCM Performance and Payment Bond	63,900	0	63,900	136,100	200,000
14. Project Specific Insurance	700	0	700	20,300	21,000
15. Hazardous Materials Remediation Costs	600,000	0	600,000	200,000	800,000
16. Additional Services	50,000	0	50,000	0	50,000
17. DCM Reimbursable Subtotal	\$870,730	0	\$870,730	\$640,010	\$1,510,740
18. Total Contract Amount with SVERDRUP	\$5,200,000	\$1,190,000	\$6,390,000	\$35,123,000	\$41,513,000

(1) Will be increased when GMP is established and will be deducted from the Construction Cost Estimate, so no change in GMP will occur.

EXHIBIT 2.1.2
Construction Schedule

DCM Services for the
San Diego Ballpark Infrastructure Project

<u>Activity</u>	<u>Start</u>	<u>Finish</u>
<u>GENERAL PROJECT</u>		
Data Collection/Coordination	27-Jul-99	30-Nov-99
Project Management Plan/Procedures	01-Jul-99	30-Nov-99
<u>DESIGN</u>		
Site Surveys/Investigation	01-Jun-99	31-Dec-99
Early Demolition Contracts	27-Jul-99	15-Dec-99
Remaining Demolition Contracts	01-Feb-00	30-Jun-00
Schematic Design for GMP Preparation	27-Jul-99	01-Feb-00
Preparation of GMP Submittal	15-Jan-00	01-Mar-00
Parking Structure Schematic Design	15-Dec-99	31-Jan-00
Prepare Parking Garage D/B Package	31-Jan-00	28-Feb-00
Procure Parking Garage D/B Subcontractor	01-Sep-99	30-Apr-00
Design Development for Parking Garage	07-Nov-99	15-Jul-00
Phase II Water & Sewer Design	01-Feb-00	01-Aug-00
Design of Streets/Streetscape/Plaza	01-Feb-00	30-Nov-00

Surface Parking Design	30-Mar-00	15-Nov-00
<u>DEMOLITION</u>		
Phase I	15-Dec-99	15-Mar-00
Phase II	03-Apr-00	31-Aug-00
<u>CONSTRUCTION</u>		
Phase I Water/Sewer	15-Dec-99	15-Jun-00
Phase II Water/Sewer	10-Dec-00	10-Jun-01
Parking Structure	10-Aug-00	30-Jun-01
Roadway/Streetscape Improvements	02-Nov-00	30-Dec-01

LIST OF GEOTECHNICAL REPORTS AND DOCUMENTS

1. August 1994, Woodward-Clyde Report, "Report of Fault Hazard Investigation for the Entertainment and Sport Center, San Diego, CA"
2. July 1995, Woodward-Clyde Report, "Geotechnical Investigation San Diego Convention Center, San Diego CA"
3. June 9, 1997, Woodward-Clyde Report, "Preliminary Fault Hazard Investigation Multi-Block Area of Downtown San Diego, San Diego, CA"
4. June 23, 1998, Woodward-Clyde Report, "Phase One Geotechnical Investigation A Ballpark for San Diego East Village Downtown San Diego"

SCOPE OF SERVICES

EXHIBIT 6.1

Services required of the DCM include those during design, bidding, construction, and operations/startup of the Project. The DCM shall provide all management, supervision, labor, services, equipment, tools, supplies, and any other item of every kind and description required for a comprehensive design and construction management program, including establishing a Guaranteed Maximum Price (GMP). The timing of the GMP will be a minimum 120 days prior to the start of any construction or excavation of existing streets other than demolition of existing buildings or the procurement of any long lead item or March 1, 2000, whichever is earlier.

6.1 Design Phase Services - DCM shall:

6.1.1 Develop and Implement a Project Management Plan and Procedures which includes, at a minimum:

- 6.1.1.1 Monthly Project status reports
- 6.1.1.2 Coordination/interface with the City Ballpark designers, CCDC, and its other consultants/contractors
- 6.1.1.3 Progress meetings
- 6.1.1.4 Interface and communications with other agencies
- 6.1.1.5 Vendors and subcontractors management
- 6.1.1.6 Document control
- 6.1.1.7 Schedule and budget control
- 6.1.1.8 Quality assurance and quality control

6.1.2 Participate with City, CCDC, Ballpark designers and others, as directed by City to review a Ballpark District Urban Design Theme and to develop estimates of the costs to implement it within the Project.

6.1.3 Review soils and geotechnical reports relating to the Project Site as referenced in Exhibit 6.1.3 of this Scope of Services.

- 6.1.3.1 Provide site surveys and geotechnical investigations to the extent necessary for final design. Geotechnical and survey information to be provided by the City will be of preliminary nature and will not have sufficient accuracy or scope to support final design.

6.1.4 Review City's Design Criteria and Requirements Program ("Criteria") to ascertain Project requirements and review such requirements with City. Design and construction must be in accordance with the Criteria unless specifically approved in writing by the City. The City has the sole responsibility of determining whether the design or construction of the Project meets the Criteria. Prepare Construction Documents appropriate for soliciting competitive bids or self-performance as approved by the City.

6.1.5 Utilizing the City required City of San Diego Standard Drawings (Document #769332, filed May 2, 1997):

6.1.5.1 Complete the design for all elements of the Project, including but not limited to: landscape, civil, structural, traffic, architectural, mechanical; electrical, and instrumentation.

6.1.5.1.1 30% Schematic design as necessary to establish the GMP. This includes:

Conceptual drawings and scoping documents for the parking garage

Design drawings and preliminary cost estimates for street improvements, surface parking lots, Phase 2 water/sewer, and railroad crossing design including grade crossing signal system, turnout modifications, and relocation of catenary poles

Supporting design reports for drainage, SWPPP, dust, noise, air pollution control, potholing and geotechnical investigations,

Plan for traffic control, safety, and hazardous material management

6.1.5.1.2 Parking structure plans and specifications as appropriate to secure Design/Build subcontractor.

6.1.5.1.3 Prepare contract drawings and specifications suitable for obtaining competitive construction

contractor bids for all Work not approved by City for self performance. Packaging of the Project into several construction contracts, including the possibility of prepurchase contracts, may be required. Preparation of technical materials and equipment specifications for prepurchase will be the responsibility of the DCM. Additionally, the DCM may utilize job order contracts as a method of contracting.

Construction documents will be prepared for:

Street improvements, demolition, landscaping, Funding Phase 2 Utilities, traffic signals, surface parking, street resurfacing

- 6.1.5.2 Evaluate alternative design and construction approaches for all facilities to ensure economical designs which optimize constructability yet meet all codes, conceptual designs, and standard specifications of the Project.
- 6.1.5.3 Research all Air Pollution Control District and noise abatement requirements, along with any hazardous materials management requirements of San Diego County Department of Environmental Health, National Fire Prevention Association ("NFPA"), Cal-OSHA and the City Fire Department. The DCM shall develop a air pollution control plan, a noise abatement plan and a hazardous materials management plan.
- 6.1.5.4 Submit the application for Storm Water Pollution Prevention Plan to the appropriate authority. If required, incorporate appropriate facilities in the design.
- 6.1.5.5 Process water, wastewater, and sewer construction drawings provided by the City and obtain necessary permits. Incorporate into bid documents.
- 6.1.6 Be responsible for procuring all surveying services, as may be required for design and construction. All construction surveying services shall be provided by a California licensed land surveyor or

a registered civil engineer licensed to practice land surveying. Among the services provided by the construction surveyor is the establishment of a baseline and a bench mark for construction.

- 6.1.7 Attend coordination meetings, not more frequently than weekly, with Ballpark Team and City as required.
- 6.1.8 Determine and establish the sequence of construction, and if appropriate, identify separate bid packages to accomplish construction of the Project in compliance with Funding Phases.
- 6.1.9 Prepare a detailed Critical Path Method schedule for Construction Phase of the Project utilizing PRIMAVERA software, showing all major Milestones, bid dates for the major bid packages, commencement of construction, sequence of construction, completion of major Project elements, all of which shall conform with the dates of Substantial Completion and Final Completion of the Project.
- 6.1.10 Conduct value engineering ("VE") studies at two different times during the design phase. Review VE recommendations and furnish recommendation to the City regarding acceptance or rejection of VE recommendations. Incorporate accepted VE recommendations.
- 6.1.11 Conduct a constructability review at the 75 percent design completion stage. Incorporate results of this review into the design.
- 6.1.12 In a format acceptable to the City, provide construction cost estimates at three intervals agreed upon by the Parties during the design to support VE and constructability reviews. Revise these estimates once accepted VE recommendations and other review comments have been incorporated. Provide final opinion of probable construction cost prior to bid advertisement.
- 6.1.13 Identify all permit requirements and prepare applications and support documents necessary for obtaining all permits. Permit fees will be paid by the City as a Reimbursable Cost. Also, furnish preliminary title reports from a City-Approved title agency, prepare field survey map (including, but not limited to, street right-of-way and boundary maps) and legal descriptions, and perform all Work necessary to satisfy application requirements of the City Property Department.

- 6.1.14 Review the Construction Documents with the governmental authorities having jurisdiction over the Project whenever required or appropriate.
- 6.1.15 Notify City within five (5) working days in writing whenever DCM reasonably believes that the cost of the Project is likely to exceed GMP and include in said notice:
 - 6.1.15.1 An itemized cost breakdown estimate;
 - 6.1.15.2 Develop recommended revisions to Project scope, design criteria, and/or Construction Schedule and provide cost estimates for changes which DCM believes will bring Project within the GMP;
 - 6.1.15.3 Assist City 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
- 6.1.16 Provide a master accounting system and matrix on Quatro Pro or equivalent software that will be updated, expanded and provided to the City monthly as the Project develops.
- 6.1.17 Submit Construction Documents to the City for plan check, pay all fees and costs associated with plan check submittal, and make any changes therein as said department may lawfully require. Obtain and pay for, as a Reimbursable Cost, plan check fees general building permit and all ancillary permits and licenses, including but not limited to demolition permits and grading permits;
- 6.1.18 Cause the appropriate professionals to stamp and sign as required the original Construction Documents or parts thereof and coordinate the design with utility companies;
- 6.1.19 Prepare a detailed description of all necessary procedures and methods, including a detailed description of the quality control program, to be utilized by DCM in performing its services under the Construction Phase of this Agreement ("Construction Management Plan") Procedure shall include a City approved plan to either engage contractors trained and experienced in identifying and removing soils containing hazardous materials, develop a training program for personnel excavating soils, or engage qualified hazardous material consultant/technician to observe excavation and

identify soils and other materials requiring transport to remediation stockpile site.

- 6.1.20 City and DCM may mutually agree in writing that DCM may contract for or perform certain Construction Phase Services during Design Phase to expedite completion of the Project, for such tasks as, for example, demolition, destructive testing, soil testing, relocation of utilities, and other critical path activities to meet the Schedule. However, absent such written agreement, DCM shall not proceed with any Construction Phase services until the City issues a written Notice to Proceed with Construction Phase.
- 6.1.21 Throughout the Design Phase, the DCM will provide scheduling and cost control reports.
- 6.1.22 During Design or Construction Phase, the DCM shall record the location by dimension, and the depth, by elevation, of all underground lines, valves, plugged tees, capped ends, etc. It shall be recorded, by dimension and/or scale drawings, all wiring, conduits, and pull boxes as actually installed.
- 6.1.23 When completed, the DCM shall submit one (1) complete set of mylars, stamped by the architect or engineer of record and five (5) blueprint copies or one (1) CADD file as specified by City.

6.2 Bidding Phase Services

- 6.2.1 Prepare all necessary documents for bidding Work, not approved by City for self-performance, which shall include at least:
 - 6.2.1.1 Instructions to bidders;
 - 6.2.1.2 General and special conditions;
 - 6.2.1.3 Form of bid;
 - 6.2.1.4 Form of bonds.
- 6.2.2 Prepare and submit to City for review separate bid packages as DCM determines appropriate to enable the construction of the Project to proceed in an efficient and cost effective manner and to encourage LSB/MBE/WBE/DME/DBE/DBVE participation;

- 6.2.3 Advertise and conduct competitive bidding for the respective bid packages, after City's review, in accordance with Section 4 of the Agreement;
- 6.2.4 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;
- 6.2.5 Respond to all questions during the Bidding Phase. Conduct pre-bid conferences. Prepare addenda and prepare written responses to bidders' questions. Review bids and information submitted with the bids for compliance with bid, Equal Opportunity Contracting Program (EOCP) requirements.
- 6.2.6 Prepare bid evaluation tables and deliver award level drawings incorporating all addenda. Conduct pre-construction conference(s) for the successful bidder(s).
- 6.2.7 Analyze all bids and award contracts to the lowest responsible and reliable bidder. Update and expand itemized cost breakdown estimate described in Exhibit 1.3.2 and provide bid breakdown at a minimum to each trade involved, sufficient for the purpose of progress billing for construction.
- 6.2.8 Execute contracts, in DCM's own name, with the lowest responsible and reliable bidder unless an alternative procedure is approved by City for individual contracts.
- 6.2.9 City may require that this Project satisfy the competitive bidding requirements set forth in the Charter and Municipal Code of the City of San Diego in which case the DCM shall act as the agent of City for the limited purpose of conducting the competitive bidding in accordance with said Charter and Municipal Code. In all other capacities it is understood that DCM shall be an independent contractor under this Agreement and that any other reference to "agent" of City in this Agreement does not include or refer to DCM. DCM shall be responsible for competitively bidding construction Work to others and for entering into contracts, in DCM's own name, with the lowest responsible and reliable bidder in the best interest of the City, and, provided that DCM has fully complied in good faith with the competitive bidding required, shall be held harmless from any

expense or delays resulting from bid protests or challenges resulting therefrom. DCM shall be responsible for ensuring that these contracts fully comply with all applicable local, state and federal laws and regulations.

6.2.10 DCM, its subsidiaries, related entities, and its design and professional consultants may self-perform actual construction Work with their own forces on the Project, with written authorization from the City, should it be in the best interest of the City with respect to cost and schedule.

6.3 Construction Phase Services

After City formally approves Construction Documents, Construction Schedule, GMP and the Construction Management Program, City shall issue to DCM a written Notice to Proceed with Construction Phase. DCM's Services in Construction Phase shall include but are not limited to construction management and administrative Services during the construction of the Project. The DCM shall be responsible for complete management, supervision and reporting of all aspects of construction of the Project that will include but not be limited to the following:

- 6.3.1 Perform all obligations set forth in DCM's Construction Management Program;
- 6.3.2 Provide administration and coordination of the Services provided in Construction Phase;
- 6.3.3 Provide estimating and value engineering Services throughout Construction Phase;
- 6.3.4 Be responsible for and coordinate all construction means, methods, techniques, sequences and procedures;
- 6.3.5 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. Monitor and report monthly to the City on actual performance compared to the Construction Schedule;
- 6.3.6 Give all notices and comply with laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project;

- 6.3.7 Provide timely review and approval of shop drawings, samples of construction materials, product data, Schedule submittals, and other submittal for compliance with the Construction Documents; keep City advised of all such matters being reviewed and approved by DCM;
- 6.3.8 Issue responses to Requests for Information, substitution requests, and Change Order requests. Provide City with copy of all correspondence within one business day of receipt. Conduct weekly review meetings with City to discuss these items;
- 6.3.9 The DCM shall develop, implement and manage a Construction Phase Construction Quality Assurance/Quality Control (QA/QC) Plan submitted to and approved by the City. The Plan shall include but not be limited to;
 - 6.3.9.1 a statement and definition of QA/QC goals;
 - 6.3.9.2 an identification of QA/QC criteria and elements;
 - 6.3.9.3 development of the Project QA/QC implementation plan;
 - 6.3.9.4 development of the QA/QC materials, components, equipment and system testing plans;
 - 6.3.9.5 enforcement of the plans and specifications; and,
 - 6.3.9.6 an independent testing agency.
- 6.3.10 Direct, and coordinate all required Special Inspections in such a manner that the progress of construction is not affected or impacted;
- 6.3.11 Correct any Work which does not conform to the Construction Documents;
- 6.3.12 Keep City informed of the progress and quality of the construction of the Project;
- 6.3.13 Pay royalties and license fees. DCM shall defend suits or claims for infringement of patent rights and shall defend and hold City harmless from loss on account thereof, except that City shall be responsible for such loss when a particular design, process or

product of a particular manufacturer is required by City. However, if DCM has reason to believe the use of a required design, process or product is an infringement of a patent, DCM shall be responsible for such loss unless such information is promptly given to City in writing;

- 6.3.14 Ensure Project is maintained in a clean, neat, sanitary and safe condition free from accumulation of waste materials or rubbish. Prior to Final Completion, DCM shall cause to be removed from and about the Project all tools, construction equipment, machinery, surplus materials, waste materials and rubbish;
- 6.3.15 Establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site;
- 6.3.16 Develop a mutually agreed upon program to abate and minimize noise, dust, and disruption to access for parking and services at all times for adjacent business entities;
- 6.3.17 Establish and monitor procedures to control on-site noise, dust and pollution during construction;
- 6.3.18 Provide City with a current detailed Construction Schedule on PRIMAVERA software within ten (10) working days after receiving notice to proceed with Construction Phase, provide updated versions of Schedule on a monthly basis, and provide immediate notice of any impact on critical path items;
- 6.3.19 Provide office space contiguous to DCM space and required utilities for two City staffmembers and Special Inspectors;
- 6.3.20 Review payment requests from all Contractors, material suppliers and others in contractual privity with DCM prior to including any such payment requests in DCM's certificate and application for payment to City;
- 6.3.21 Conduct and prepare minutes for weekly Project team meetings with City and appropriate design and construction team representatives;
- 6.3.22 Maintain a complete and up-to-date set of Construction Documents in the Project field office at all times during construction which reflect all changes and modifications, and at the end of construction

prepare for City a complete set of Project documents, along with one reproducible set of drawings depicting as-built conditions for Project;

- 6.3.23 Notify City in writing when DCM believes that the Project has achieved Substantial Completion, participate with City in inspecting the completed construction, prepare punchlists, and cause the punchlist items to be performed and/or corrected in accordance with the Construction Documents;
- 6.3.24 Assemble and deliver to City upon Final Completion all records, documents, warranties, bonds, guarantees, maintenance/ service contracts, and maintenance and operating manuals;
- 6.3.25 Notify City in writing when DCM believes that the Project has achieved Final Completion.
- 6.3.26 Establish a cost reduction and shared savings program with subcontractors and design engineers, that implements, and is consistent with the Project Cost Reduction Incentive provisions set forth in Section 17 of the Agreement.
- 6.3.27 Unless the DCM receives the City's prior approval to substitute equal or better quality materials, the DCM warrants to City that materials and equipment incorporated in the Project will be new, unless otherwise specified, and that the Project will be of good quality, free from faults and defects, and in strict conformance with the Construction Documents and in accordance with Section 23.
- 6.3.28 Cost Tracking, Control and Reporting
 - 6.3.28.1 Manage all construction activity costs.
 - 6.3.28.2 Report construction costs to the City in a manner consistent with the City-wide reporting system.
 - 6.3.28.3 Develop a Project-specific Plan for defining, tracking and reporting cash flow activity requirements and submit such plan to the City for review and approval prior to implementation.
 - 6.3.28.4 Develop a detailed cost accounting procedure to identify and capture all applicable sales and use taxes paid for Work performed on this Project and to report the results to City accurately.

6.3.29 Construction Site Security

6.3.29.1 Provide all security as needed at the construction site.

6.3.30 Change Orders

6.3.30.1 Develop a Project-specific Change Order Administration Plan ("COA Plan") for review and approval of the City. Upon written approval of the COA Plan by the City, the DCM shall initiate implementation.

6.3.30.2 The COA Plan shall define the required Change Order procedures, including requirements for requesting, developing, approving, recording, and filing.

6.3.30.3. The COA Plan shall define the procedure by which the Change Order information is distributed to all affected parties.

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

6.3.30.5 The COA Plan shall include a flow chart with procedures and duration of each step.

6.3.31 Construction Records Management/Document Control

6.3.31.1 Implement and maintain an internal records management and document control system as required to support Project operations and in a manner consistent with the City-wide reporting system.

6.3.32 Claims and Mitigation Management

6.3.32.1 Develop, submit for City's written approval, and implement a comprehensive Claims and Dispute Management Plan ("CDM").

6.3.32.2 The CDM Plan shall include a claims mitigation plan which shall be updated at regular intervals to incorporate changing conditions.

6.3.32.3 Report a record of construction claims, including the Request for Claims (RFC) from the Contractor, action taken on the RFC, and final resolution of the RFC, to the City in a manner consistent with the City-wide reporting system.

6.3.33 Materials Management

6.3.33.1 Purchasing support

6.3.33.2 Expediting

6.3.33.3 Receiving

6.3.33.4 Warehousing, maintenance and security

6.3.33.5 Issuing

6.3.33.6 Construction accounting/invoice review

6.3.34 Environmental Mitigation, Monitoring, and Reporting

6.3.34.1 Administer and enforce the Environmental Mitigation Monitoring and Reporting Plan provided by the City for the Project.

6.3.34.2 Report environmental issues to the City in a manner consistent with the City-wide reporting system.

6.3.34.3 At City direction, Remove, transport and upon receiving City direction to do so, properly dispose of soil and subsurface materials determined or believed to be hazardous or contaminated in accordance with the Mitigation Monitoring Plan to a staging area, provided by the City, that will be located within one mile of the site.

6.3.34.4 Other materials encountered during the demolition of buildings (including basements) which are determined to be hazardous shall be removed, transported and disposed of in accordance with the Mitigation Monitoring Plan. These additional obligations of disposal do not extend to any material determined to be hazardous which is not a fixture or real property.

- 6.3.34.5 Log the source location of all materials removed in 6.3.34.3 with an accuracy of ten (10) feet relative to identifiable curblines and streets and locate these source locations on the survey drawing depicting property lines prior to street vacation or lot consolidation. Reports will be provided weekly.
- 6.3.34.6 Maintain documentation by parcel of quantity of materials removed and hours of work and invoice separately by parcel.
- 6.3.35 Provide labor relations for the entire Project.
- 6.3.36 If so directed by the City, assist in developing and negotiating labor agreements for the entire Project.
- 6.3.37 Construct Downtown Sewer and Water Enhancements per Phase 1 Relocation Plans.
- 6.3.38 The DCM will develop a plan for the de-construction (salvage) and recycling of onsite demolition materials for Phase 2.
 - 6.3.38.1 Schedule permitting, the DCM will seek to recycle demolition materials for use onsite and for salvage and reuse offsite to minimize impact to area landfills.
 - 6.3.38.2 The DCM will seek to process and crush demolished concrete, sidewalks, roads, curbs, buildings, and foundations for use as crushed aggregate base and fill beneath buildings, roads, sidewalks, and parking lots or for use offsite. The recycling sites will be selected, as needed, within one mile of the project or on surface parking lots P6 through P8, B2, B3, D1 or D2.
 - 6.3.38.3 The DCM will develop alternate specification wording permitting the use of recycled non-hazardous concrete, brick, asphalt, base and stone material in the work.

6.4 Operations/Start-Up Phase Services

- 6.4.1 The DCM shall prepare, submit for City written approval, and implement a Project Startup and Testing Plan for the Project.
 - 6.4.1.1 The DCM shall supervise, manage, and coordinate all Project startup and testing activities in accordance with the provisions of the Project Construction Documents.

- 6.4.1.2 The DCM shall report progress of Project startup and testing to the City in a manner consistent with the City-wide reporting system.
- 6.4.2 The DCM shall report to the City all guarantee/warranty disputes. The DCM shall proceed to resolve such disputes after having submitted to the City for review and approval the DCM's approach for obtaining resolution for the dispute.
- 6.4.3 The DCM shall remove all materials and equipment from the Project Site as soon as they are no longer necessary. Upon completion of the Work and before final inspection, the entire Project Site shall be cleared of equipment, unused materials and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be included in the GMP.
- 6.4.3.1 The DCM shall remove excess excavated material not requiring mediation shall be removed from the Project Site. Sufficient material may remain for use as backfill if required and permitted by the City. Forms and form lumber shall be removed from the Project Site as soon as practicable after stripping. All excess excavation material, demolition material or other spoil that is removed from the Project Site, is to be disposed of in an approved City or County sanitary fill unless otherwise approved by the City. As a condition of final payment, the DCM shall submit a signed and notarized affidavit stating that all brush, demolition material, trash, debris, and surplus materials resulting from this Project have been disposed of in a legal manner. Disposal of refuse generated as a result of this Agreement at City landfills is subject to a fee. The cost of disposing of this refuse is included in the GMP.
- 6.4.3.2 Earth dams will not be permitted at the Project Site except in time of emergency. Temporary dams of sand bags, asphaltic concrete, or other acceptable material may be permitted when necessary to protect the Work, provided their use does not create a hazard or nuisance to the public. Such dams shall be removed from the Project Site as soon as their use is no longer necessary.

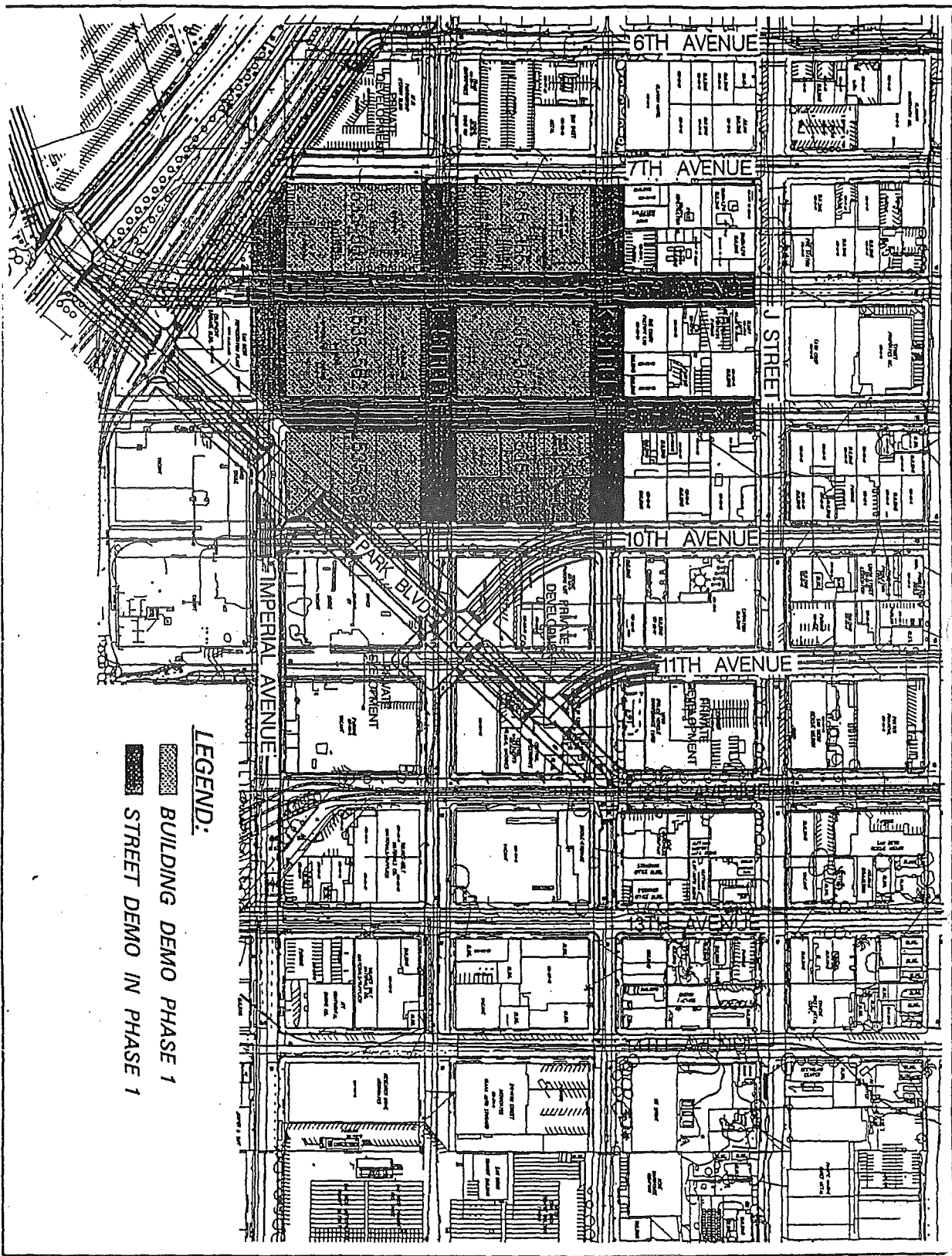
Exhibit 6.1 A

Funding Phase One for Scope of Services

DCM shall complete the following components of the Project by February 29, 2000 for Funding Phase One:

1. As to the areas and parcels specified in the map attached, and incorporated herein by this reference, to this Exhibit (Attachment 1), complete the Design, Bidding, and Construction Phases of work set forth in Exhibit 6.1.
2. Complete Section 6.3.37 of Exhibit 6.1.
3. Prepare 30% design development drawings for the entire Project, except the parking structure, as specified in the Design Phase of Exhibit 6.1.
4. For the parking structure, prepare construction documents, as specified in the Design and Bidding Phases of Exhibit 6.1.
5. Prepare and submit final GMP.
6. Prepare and submit final detailed Construction Schedule and prepare subcontracting package plan pursuant to Section 6.1.5.1.3 of Exhibit 6.1.

EXHIBIT 6.1A ATTACHMENT 1



PRELIMINARY PROVISIONS FOR PROJECT PROCEDURES MANUAL

EXHIBIT 6.8

1. Product Samples

1.1 The DCM shall submit to the City for review and concurrence samples as specifically required by the Construction Documents. Samples submitted to the City shall be pieces of the actual item which illustrate the actual materials, equipment, or workmanship and establish the standards by which the Work shall be judged. Photographic reproductions are not acceptable. Each sample shall be clearly labeled or permanently tagged as to manufacturer, product name, model, and style, and reference to the applicable section and/or paragraph of the performance specification.

1.2 Paint samples shall be nominally 8" x 10" and no larger than 8 1/2" x 11", field samples excepted. Opaque paint samples (brushouts) shall be presented on stiff cardboard. Corrugated paper box cardboard is not acceptable. Transparent or semi-transparent paint samples shall be presented on pieces of actual substrate. Each sample shall be clearly labeled or permanently tagged as to manufacturer, product name, number, and color name; and reference to the applicable section and/or paragraph of the Construction Documents.

1.3 Field samples shall be prepared as required under this Section. The sample may be prepared on the same day that affected Work is scheduled. No delay will be granted to the DCM for reasons of the City's rejection of any sample.

1.4 Materials and equipment incorporated in the Work shall match the samples as approved by the City.

1.5 Samples of various material or equipment delivered to the Project Site or in place may be taken by the City for testing. Samples failing to meet the requirements of the Construction Documents shall automatically void previous approvals of the items tested. The DCM shall replace such materials or equipment found not to have met the requirements of the Construction Documents or, if acceptable to the City, there may be a proper adjustment of the Contract Amount, as appropriate.

2. Inspection

2.1 The DCM (or City, to be determined) shall be responsible for Special Inspection as required and defined in the prevailing Uniform Building Code (U.B.C.), Section 306, as adopted by the City. The City shall designate an inspection representative(s) for the DCM to contact for other inspections. It shall be the responsibility of the DCM, to call for, coordinate and schedule all inspections.

- 2.1.1 Each Special Inspector shall be certified by the Development Services Department of the City prior to performing any duties. Special Inspectors shall carry approved identification, as stipulated by the Development Services Department, when performing the function of a Special Inspector. Special Inspections are to be continuous. Intermittent or Periodical Special Inspections are not acceptable.
- 2.1.2 The following are the DCM's responsibilities:
- 2.1.2.1 The Special Inspector shall be notified one (1) working day prior to performing any Work that requires Special inspection and shall review the Construction Documents and perform any necessary preparatory Work at the Project Site.
 - 2.1.2.2 The DCM shall provide the Special Inspector access to approved plans and specifications at the Project Site.
 - 2.1.2.3 The DCM shall retain at the Project Site all Special Inspection records submitted by the Special Inspector and providing these records for review by the City's Inspector upon request.
 - 2.1.2.4 The DCM shall not perform any Work that requires Special Inspection without the presence of the Special Inspector(s) during the performance of that Work.
 - 2.1.2.5 The final inspection of the Project may not be scheduled until all reports documenting the Special Inspection Work have been submitted and approved by the City.
 - 2.1.2.6 Work requiring Special Inspection should be continuous inspection and any performed without continuous Special Inspection is subject to removal.
 - 2.1.2.7 The DCM shall employ a sufficient number of Special Inspectors to assure inspection of all Work requiring Special Inspection without hindering the progress of the Work.
 - 2.1.2.8 To the extent that it is possible, the same Special Inspectors shall be employed during the construction of the Project.
 - 2.1.2.9 Upon completion of Work requiring Special Inspection, the DCM shall submit to the City all Special Inspection reports that certify that the Work requiring Special Inspection has

been completed in accordance with the Bid Plans and Specifications, and the U.B.C.

- 2.1.3 The Special Inspector is NOT AUTHORIZED to do any of the following:
- 2.1.3.1 To inspect or approve any Work for which a building permit has not been issued;
 - 2.1.3.2 To inspect or approve any Work before the Development Services Department has made the Initial Inspection. Deviations from this procedure must be requested in writing from the Development Services Department;
 - 2.1.3.3 To inspect or approve any Work other than that for which he or she is specifically certified; or
 - 2.1.3.4 To accept alternate materials, structural changes, or revisions to Bid Plans and Specifications.
- 2.1.4 The Special Inspector shall observe the Work for conformance with the Development Services Department approved (stamped) design drawings and specifications and applicable workmanship provisions of the U.B.C. City reviewed shop drawings and/or placing drawings may be used only as an aid to inspection. Special Inspections are to be performed on a continuous basis, meaning that the Special Inspector is on the Project Site, in the general area, at all times observing the Work requiring Special Inspection. Periodic inspections are not acceptable.
- 2.1.5 The Special Inspector shall bring nonconforming items to the immediate attention of the DCM and the City and note all such items in the daily report. If any item is not resolved in a timely manner or is about to be incorporated in the Work the Special Inspector shall immediately notify the Development Services Department by telephone or in person, notify the City, and post a discrepancy notice.
- 2.1.6 On request, each Special Inspector shall complete and sign both the Special Inspection record and the daily report form for each day's inspections to remain at the Project Site with the DCM for review by the City.
- 2.1.7 The Special Inspector or inspection agency shall furnish weekly reports of tests and inspections directly to the City. These reports must include the following:

- 2.1.7.1 A description of daily inspections and tests made with applicable locations;
 - 2.1.7.2 A listing of all nonconforming items;
 - 2.1.7.3 A report on how nonconforming items were resolved or unresolved as applicable; and
 - 2.1.7.4 A list of itemized changes authorized by the City if not included in nonconformance items.
- 2.1.8 The Special Inspector shall submit a final signed report to the City stating that all Work and materials requiring Special Inspection and testing were inspected, tested and reported and, to the best of his/her knowledge, is in conformance with the Construction Documents and the applicable workmanship provisions of the U.B.C. Items not in conformance, unresolved items or any discrepancies in inspection coverage (i.e., missed inspections, periodic inspections when continuous was required, etc.) Shall be specifically itemized in this report. Final inspection of the structure will not be scheduled until the final report for all Work items requiring Special Inspection have been reviewed and approved by the City and Development Services Department.

2.2 Before incorporation in the Work, the DCM shall submit samples of materials, as the City may require, at no cost to the City. The DCM, at its own expense, shall deliver the materials for testing to the place and at the time designated by the City. Unless otherwise provided, all initial testing and a reasonable amount of retesting shall be performed under the direction of the City, and at no expense to the City.

- 2.2.1 The DCM shall notify the City in writing at least fifteen (15) working days in advance of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material.
- 2.2.2 If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the job, it shall be the DCM's responsibility to re-notify the City when samples which are representative may be obtained.
- 2.2.3 It is the intent of the Parties to this Agreement to permit the DCM to supply any of the materials specified or offer an equivalent. The City shall determine whether the material offered is equivalent to that specified. Adequate time shall be allowed for the City to make this determination.

2.3 Whenever any particular material, process, or equipment is indicated by patent, proprietary or brand name, or by name of manufacturer, such wording is used for the purpose of facilitating its description and shall be deemed to be followed by the words "or equal." A listing of materials is not intended to be comprehensive, or in order of preference. The DCM may offer any material, process, or equipment considered equivalent to that indicated.

2.3.1 The DCM shall, at its expense, furnish data concerning items offered by it as equivalent to those specified. The DCM shall have the material tested as required by the City to determine that the quality, strength, physical, chemical, or other characteristics, including durability, finish efficiency, dimensions, service, and suitability are such that the item will fulfill its intended function.

2.3.2 Test methods shall be subject to the approval of the City. Test results shall be reported promptly to the City, who will evaluate the results and determine if the substitute item is equivalent. The City's findings shall be final. Installation and use of a substitute item shall not be made until approved by the City.

2.3.3 If a substitute offered by the DCM is not found to be equal to the specified material, the DCM shall furnish and install the specified materials.

2.3.4 The Contract Time shall not be affected by any circumstance developing from the provision of this Section.

2.4 All scales used for proportioning materials shall be inspected for accuracy and certified within three hundred and sixty-five (365) calendar days prior to their use on the Project by the State of California Bureau of Weights and Measures, by a scale mechanic registered with or licensed by the County.

2.4.1 The accuracy of the Work of a scale service agency, except as stated herein, shall meet the standards of the California Business and Professions Code and the California Administrative Code pertaining to weighing devices. A certificate of compliance shall be presented, prior to operation, to the City for approval and shall be renewed whenever required by the City at no cost to the City. All scales shall be so arranged that they may be read easily from the operator's platform or area. They shall indicate the true net weight without the application of any factor. The figures of the scales shall be clearly legible. Scales shall be accurate to within one percent (1%) when tested with the plant shut down. Weighing equipment shall be so insulated against vibration or moving of other operating equipment in the plant area that the error in weighing with the entire plant running will not exceed two percent (2%) for any setting on or one and one-half percent (1-½%) for any batch.

3. Safety and Health Requirements

3.1 Scope

- 3.1.1 These Safety requirements apply to all personnel and companies working on any Project related to a City of San Diego Ballpark Infrastructure Projects (BIP) under control of or contract to the DCM. All Parties are required to comply with these requirements, applicable Ballpark Health and Safety procedures and CAL/OSHA Title 8 in full, including Section 3203. of the California Code of Regulations.
- 3.1.2 The OCIP Construction program safety and health plan - The BIP Construction Safety Manager has prepared, for the Owner, an Owner Controlled Insurance (OCIP) Construction Program Safety and Health plan. The purpose of the plan is to set forth basic responsibilities, guidelines, rules and regulations for all personnel involved in the construction of various City Construction Projects covered under the OCIP. The plan does not cover, and is not intended to cover, the full spectrum of the published safety and health standards which are mandated by law. In the event of a conflict between the provision of this program manual and applicable local, state or federal safety and health laws, regulations and/or standards, or the contract documents the more stringent shall apply.

3.2 Goals

- 3.2.1 The goal of the Safety effort is to establish superior safety performance on the BIP and to define roles, responsibilities, programs, policies and procedures to accomplish this goal. All Parties shall implement measures to develop an acute awareness that shall promote error-free performance at the Project sites and facilitate achieving contract objectives in the safest manner possible.
- 3.2.2 The goal is to construct each Project with ZERO accidents, totally free from Incidents. This goal can only be achieved when everyone commits to error-free performance. The commitment to achieve this goal will result in increased productivity and the prevention of job related losses.

3.3 Definitions as related to

“ ” - Words in quotation shall have the meaning as set forth in OSHA regulations.

ANSI - American National Standards Institute

CAL/OSHA - California Occupational Safety and Health Administration

BIP - Ballpark Infrastructure Project

Competent Person(s) - One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

DCM - Design Construction Management firm who is a party to the Agreement to design and construction the BIP.

BIP Safety Manager - BIP staff member charged with the responsibility for monitoring, auditing, enforcing, coordinating and administering the Safety Program.

Contractor - Any person or entity with whom the DCM or City contracts or subcontracts for construction of the Project.

DAW - Day Away From Work.

DAW Days Incidence Rate - The number of days away from work x 200,000 / number of man-hours.

Emergency Action Plan - Written plan prepared by the Contractor to describe the various response activities that take place in the event of emergency. Typical plans would include but not be limited to fire, explosions, chemical releases, natural disasters and civil disruptions.

EMR - Experience Modification Rate. The amount a firm pays for one dollar's worth of insurance.

Fall Protection Plan - OSHA required written plan describing a firm's fall protection requirements for specific tasks.

First Aid Case - Any personal injury that does not require more than first aid, i.e, scratch, dust in eye, minor bruise et al.

Incident - Any personal injury, property damage, near miss, security breach, environmental or other business interruption associated with BIP Projects.

Job Task Analysis - A method of analyzing the steps of a task, identifying associated hazards and inserting control measures to prevent an Incident.

LWD - Lost Work Day

LWD Cases - The number of cases where the employee would have worked but could not because of a work-related illness/injury; or the number of recordable cases on which, because of an injury or illness: (1) the employee was assigned to other duties on a

temporary basis; or (2) the employee worked less than full time; or (3) the employee worked at his/her assigned function but could not perform all duties connected with it.

LWD Cases Incidence Rate Formula - Number of Lost Workday Cases x 200,000 / number of manhours.

Medical/Emergency Medical Plan - Written plan prepared by the Contractor to describe actions to take when a person is injured and requires either routine medical treatment or emergency medical response.

Number of DAW Days - The number of days away from work (consecutive or not); the number of workdays away from work does not include the day of the injury or onset of illness or any days on which the employee would not have worked even though able to work.

OCIP - Owner Controlled Insurance Program, administered by OCIP Risk Manager.

OSHA - Occupational Safety and Health Administration

Party - Any person or company working on a BIP Project.

Personal Protective Equipment - Equipment worn by employees as barriers to adverse environmental conditions.

Process Safety Management - OSHA regulation that specifies safety requirements for operating and maintaining systems that contain highly hazardous chemicals.

Project - Activity or undertaking identified in Scope of Services to this Agreement.

Project Manager - City employee with overall responsibility for the completion of the project.

Property Damage Incidents - Incidents that involve damage to equipment, material, tools, buildings or other physical assets.

Qualified Person(s) - One who, by possession of a recognized degree, certificate or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work or the Project.

Recordable Case - All work-related deaths and illnesses, and those work-related injuries which result in: Loss of consciousness, restriction of work or motion, transfer to other

duties, or require medical treatment beyond first aid. See the "Blue Book" document Office of Management and Budget, number 1220-0029.

Recordable Incidence Rate Formula - Number of Recordable Cases x 200,000 /number of manhours.

Safety Program - Contractor Safety Management Program for the BIP.

Safety Performance Review - City internal review process to determine Contractor compliance with regulated documentation requirements, field safety conditions and employee knowledge of safety requirements.

Security Breach - Acts which result in losses related to theft of equipment or information, vandalism, trespassing et al.

Site Specific Safety, Health, Environmental Spill Control, Fire and Security Plan - A written plan prepared by the Contractor that details specific Project Site safety issues and assigns responsibility for control of those issues. Hereinafter referred to as the Safety Plan.

Subcontractor - Party contracting with a Contractor to perform work on a BIP project.

ZERO - A philosophical concept associated with the term "zero Incidents" meaning the BIP desire to have as few losses as possible.

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3.4 Responsibilities of the BIP Project Manager and staff include:

3.4.1 Demonstrate a serious, vigorous and persistent commitment to safety.

3.4.2 The BIP Project Manager is responsible for assuring that the requirements of this Safety Program are fulfilled. The City Project Manager and staff shall maintain continuous contact with affected operations personnel to ensure that lines of communication exist and that safety issues are resolved promptly.

- 3.4.3 When the Project Manager is absent from the job for any reason, transfer of responsibility must be made to another BIP staff member to assure that daily communication with BIP Construction Management and Contractors is not interrupted.
- 3.4.4 When pre-bid meetings are conducted, members of the BIP Project Manager, the Construction Safety Manager and the OCIP Risk Manager shall review applicable safety, health and insurance requirements with prospective bidders.
- 3.4.5 Review site safety performance, Contractor submitted hazard assessments and Job Task Analyses, at weekly construction review meetings.
- 3.4.6 Conduct periodic informal job site inspections to review party(ies) behavior regarding safety issues and Project site conditions.
- 3.4.7 BIP Project Manager shall inform their immediate BIP supervisor whenever an OSHA recordable Incident or property damage accident occurs on Projects for which they are responsible. (Exhibit 8)
- 3.4.8 BIP Project Manager and staff shall participate in training related to construction safety management concepts, an OSHA 10-hour course and others as required.
- 3.4.9 The DCM shall inform contractors at pre-bid meetings whether the Project will require a full time OSHA defined "Qualified" or "Competent" person.
- 3.4.10 Pre-mobilization Safety Review (see Exhibit 1). Prior to the start of each Project, a documented pre-mobilization safety review meeting shall be held by the responsible BIP Safety Manager and the DCM with Contractor(s) performing the work. Site specific Safety Plan requirements shall be reviewed. The review shall consist of at least the following:
 - 3.4.10.1 Activities expected to have a high potential for Incidents, i.e., heavy lifts, high work, trenching, scaffold erection, and tasks identified as hazardous and accompanied by a Contractor prepared Job Task Analysis:
 - 3.4.10.2 Any known potential fire, explosion, or toxic release hazards near, on or brought to the site.
 - 3.4.10.3 "Process Safety Management" & Facilities Operations review.

3.4.10.4 Applicable safe work practices, such as:

- lockout tag-out,
- confined space entry,
- hot work,
- crane safety,
- personal protective equipment,
- bloodborne pathogens,
- site access and control procedures,
- the location emergency action plan,
- material safety data sheets for existing Project site chemicals and chemicals brought to the Project site by the Contractor,
- The Contractor's medical emergency plan,
- Contractor's written fall protection plan,
- Contractor's "Site Specific Safety Plan,"
- Any unique hazards brought to the Project site by the Contractor,
- Names of "Competent and Qualified Persons" for scaffold erection, excavations, first aid and others as required by regulation.

3.4.11 On-site field orientation - Upon completion of the pre-mobilization review the DCM, the BIP Safety Manager, the Contractor and City (if applicable) representatives shall jointly conduct an on-site field orientation to review and discuss specific field and emergency procedures relevant to the area.

3.4.12 The DCM shall ensure that "Personal Protective Equipment" is available and being used properly by its employees.

- 3.5** Responsibilities of BIP Construction Safety Manager and staff (provided by the City) who are qualified safety professionals charged with the responsibility of monitoring, auditing, enforcing, coordinating and administering the Safety Program.
- 3.5.1 Expectation: BIP Construction Safety Manager and staff shall demonstrate a serious, vigorous and persistent commitment to safety.
 - 3.5.2 Review Contractor's written safety programs, policies and procedures for compliance with State and Federal regulations and the OCIP Safety and Health Plan.
 - 3.5.3 Develop, implement and maintain comprehensive written safety and health programs, containing philosophies, policies and procedures that comply with City, CAL/OSHA, and other regulatory agency requirements.
 - 3.5.4 Train the DCM staff, and Contractor representatives in safety management concepts, the OSHA 10-hour course, specific Project site orientation and conduct other training as needed.
 - 3.5.5 Maintain appropriate records as required by City, CAL/OSHA and other regulatory agencies.
 - 3.5.6 Attend, conduct and/or participate in various meetings with the DCM and Contractors to enforce compliance with safety and health requirements at each Project site.
 - 3.5.7 Conduct Project site audits to review records, permits, field conditions, safe work practices, and assess employee knowledge of safety policies and procedures and correct deficiencies immediately.
 - 3.5.8 Monitor hazardous materials usage and storage at all Project sites and transportation to staging area provided by City and coordinate with City environmental compliance personnel.
 - 3.5.9 Monitor security related activities at each Project site.
 - 3.5.10 Assure involvement at all levels of employees in the safety and health process.
 - 3.5.11 Act as principal agent for the City and DCM for field safety related issues.
- 3.6** Safety responsibilities of the DCM include the following:

- 3.6.1 The DCM shall demonstrate a serious, vigorous, and persistent commitment to safety.
- 3.6.2 When a Construction Management Team member is absent from the Project for any reason, transfer of responsibility must be made to another member of the Team.
- 3.6.3 When on Project sites, the DCM and staff shall observe behaviors of people and conditions and intervene to take corrective action when deviations from the Safety Program are observed.
- 3.6.4 The DCM shall ensure that supervisors understand and enforce safe work practices. Key Project site supervisors shall attend an OSHA 10-hour safety-training course within ten working days of mobilization. The BIP Construction Safety Manager and staff shall coordinate and conduct this training utilizing OSHA Certified Instructors.[CAL/OSHA Title 8 3203. (7)(F)]
- 3.6.5 The DCM shall enforce the Safety Program with Contractors.
- 3.6.6 The DCM shall require Contractors to prepare Incident Investigation reports and shall inform the BIP Project Manager and BIP Construction Safety Manager of any incidents at the Project site. (Exhibit 8)
- 3.6.7 The DCM shall ensure that prior to making crane lifts, documented plans shall be completed and submitted by the Contractor for record purposes.
- 3.6.8 The DCM shall review Contractor submitted hazard assessments [CAL/OSHA 3203. (4)], shoring and trenching plans, fall protection and specific Job Task Analyses to assure compliance with regulatory requirements.
- 3.6.9 The DCM shall ensure that all "Personal Protective Equipment" is available and being used properly by its employees. Minimum personal protective equipment required on all Projects consists of high visibility safety vest, ANSI approved hard hat, safety glasses with side shields and steel-toed footwear.

3.7 The DCM and Contractor's Responsibilities:

- 3.7.1 The DCM and Contractor shall demonstrate a serious, vigorous and persistent commitment to safety.

- 3.7.2 The DCM and Contractor is responsible for documenting that each employee has received and understands appropriate Project site orientation and training. The DCM and Contractor shall ensure that each employee is trained in the proper work practices to perform their job safely. The DCM and Contractor shall ensure that each employee understands the hazards related to the Project and applicable provisions of the emergency action and medical emergency plans.
- 3.7.3 The DCM and Contractor shall ensure that all SubConsultant and Contractors comply with the requirements of 7.0 and this Safety Program.
- 3.7.4 The DCM and Contractor shall staff the Project with a person who is a "qualified" safety professional or "competent person(s)" as defined in OSHA. The DCM and Contractor shall submit to the BIP Construction Safety Manager a resume of the candidate listing qualifications for review and approval prior to the start of work.
- 3.7.5 DCM and Contractors shall conduct a documented safety inspection of the construction activities in accordance with CAL/OSHA 3203.(4)(A)(B)(C). A copy of the inspection report, complete with corrective actions shall be kept in a file by the DCM and Contractor.
- 3.7.6 The DCM and Contractor shall conduct daily inspections of the Project site with special emphasis on observing and correcting unsafe employee behavior and Project site conditions.
- 3.7.7 The DCM and Contractor shall conduct, at a minimum, weekly safety and health meetings that are relevant to the specific types of work at the Project site which comply with CAL/OSHA 3203.(7) (A)-(F). The DCM and Contractor shall prepare documentation of meeting content and employee attendance.
- 3.7.8 DCM and Contractors shall investigate all Incidents, accidents and near misses involving their employees or equipment. The Safety Representative BIP Project Manager and staff and the BIP Construction Safety Manager shall be informed of all Incidents at the time of occurrence. Written Incident reports shall be submitted to the DCM utilizing City of San Diego Incident Investigation Form (Exhibit 8) within 48 hours of the occurrence.
- 3.7.9 DCM and Contractors shall confine their work activities to the designated Project site and shall not enter or have access to unauthorized facilities. While on City property, DCM and Contractor employees shall go to and from Project sites only by routes designated by the City.

- 3.7.10 DCM and Contractor shall restrict their work activities to authorized tasks.
- 3.7.11 DCM and Contractors shall remove employees who are flagrant or repeat violators of the Safety Program rules and procedures from the site.
- 3.7.12 The DCM and its Contractor of every tier shall ensure that supervisors understand and enforce safe work practices. Key Project site supervisors shall attend an OSHA 10-hour safety-training course within ten working days of mobilization. The BIP Construction Safety Manager and staff shall coordinate and conduct the OSHA 10-hour safety training utilizing OSHA Certified Instructors [CAL/OSHA Title 8 3203.(7)(F)].
- 3.7.13 The DCM and Contractors shall ensure that all "Personal Protective Equipment" is available and being used properly. Minimum personal protective equipment required on all Projects consists of, ANSI approved hard hat, safety glasses with side shields and hard soled work boots or shoes, as determined by a pre-work hazard evaluation.
- 3.7.14 The DCM and the Contractors shall ensure that all construction equipment and motor vehicle certifications, inspections, repair and controls are in place and in compliance with Safety and Health Plan requirements and regulatory requirements. Annual crane certification(s) shall be delivered to the BIP Construction Safety Manager prior to the crane(s) starting work on the Project.
- 3.7.15 The DCM and Contractor shall ensure that lifting operations are in strict compliance with CAL/OSHA Title 8 regulations and manufacture's specifications and limitations applicable to the operation of any and all cranes. When manufacturers specifications are not available, the limitations assigned to the equipment shall be based on the determinations of a qualified Professional Engineer competent in the field and such determinations will be appropriately documented and recorded. A copy of the documents shall be submitted to the Construction Manager.
- 3.7.16 The DCM and Contractor shall attend BIP safety meetings as required.
- 3.7.17 The DCM and Contractor shall allow only authorized persons, with proper identification to enter the project site.
- 3.7.18 The DCM and Contractor shall not allow cameras on site or photographs be taken without approval of the owner.

3.7.19 The DCM and Contractor shall protect the work, including the field office trailers and their contents from theft, vandalism and unauthorized entry.

3.7.19.1 The DCM and Contractor shall initiate a security program at job mobilization.

3.7.19.2 Maintain the security program throughout the Contract duration.

3.7.19.3 The DCM and Contractor and Subcontractors are wholly responsible for the security of their storage compound and lay down area, and for all their plant material, equipment and tools at all times.

3.7.19.4 Provide the OCIP Safety Coordinator with a list of 24 hour emergency phone numbers.

3.7.20 The DCM and Contractor shall be fully responsible for the safety and health of its employees, Sub-Contractors, and lower tier Contractors during the performance of the Contract related activities.

3.8 DCM and Contractor Site Specific Safety Plans

3.8.1 The DCM shall assign a competent safety person. This person will have a minimum of two years construction safety and health experience or a combination of education and five years of construction safety and health experience. The competent person will be experienced in heavy construction safety and health procedures.

3.8.1.1 The person's duties and responsibilities will be hazard recognition, accident prevention, new employee orientation (including Sub-Contractors) and the maintaining and supervising of safety precautions and program.

3.8.1.2 Qualifications of this person will be submitted to the BIP Construction Safety Manager for review. Acceptance of this persons qualifications by the BIP Construction Safety Manager is required prior to the start of any activity on the project.

3.8.2 An original Site Specific Safety Plan and 5 copies shall be submitted by the DCM and Contractor to the responsible BIP Project Manager 15 days prior to commencement of work. In the event of conflict between the DCM and

Contractors Safety Plan, the OCIP Safety Plan or State requirements the more stringent shall apply. The Safety Plan shall include applicable requirements of CAL/OSHA 3203 and the following:

- 3.8.2.1 Scope of work evaluation that describes the sequence of work and associated hazardous activities.
- 3.8.2.2 Specific Job Task Analysis (JTA), for jobs/tasks identified in 8.1.1 that identify task sequence, associated hazards and control measures.
- 3.8.2.3 A Project site employee orientation program that addresses location specific issues relative to safety and health.
- 3.8.2.4 A site specific "Emergency Action Plan" that includes a list of key management contacts with home office, Project site, home and cellular telephone numbers.
- 3.8.2.5 A site-specific "Medical Emergency Plan" listing qualified first aid personnel, by name and copy of current certificate.
- 3.8.2.6 Identify key line management personnel, by name and position, who shall enforce the Safety Plan.
- 3.8.2.7 Identify key "Competent" and/or "Qualified" personnel by name and copy of current documentation identifying specific certified competency, i.e., scaffolding, excavations, etc.
- 3.8.2.8 Include a written "back to work/modified duty" program to provide transitional work to employees released back to work by a physician that has restricted the employees duties.
- 3.8.2.9 Include a written progressive disciplinary program.
- 3.8.2.10 Prepare a trenching and shoring plan for each excavation deeper than five feet into which employees are required to enter.
- 3.8.2.11 Prepare a comprehensive 100% "Fall Protection Plan" for all fall exposures above six feet.
- 3.8.2.12 Include DCM and Contractors Drug Free Workplace Policy.

3.8.3 DCM and Contractor Task Hazard Planning – This is a comprehensive review of tasks planned, including the identification of planned procedures, task sequencing, potential hazards, proper equipment to use, the safe work environment to be maintained and employee skill/training required.

3.8.3.1 DCM and Contractor Supervisory Weekly Planning/ Scheduling Meeting – These routine meetings are conducted by and among all levels of supervision on the Project with the express purpose of reviewing the general execution strategies and obvious hazards identified. Also, interaction between simultaneous activities and crafts are identified and coordinated. The DCM shall document this meeting.

3.8.3.2 DCM and Contractor Workers Daily Task Safety Planning – This level of task analysis and planning directly involves the foreperson and workers as the day's work is outlined. The purpose of this informal meeting is to identify the work and how it is to be done. At this time the whole crew discusses hazards anticipated, or overlooked, equipment needed to work safely, and personal protective equipment to be provided and worn.

3.8.4 If the DCM performs construction work the above provisions pertaining to Contractors shall also apply to the DCM.

3.9 Monitoring Field Work/Work Stoppage Conditions/Penalties Related to Safety Issues

3.9.1 The DCM and BIP Construction Safety Manager and staff shall monitor DCM and Contractor's and/or its Subcontractor's implementation and application of their respective Safety Programs at each Project site. The above listed parties shall have the authority to require the DCM and Contractor to remove from the Project site any violator of safe work practices.

3.9.2 Serious/Imminent Danger - The DCM and BIP Construction Safety Manager and staff have the authority to stop work when either site conditions and/or work practices present an imminent danger (i.e., may result in serious injury, death, extensive property damage) until those conditions/practices are corrected. A "Notice of Contractor Violation of Safety & Health Regulations" shall be issued to the Contractor.

- 3.9.2.1 No time lost due to any such stop work order shall be the basis for a claim for extension of time or increased costs by the Contractor or it's Subcontractor.
- 3.9.2.2 The City has the right to suspend progress payments until the City is satisfied that the DCM and Contractor and/or Subcontractor is in full compliance with the Safety Program and all safety and health rules, standards and regulations.
- 3.9.3 Non-serious Hazards – The DCM, BIP Construction Safety Manager and staff shall advise the DCM and Contractor of the non-serious hazard condition, and obtain a date from the DCM and Contractor by which the condition shall be abated (not to exceed 48 hours).
- 3.9.3.2 If the responsible DCM and Contractor fails to take corrective action by the agreed upon abatement date, the BIP Project Management Team member has authority to retain the necessary craftsmen to perform the work with the costs for all such labor and material being charged to the responsible DCM and Contractor.
- 3.9.3.3 The DCM and Contractor shall have no recourse against either the City, BIP Construction Manager or BIP Construction Safety Manager and staff for any costs or damage's, delay or other losses that may arise as a result of such action.
- 3.9.4 The DCM and Contractor shall not receive additional payment or reimbursement for safety items and procedures that have been identified as required by the Safety Program or regulatory authority.
- 3.9.5 The DCM and Contractor shall ensure that employees and Subcontractors comply with the requirements of 3.7 and this Safety Program. Failure to comply with the Safety Program by the DCM and Contractor, or any of it's Subcontractors, constitutes a Default subject to the terms and conditions of the Agreement between the City and the DCM and Contractor.
- 3.9.6 In the event the work, or any portion thereof, is shut down by CAL/OSHA or other similar regulatory agency or because of an unsafe condition(s) as determined by the BIP Project Manager, Construction Manager or Construction Safety Manager the responsible DCM and Contractor shall be responsible for all related costs and damages.

- 3.10 The "Notice of Contractor Violation of Safety & Health Regulations" provided in Exhibit 5A-B shall be utilized whenever a violation of Safety Program policy, or procedure is noted. Any Construction Manager or staff, BIP Project Manager or staff or BIP Construction Safety Manager and staff can utilize the procedure.**
- 3.11 DCM and Contractor Formal Safety Performance Review Process**
- 3.11.1 All DCM and Contractors and their Subcontractors are subject to periodic on-site safety performance reviews and safety inspections. The Safety Performance Reviews shall be conducted to assure that all DCM and Contractors' are performing work in a safe manner and in compliance with this Safety Program and associated regulatory requirements. (Exhibit 6A-B)
- 3.11.2 The BIP Construction Safety Manager and staff, BIP Project Manager and BIP Construction Manager shall conduct periodic Safety Performance Reviews. The BIP Construction Safety Manager shall maintain records of Safety Performance Reviews.
- 3.11.3 DCM and Contractors shall be given one business days notice in the event of a formal Safety Performance Review to enable them to have the necessary personnel on hand to facilitate the review and provide the required records.
- 3.11.4 DCM and Contractor's Safety Performance shall be reviewed in the following areas:
- 3.11.4.1 Employee training records including; job site orientation, verification of understanding, safe work practices, emergency action plans, emergency medical plans, welding/other skilled craft certifications, certifications, OSHA 200 logs/first aid logs.
- 3.11.4.2 DCM and Contractor's employees shall be selected at random and interviewed for their knowledge of: types of hazards in area, emergency action plan, safe work practice knowledge, escape/evacuation route (if applicable), required personal protective equipment, general safety, daily task safety planning meeting content.
- 3.11.4.3 The DCM and Contractor's general field conditions shall be included in the Safety Performance Review. Areas to be

reviewed include but are not limited to:
housekeeping/orderliness, tool storage, cranes and rigging,
scaffolding, fall protection, excavations/spill pile locations,
general personnel compliance with policies and procedures,
security and environmental spill control measures.

3.11.5 If the Safety Performance Review reveals that the DCM and Contractor's records are not in compliance with regulatory and BIP Safety Program requirements or that DCM and Contractor's employees demonstrate a lack of basic understanding of safe work policies, practices, procedures and potential hazards to which they may be exposed, the DCM and Contractor shall immediately correct the observed deficiency and/or retrain employees before reporting to work on succeeding shifts. Documentation of retraining must be provided, upon request, before an employee will be allowed to return to the Project Site.

3.12 Contractor Safety Program Review (Exhibit 7A-E)

3.12.1 This is a system to review the quality of DCM and Contractor Safety Programs and has been developed using the recommendations of The Business Roundtable - "A3 report", "the Construction Industry Institute - "ZERO Injury Techniques" and current construction industry best management practices.

3.12.2 DCM and Contractors shall submit Safety Program documentation with their bid documents.

3.12.3 DCM and Contractors shall demonstrate that they have experience to implement an effective Safety Program. This shall be evidenced by a combination of an acceptable "Experience Modification Rate" (EMR), acceptable Incident rates, written programs containing elements as listed in the DCM and Contractors Safety Program Review package and references verifying previous safe work practices at other locations.

3.12.4 Review Levels to be considered

3.12.4.1 Experience Modification Rating of not more than 1.

3.12.4.2 "Total Case Incident Rate" below current Bureau of Labor Statistics national average;

3.12.4.3 "Lost Workday Case Incident Rate" below current Bureau of Labor Statistics national average.

3.12.4.4 DCM and Contractors whose review levels are above those listed in 3.12.4.1.2.3 shall be given an opportunity to explain past performance and demonstrate the future potential for an effective Safety Program.

4. Utilities

4.1 At least two (2) working days before commencing excavation Work where underground facilities may be located, the DCM shall request all utility owners to mark or otherwise indicate the approximate location of their subsurface facilities including, but not limited to, structures, main conduits and service connections by calling Underground Service Alert at Telephone No. 1-800-422-4133. This requirement will not apply to sewer and storm drain installations where their location and depth are shown on the Criteria for the Project.

4.2 The DCM shall not interrupt the service function or disturb the supporting base of any utility without authority from the owner or order from the City. If utility interruption is unavoidable, the DCM must provide owner with a minimum of seven (7) calendar days advance notice in writing.

4.3 Where protection is required to insure support of utilities located as shown on the Criteria or in accordance with the Standard Specifications for Public Works Contracts ("Greenbook"), the DCM shall, unless otherwise provided, furnish and place the necessary protection at its expense.

4.4 When placing concrete around or contiguous to any nonmetallic utility installation, the DCM at its expense, shall:

4.4.1 Furnish and install a two inch (2") cushion of expansion joint material or other similar resilient material; or

4.4.2 Provide a sleeve or other opening which shall result in a two inch (2") minimum clear annular space between the concrete and the utility; or

4.4.3 Provide other means, approved by the utility owner, to prevent embedment in or bonding to the concrete.

4.5 Where concrete is used for backfill or for structures which would result in embedment, or partial embedment, of a metallic utility installation, or where the coating, bedding or other cathodic protection system is exposed or damaged by the DCM's operations or as may be required by the Work, the DCM shall notify the City and arrange to secure the advice of the affected utility owner regarding the procedures required to maintain or restore the integrity of the system.

4.6 The DCM shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, noted and completed in accordance with the Agreement Documents unless the delay is solely due to the actions of parties other than the DCM and the delayed activity is in the critical path leading to Substantial Completion as shown in the most recently approved Construction Schedule. The DCM may be given an extension of time for unforeseen delays attributable to utility relocations or alterations not shown or incorrectly shown on the Agreement Documents, or for unreasonably protracted interference by utilities in performing Work correctly shown on the Agreement Documents. If the DCM sustains loss due to delays attributable to interference, relocations or alterations which could not have been avoided by the judicious handling of forces, equipment or plant, there shall be paid to the DCM such amount as the City may find to be fair and reasonable compensation for such part of the DCM's actual loss as was unavoidable if such event conflicted with an event or activity that was on the critical path as shown in the most recently approved Construction Schedule and no Float Time is available to allow Schedule recovery.

EXHIBIT 1

**CITY OF SAN DIEGO
BALLPARK INFRASTRUCTURE PROGRAM**

PRE-MOBILIZATION SAFETY MEETING

The following safety requirements and procedures have been reviewed and discussed on the following date _____ with the following company _____:

	Yes	No
Will this work be performed on or near a covered process? If yes, name of process: _____	_____	_____
Has the proper operating supervisor been notified?	_____	_____
Known potential fire hazards	_____	_____
Known potential explosion hazards	_____	_____
Known potential toxic releases	_____	_____
Trenching	_____	_____
Lockout/Tagout	_____	_____
Confined Space Entry	_____	_____
Hot Work Permits	_____	_____
Crane Safety	_____	_____
Personal Protective Equipment (such as hard hats, steel toe shoes, safety glasses with sideshields, and respirators)	_____	_____
Emergency Planning and Response Plan	_____	_____
Fall Protection	_____	_____
Entrance, Presence and Exit of Contractor Employees	_____	_____
Back-up Alarms on equipment/trucks	_____	_____
Unique hazards presented by contractor's work: _____		
Other hazards discussed: _____		
The following MSDS's were covered: _____ *****		
An on-site field orientation was conducted on the following date _____ by _____ (City/ CM Representative).		

Contractor Representative

City CM Representative

EXHIBIT 2

CITY OF SAN DIEGO MONTHLY SAFETY REPORT

PROJECT SITE LOCATION	PROJECT NAME:	PROJECT MANAGER:	JOB NO
FOR MONTH OF	PREPARED BY	PHONE	FAX

PROJECT START DATE	CONTRACT #	RESPONSIBLE	ACCESSIBLE	WORKDAYS	LAW	EQUIPMENT	SIGN	TEMPORARY	ADDITIONAL	ADDITIONAL	ADDITIONAL	ADDITIONAL	ADDITIONAL	ADDITIONAL	ADDITIONAL
	NO.	NAME	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE

CONTRACTOR/CM	(LWD (Last Workday) Case = Case with DAW (Day Away From Work) or RDD (Restricted Duty Workday) or combination of DAW and RDD)														
	MONTH	YTD	PROJ TO DATE												
SUBCONTRACTORS	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
	MONTH	YTD	PROJ TO DATE												
TOTAL	MONTH	YTD	PROJ TO DATE												

CITY OF SAN DIEGO CONTACTS	
D. STANHOPE	619-533-6670
J. BENNETT	619-533-6635
FAX	619-533-5278

EXHIBIT 3

**CITY OF SAN DIEGO - BALLPARK
BALLPARK INFRASTRUCTURE PROGRAM
MONTHLY INCIDENTS REPORT**

Project Site Location:	Project Name:	Project Number:	Job No.:
------------------------	---------------	-----------------	----------

For Month of:	Prepared By:	Phone:	Fax:
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Project Start Date:

Recordable Incident Review:

Property Damage:

Security Breaches:

Environmental:

FOR ASSISTANCE IN COMPLETING THIS FORM CONTACT:	
Sonia Cooper	619 533-5102
Don Wickell	619 533-4210
BP PROGRAM FAX	619 533-5103

EXHIBIT 4

CITY OF SAN DIEGO - WATER DEPARTMENT - CAPITAL IMPROVEMENTS DEPARTMENT RECORDABLE INCIDENT DETAIL REPORT

JOB NUMBER
PROJECT
LOCATION
PROJECT START DATE

MONTH OF THIS REPORT _____

COMPANY/CATEGORY _____

CATEGORY	TOTAL RECORDABLE CASES			RECORDABLE CASES WITH LOST WORKDAYS (REG. AND NON-REG.) AND/OR RESTRICTED DUTY			RECORDABLE CASES WITH LOST WORKDAYS (NON-REG.)			NUMBER OF DAYS AWAY FROM WORK			NUMBER OF RESTRICTED DUTY DAYS		
	NO.	YTD	PROJ.-TO- DATE	NO.	YTD	PROJ.-TO- DATE	NO.	YTD	PROJ.-TO- DATE	NO.	YTD	PROJ.-TO- DATE	NO.	YTD	PROJ.-TO- DATE
	FALL FROM ELEVATION														
FALL INTO THROUGH															
FALL (SUP/TRIP) SAME ELEVATION															
MANUAL HANDLING/OVEREXERTION															
STRUCK BY/AGAINST															
OBJECT/SUBSTANCE IN EYE															
CAUGHT IN/BETWEEN															
STEPPED ON/IN															
EXPOSURE TO CONTACT WITH															
VEHICLE ACCIDENT															
ASSAULT/BATTERY															
KICKED BY															
FIRE/EXPLOSION															
ELECTRICAL CONTACT															
REPETITIVE MOTION															
EMOTIONAL STRESS															
NOT OTHERWISE CLASSIFIED															
TOTALS															

4-Recordable Incident Detail Report

EXHIBIT 5A

**CITY OF SAN DIEGO
BALLPARK INFRASTRUCTURE PROGRAM**

**NOTICE OF CONTRACTOR VIOLATION OF SAFETY
REGULATIONS**

Date: _____

Contractor Name: _____

Address: _____

Attention: _____

This letter officially notifies you that you have been found to be in violation of the following Safety Regulations:

_____ on (date) _____, by

Confined Space Entry _____ Lockout/Blockout _____ Hot Work _____ Personal Protective Equipment _____

Knowledge of the environment _____ Awareness of warning alarms _____ Evacuation routes _____

Assembly locations _____ Fall Protection _____ Scaffolding _____ Back-up Alarms _____ Trenching _____

Safework Practices _____ Security Practices _____ Environmental/Hazardous Material Storage _____

Other: _____

This/These violation(s) occurred at the following location(s):

at the following time(s) _____ and date(s) _____

The name of the employee(s) was/were _____

under the supervision of _____

EXHIBIT 5B

CITY OF SAN DIEGO BALLPARK INFRASTRUCTURE PROGRAM

NOTICE OF CONTRACTOR VIOLATION OF SAFETY REGULATIONS

Under conditions of this enforcement procedure check all items that apply:

1. You are being notified of this violation and should take corrective action to prevent a reoccurrence. The corrective action shall be documented to the City/Engineer representative immediately.
2. You must submit a plan for compliance to your City/Engineer representative and the Construction Safety Manager within two days of receipt of this letter. The compliance plan must include the means and/or methods of compliance and the date that the requirements for compliance will be completed. Once compliance has been achieved, a follow up letter must be sent to the City/Engineer representative and Construction Safety Manager. Failure to comply will result in disciplinary action against your Company.
3. You are required to review the stated procedure(s) with you City/Engineer representative. Work may not commence on the site until the review is complete and the Contractor responds formally that the procedure is understood and will comply.
4. You are required to review the stated procedure(s) with you City/Engineer representative. Work may not commence on the site until the review is complete and you must confirm formally the disciplinary action to be taken against the supervisor and employee(s).
5. All work on the site will stop until the City/Engineer representative reviews all the facts with the Contractor and determines if the contract between the parties will be terminated.

Sincerely,

City Representative

cc: Issuing City/Engineer Representative
Job File
Construction Safety & Health Department
Responsible Project Manager

EXHIBIT 6

**CITY OF SAN DIEGO
BALLPARK INFRASTRUCTURE PROGRAM**

CONTRACTOR SAFETY PERFORMANCE REVIEW

Has the contractor trained all contract employees to safely perform the work contracted? Yes ___ No ___

If yes, how was the training conducted? _____

Has the contractor informed all contract employees of known potential fire, explosion, or toxic hazards related to the job? Yes ___ No ___

If yes, how was this information relayed to the contract employee? _____

Has the contractor informed all contract employees of the applicable provisions of the emergency action plan for the assigned work area? Yes ___ No ___

If yes, how was this information relayed to the contract employee? _____

Has the contractor documented that all contract employees have received and understood the training to safely perform the work at City CIP Project site? Yes ___ No ___

Does the contractor have a record for each contract employees showing:

Employee identity? Yes ___ No ___ Date of training? Yes ___ No ___ Means used to verify that training was understood? Yes ___ No ___

Has the contractor informed the contract employee of the following safe work practices?

	Yes	No
Lockout/Blockout	_____	_____
Confined Space Entry	_____	_____
Hot Work Procedures	_____	_____
Control over entrance, presence, and exit from work area	_____	_____

Does the contractor maintain an injury and illness log for all the contract employees? Yes ___ No ___

EXHIBIT 6B

**CITY OF SAN DIEGO
BALLPARK INFRASTRUCTURE PROGRAM**

CONTRACTOR SAFETY PERFORMANCE REVIEW

Does the contractor have on file a current OSHA Form 200? Yes ___ No ___

Does the contractor send the updated monthly reports to the Construction Safety and Health Department?
Yes ___ No ___

Do the contractor's employees demonstrate a working knowledge of: Safe work practices? Yes ___ No ___
Environmental hazards? Yes ___ No ___ Evacuation and Assembly routes? Yes ___ No ___ Personal
protective equipment? Yes ___ No ___ Written Fall Protection Program? Yes ___ No ___

Does the contractor maintain a file of weekly inspections and safety meetings? Yes ___ No ___

Does the contractor have records of certification for:

	Yes	No
Electricians	_____	_____
Welders	_____	_____
Employees interviewed:		
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Contractor Safety Performance Review Forms are to be completed by auditors and forwarded to the Construction Safety and Health Department for filing.

Auditor: _____

Contractor Representative: _____

Date: _____

EXHIBIT 7A

**CITY OF SAN DIEGO
BALLPARK INFRASTRUCTURE PROGRAM**

CONTRACTOR SAFETY PROGRAM REVIEW

The following form shall be completed by the contractor and submitted to the City of San Diego Construction Safety Department for review and evaluation prior to the contractor performing work on City of San Diego property

Name of Contracting Company: _____
Date: _____
City/Engineer Contact Person: _____

1. List your firm's Interstate Experience modification rate for the three most recent years:

19 _____
19 _____
19 _____

2. List your firm's Total Case Incident Rate (TCIR) and Lost Workday Case Incident Rate (LWCIR) for the three most recent years:

	TCIR		LWCIR
19	_____	19	_____
19	_____	19	_____
19	_____	19	_____

3. List all fatalities:

EXHIBIT 7B

4. List your type of work:

- _____ Excavation
- _____ Building
- _____ Heavy Construction
- _____ Plumbing, heating and air conditioning
- _____ Mechanical
- _____ Electrical
- _____ Insulation
- _____ Other (List): _____

5. Are accident reports, OSHA 200 log and report summaries sent to the following? How often?

	Yes	No	Monthly	Quarterly	Annually
Field Superintendent	_____	_____	_____	_____	_____
Vice President of Construction	_____	_____	_____	_____	_____
President of Firm	_____	_____	_____	_____	_____

6. Do you hold site safety meetings for field supervision? Yes _____ No _____ How often?

- _____ Weekly
- _____ Bi-Weekly
- _____ Monthly
- _____ Less often, as needed _____

7. Do you conduct project safety inspections: Yes _____ No _____

By whom?, (Name, Title) _____
 And how often? _____

EXHIBIT 7C

8.

	Yes	No	Monthly	Annually
Accidents totaled for the entire company	_____	_____	_____	_____
Accidents totaled by project	_____	_____	_____	_____

9. How are the costs of individual accidents kept? How often are they reported?

	Yes	No	Monthly	Annually
Costs totaled for entire company	_____	_____	_____	_____
Costs totaled by project	_____	_____	_____	_____

10. List key personnel planned for this project. Please list names, include the person who will be responsible for implementation of the safety/health program.

11. Do you have a written safety program? Yes _____ No _____
If yes, please include with your Safety Program Review submission packet.

EXHIBIT 7D

12. Do you have an orientation program for new hires? Yes _____ No _____
 If yes, does it include the following?

	Yes	No	N/A
Head Protection	_____	_____	_____
Eye Protection	_____	_____	_____
Hearing Protection	_____	_____	_____
Respiratory Protection	_____	_____	_____
Fall Protection	_____	_____	_____
Scaffolding	_____	_____	_____
Perimeter Guarding	_____	_____	_____
Housekeeping	_____	_____	_____
Fire Protection	_____	_____	_____
First Aid Facilities	_____	_____	_____
Emergency Procedures	_____	_____	_____
Hazard Communication	_____	_____	_____
Trenching and Excavation	_____	_____	_____
Signs, Barricades, Flagging	_____	_____	_____
Electrical Safety	_____	_____	_____
Rigging and Crane Safety	_____	_____	_____
Confined Spaces	_____	_____	_____
Line Breaking	_____	_____	_____
Lockout/Tagout	_____	_____	_____
Hot work	_____	_____	_____

EXHIBIT 7E

13. Do you have a program for newly hired or promoted foremen? Yes ___ No ___
 If yes, does it include instruction on the following?

	Yes	No
Safe Work Practices	_____	_____
Safety Supervision	_____	_____
Toolbox Meetings	_____	_____
Emergency Procedures	_____	_____
First Aid certification	_____	_____
Accident Investigation	_____	_____
Fire Protection/Prevention	_____	_____
New Worker Orientation	_____	_____
Fall Protection Requirements	_____	_____

14. Do you hold craft "toolbox" safety meetings? Yes ___ No ___ How often?

- _____ Weekly
- _____ Bi-Weekly
- _____ Monthly
- _____ Less often, as needed

15. Please submit the following:
1. Written Safety & Health Manual
 2. Copy of 3 previous years OSHA 200 Summary Sheet
 3. Copy of your 3 previous years Experience Modification Rate on your Insurance Carrier Letterhead
 4. Copy of your CAL OSHA IIPP

EXHIBIT 8

City of San Diego
Water Department - Capital Improvements Program

Incident Investigation Report

IDENTIFYING INFORMATION	1. CONTRACT NO.		2. PROJECT NAME	
	3. LOCATION OF INCIDENT		4. DATE OF INCIDENT	5. TIME AND SEVERE OF REPORT
	6. INJURY OR ILLNESS		7. PROPERTY DAMAGE	
	8. NATURE OF INJURY OR ILLNESS		9. NATURE OF DAMAGE	
	10. OCCUPANTS		11. PERSON IN CONTROL OF ACTIVITY AT TIME OF OCCURRENCE	
RISK	12. EVALUATION OF LOSS POTENTIAL IF NOT CORRECTED		13. LOSS SEVERITY RATING 0 = Major 0.5 = Serious 0 = Good	
			14. PROBABILITY OF OCCURRENCE 0 = Frequent 0.5 = Occasional 0 = Rare	
DESCRIPTION	15. ARE THERE ANY OTHER CAUSES?			
CASE ANALYSIS	16. WEATHER CONDITIONS, SPECIAL SITUATIONS OR ACTIONS AND CONDITIONS CAUSED OR COULD CAUSE THE EVENT?			
ACTION PLAN	17. PREVENTIVE ACTIONS WHICH HAS NOT BEEN DONE PRIOR TO CORRECT THE CAUSES LISTED?			
18. SIGNATURE OF INVESTIGATOR		19. FOLLOWUP 0 = 0 1 = 1 2 = 2 3 = 3 4 = 4		
20. SIGNATURE OF REVIEWER		21. DATE		

EXHIBIT 37.3.3

CITY OF SAN DIEGO
ENGINEERING AND CAPITAL PROJECTS DEPARTMENT

CONTRACTOR CERTIFICATION

FOR

DRUG FREE WORKPLACE

PROJECT TITLE: Design Engineering and Construction Management At
Risk Services for the Ballpark Infrastructure Project

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

(Contractor's Name)

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 subdivisions a) through c) of the policy as outlined.

Signed

Gary E. Brasser

Printed Name Gary Brasser, P.E.

Title Senior Vice President

Date April 1, 1999