



**THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS**

DATE ISSUED: June 25, 2010 REPORT NUMBER:
ATTENTION: Rules Committee Agenda of June 30, 2010
ORIGINATING DEPARTMENT: Office of Mayor Jerry Sanders
SUBJECT: San Diego Civic Center Complex (202 C Street) – City
Downtown Occupancy Alternatives -- Core Redevelopment
District of the Expansion Sub Area of the Centre City
Redevelopment Project
COUNCIL DISTRICT: 2
STAFF CONTACT: Phil Rath, Deputy Director of Policy
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REQUESTED ACTIONS: That the Rules Committee recommends the City of San Diego City Council (“Council”) approves the submission of a proposition on the November 2, 2010 ballot to approve the execution of an agreement for the design and construction of a new Civic Center Complex.

That the Rules Committee recommends the Council approves a Resolution of Intention by the City Council that will allow the City to reimburse itself for the amounts expended for the design and pre-development of a Civic Center Complex, to be paid to the City from the proceeds of the tax-exempt financing for the Civic Center Complex.

That the Rules Committee recommends the Council authorizes expenditures of up to \$2 million in fiscal year 2011 and up to \$5.6 million in fiscal year 2012, not to exceed total expenditures of \$7.6 million from the General Fund reserves for the design and pre-development of a Civic Center Complex, contingent on a majority of the electorate approving the agreement for the design and construction of a Civic Center Complex.

That the Rules Committee recommends the Council authorizes the Mayor to enter into any contracts necessary for the design and pre-construction of the Civic Center Complex, provided total expenditures shall not exceed \$293,500,000 million (excluding interest portion of debt service), contingent on a majority of the electorate approving the agreement for the design and construction of a Civic Center Complex.

That the Rules Committee recommends the Council approves the Fourth Addendum to the Final Environmental Impact Report (FEIR) for San Diego Downtown Community Plan, Centre City Planned District Ordinance, and Redevelopment Plan for the Centre City Project Area (State Clearinghouse Number 2003041001, Revised March 2006) for the proposed San Diego Civic Center Complex Project.

STAFF RECOMMENDATIONS: That the Rules Committee recommends the City Council approves the requested actions.

SUMMARY: Following several months of negotiations, City staff has reached agreement with GEDI California (GED) to develop a new City Hall (the "Project") through a Design and Construction Agreement ("Agreement") on the site known as the Civic Center Complex located within the Civic/Core District of downtown. The terms of the agreement achieve all of the goals requested by the Council and the Mayor outlined in the Exclusive Negotiation Agreement (ENA) between the City and GED which was approved by the Council in October 2009. The negotiations have resulted in a new City Hall project that consolidated all of the City's downtown employees into a single new facility which provides the lowest cost occupancy solution, removes the latent risk inherent with the City's existing aging facilities and eliminates the need to lease privately owned space. The project, which is projected to save the City millions of General Fund dollars during the near-term and the long-term, is recommended to be placed on the November 2010 ballot, allowing voters to make the decision on the proposed agreement.

FISCAL CONSIDERATIONS:

The GED proposal to design and construct a new City Hall provides the lowest cost occupancy solution to the City both in the near-term and the long-term as detailed in the revised financial analysis provided by Jones Lang LaSalle (JLL) as detailed in Section 6 of this report.

The City's occupancy costs projections for the GED proposal are estimated to total \$206.4 million during the first ten years of the analysis period (2010 through 2020), a ten year cost savings to the City of \$23.9 million as compared to the "Hold Steady" alternative (the benchmark scenario established in the ENA). Over the 50-year analysis period, the GED proposal provides an estimated cumulative savings of \$232.2 million compared to the "Hold Steady" alternative.

During the design and pre-development phase of the project, which is anticipated to commence in December 2010, the City will be required to fund an amount not-to-exceed of \$7.6 million expended over fiscal years 2011 and 2012. This amount will fund the design and pre-development expenses which include architecture and engineering, permits and fees, developer fees, legal and various other required studies for the project. The City will own all of the plans and work product produced during this phase. The design costs will be funded from the General Fund reserves and the budgetary impact will be allocated over two fiscal years: not to exceed \$2 million in Fiscal Year 2011 and the remaining expenditure of \$5.6 million occurring in Fiscal

Year 2012. These amounts can be fully repaid to the City from bond proceeds prior to the commencement of the new City Hall construction in fiscal year 2012. In contrast, if the ballot measure does not receive voter approval, the City will be required to install fire sprinklers and conduct other improvements to ensure fire code compliance beginning in Fiscal Year 2011 costing an estimated \$9.3 million. Staff's request for the City to approve the Adoption of the Resolution of Intention does not obligate the City to issue debt but enables the City to reimburse itself for qualified expenditures from any bonds issued.

If the City proceeds with the Project's design and the Project does not advance to construction, the City would be unable to recover the design and pre-construction expense but would own the architectural drawings.

The City Clerk is currently estimating the City's costs for placing a measure on the November 2010 ballot at between \$220,000 and \$252,000. Costs associated with placing the measure on the ballot would be a future obligation of the City.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On May 27 and June 10, 2009, a full presentation of the City's occupancy alternatives by Centre City Development Corporation (CCDC) staff and consultants was delivered to the Rules, Open Government, and Intergovernmental Relations Committee. Following discussion, the Committee voted 4-0 to forward the item on to the full City Council with direction to the Mayor to develop an ENA and present it to the City Council for review and approval and provided numerous objectives and conditions to be included.

On October 12, 2009, the Council approved the execution of an ENA with GED for the proposed development of a new City Hall and possible private uses and requested the Agency to fund up to \$705,000 for the City's anticipated costs to be incurred during negotiations.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On May 13, 2009, the Centre City Advisory Committee and the Project Area Committee voted to enter into an ENA with GED.

On May 20, 2009, the Centre City Development Corporation Board voted unanimously to recommend that the City Council consider all identified non-development and development occupancy alternatives and authorize the Mayor, or designee, to execute an ENA between the City and GED for the proposed development of a new City Hall and possible private uses with the objective of reaching the most cost-effective short-term and long-term solution while providing an acceptable level of risk to the City.

The CCDC required that public education and engagement be a priority throughout the entire process. Four series of public meetings were held through the process prior to City Council approval of the execution of the ENA in October 2009. The meetings served to inform the public about the process, the various non-development and development occupancy alternatives and related issues. Numerous presentations were given to a broad range of stakeholder groups and

constituents of all eight Council Districts. More than 30 meetings were held during the assessment process.

A series of meetings is currently in process with numerous stakeholder groups to present the terms of the proposed Project.

OTHER RECOMMENDATIONS:

No other recommendations have been received since the City Council approval on October 12, 2009 to authorize the execution of an ENA with GED.

BACKGROUND

In June 2007, the City of San Diego (“City”) sought the assistance of CCDC in identifying and evaluating the City’s viable alternatives to minimize occupancy costs for its more than 3,000 downtown employees, including the City’s executive, legislative and administrative functions. Approximately 1,060 of the City’s 3,000 downtown employees work within City-owned facilities located in the Civic Center Complex (“Civic Center”). The Civic Center site is bounded by Third Avenue to the east, A Street to the north, C Street to the south and Front Street to the west, (the “Site”). A site map is provided in Attachment A. The Site consists of four square-blocks (6.07 acres) including the vacated portions of B Street and Second Avenue within the Site. The remaining downtown City employees utilize leased space, a description of which is found later in this report.

The structures comprising the Civic Center are commonly known as the City Administration Building (CAB), the City Operations Building (COB), the Civic Theatre and the Concourse. Some of the City employees, customers conducting business with the City, and theatre patrons park within the 1,100-stall Evan Jones Parkade (“Parkade”), which is also located on the Site. The Site also includes the Civic Center Plaza office building, which is privately owned but ninety-three percent is leased to the City for various departments’ use.

As of June 30, 2010, the following table summarizes the occupancy of the City-owned facilities on the Civic Center site.

Civic Center Complex: City-owned Facilities

City-owned Facility	Estimated Total Space	Estimated City-Occupied Space	Approx. Number of Employees
City Administration Building	188,926 GSF	174,000 RSF	446
City Operations Building	213,905 GSF	194,000 RSF	326
Concourse	159,119 GSF	42,000 RSF	0
Evan Jones Parkade	1,100 stalls	1,100 stalls	0
Civic Theatre	110,000 GSF / 2,967 seats	n/a	0

Based on an assessment conducted by CCDC’s consultant, the City’s facilities located on the Site were constructed in the mid-1960s, are in poor physical condition, contain hazardous

materials including asbestos, lack modern life-safety systems such as active fire sprinklers in most areas, fail to meet current seismic building codes and are not fully compliant with Americans with Disabilities Act of 1990 (ADA) regulations. The noncompliant conditions could potentially expose the City to significant legal and financial risk in the event of a seismic event, fire or terrorism-related act, according to an opinion by the City Attorney (Attachment B).

As of June 30, 2010, the City also leases approximately 518,000 square feet of space in three privately-owned downtown office buildings, providing workspace for approximately 1,648 City employees. The original leases were negotiated and executed in 1991, contain numerous subsequent amendments, and expire in the years 2013 and 2014. Based on lease renewal proposals received from the three building owners, leasing costs are expected to rise upon their expiration, if renewed.

Existing City Leases and Associated Costs - 2010

Leased Facility	Occupied Space (SF)	2010 Monthly Rental Rate / SF	2010 Annual Rent	2010 Monthly Operating Exp. / SF	2010 Annual Operating Expenses	2010 Total Annual Occupancy Costs	2010 Monthly Total / SF	Lease Expiration
Civic Center Plaza	243,176	\$1.45	\$4,231,262	\$0.16	\$464,982	\$4,696,244	\$1.61	7/23/2014
Executive Complex	136,321	\$1.59	\$2,592,825	\$0.09	\$140,411	\$2,733,236	\$1.67	3/31/2014
600 B Street	146,114 (average; 138,962 as of 6/30/10)	\$2.15 (\$1.98 net of sublease income)	\$3,472,899 (net of sublease income)	\$0.21	\$364,968	\$3,837,867 (net of sublease income)	\$2.36 (\$2.19 net of sublease income)	5/31/2013
Total	518,459		\$10,296,986		\$970,361	\$11,267,347		

As of June 30, 2010, the following table summarizes the approximate number of full-time equivalent employees located in each building, space occupied, current lease and operating costs, and projected lease and operating costs in 2014 to demonstrate likely cost increases. The projected costs in 2014 **do not** include costs for capital repairs and replacements on City-owned buildings.

Facility	Approx. Number of Employees (FTE) (2010)	Employee-occupied space (RSF) (2010)	Current Annual Lease & Net Operating Costs (2010)	Projected Annual Lease & Net Operating Costs (2014)	Lease Expiration Date
City Administration Building	446	174,000	\$1.6 million	\$1.9 million	City-owned
City Operations Building	326	194,000	\$1.8 million	\$2.0 million	City-owned
Concourse	0	42,000 office/158,119 total	\$1.0 million	\$1.1 million	City-owned
Parkade (1,100 stalls)	0	0	(1.6 million)	(\$1.9 million)	City-owned
Civic Center Plaza	807	243,176	\$11.3 million	\$12.3 million	7/23/2014
600 B Street	436	153,265			5/31/2013
Executive Complex	405	136,321			3/31/2014
Totals	2,420	942,762	\$14.1 million	\$15.4 million	

During 2008 and 2009, CCDC conducted an extensive evaluation of the City's occupancy alternatives for its downtown workforce. Eight non-development alternatives were identified which included assumptions such as renovation of the existing City-owned buildings, continuing to lease space in privately owned buildings, purchasing existing Class B office buildings, and converting the existing Concourse building into office space. Development of a new City Hall facility was also considered on various City-owned sites located outside of downtown but were eliminated for various reasons. And finally, the development of a new City Hall facility within the Site was evaluated based on the development proposal submitted by GED through a competitive public process.

The results of the financial analysis of the various occupancy scenarios concluded that the GED proposal was the lowest cost development alternative and that the "Hold Steady" alternative was the lowest cost non-development alternative.

On October 12, 2009, the City Council voted to authorize the execution of the ENA for the proposed development of a new City Hall and established the "Hold Steady" alternative as the benchmark with which any future agreement between the parties will be compared.

The GED proposal provided for the design and construction of a new City Hall on the portion of the Site currently occupied by the Concourse building based on the space needs of the City. Completion and occupancy were expected to occur in 2014. All downtown City staff would relocate into the new facility, the CAB would then be demolished and a new public plaza would be constructed in its place. The COB site would become available for future mixed-use development opportunities and provide additional revenues to the City.

The "Hold Steady" alternative assumed the City would remain in its existing owned and leased facilities for 10 additional years, conduct necessary repairs and capital improvements to the owned buildings to maintain safety and functionality, then construct a new City Hall according to the terms specified in the GED proposal for occupancy in 2018.

Cost Estimate to Renovate Civic Center Facilities

As a subconsultant to JLL, DMJM H&N | AECOM Design (AECOM)—a global architectural, planning and engineering firm, conducted a comprehensive condition assessment of the four City-owned structures located within the Civic Center. The purpose of the assessment was to evaluate, based on visual inspection, the current structural and operating condition of the facilities, identify deficiencies, and prioritize recommended repairs and requisite renovations to comply with current building codes in an effort to significantly extend the buildings' useful lives. The assessment also included an estimate of the costs to complete such renovations and repairs.

As part of the comprehensive facility condition assessment, specific site and individual building-related deficiencies were identified and assigned to one of 12 major building systems categories. A detailed cost estimate for correcting each deficiency was prepared, which included construction costs, design and engineering fees, contingencies, inflation escalation and administrative expenses.

A thorough structural and seismic review of the buildings was limited due to the unavailability of structural drawings that typically depict detailed connections and framing. Although seismic retrofit analysis was not part of the assessment scope, comparison of the 1964 Uniform Building Code and the 2006 International Building Code indicates that current design standards now require a lateral force that is more than double the code in force at the time the buildings were constructed, suggesting that a retrofit would be required to bring the structures into compliance with current code. A detailed cost estimate for seismic retrofit was not included in the study; however, the consultant did provide a typical range of costs for buildings constructed during this era (\$35 to \$60 per gross square foot).

Finally, the AECOM study estimated that, upon completion of all recommended structural repairs and improvements, the buildings' remaining useful lives could be up to 30 years. Cost estimates were prepared by AECOM to implement all of the recommended improvements and presented in year 2011 dollars (the year in which the improvements were assumed to be competitively bid). The following table summarizes the total estimated renovation costs per building, including a range of seismic retrofit from \$35 to \$60 per gross square foot and temporary staff relocation costs.

Cost Estimate to Renovate Civic Center Facilities

Building	Renovation Costs (in Year 2011 dollars)	Facility Condition Index ⁽¹⁾
City Administration Building	\$37.5 million	50.3%
City Operations Building	\$22.5 million	26.6%
Concourse	\$27.2 million	51.4%
Evans Jones Parkade	\$6.3 million	12.7%
Swing Space/Move Costs	\$11.2 million	
Seismic Retrofit (CAB, COB, Concourse)	\$19.6 - \$33.6 million	
Total	\$124.3 - \$138.3 million	

(1) The Facility Condition Index (FCI) is a general indicator of a building's health (calculation: FCI = renovation costs/replacement value).

Near Term Focused Condition Assessment

AECOM also completed a more focused condition assessment, including cost estimates, of the minimum required repairs and replacements to maintain building safety and functionality until the possible delivery of a new City Hall for occupancy within the next five to ten years. The following table summarizes of the near term cost estimates that are provided in the full supplemental AECOM report (Attachment C).

	GED 5 Years	“Hold Steady” 10 Years
Fire	\$6,726,030	\$8,226,687
Life-Safety	1,293,847	1,308,460
Elevators	72,886	92,322
Site	118,177	118,177
Roofing	46,668	2,182,945
Exterior	289,187	3,022,115
Structural	94,768	189,536
Interior	335,899	4,272,641
Mechanical	2,745,256	8,741,578
Electrical	6,760,336	8,340,330
Plumbing	370,481	2,285,370
Technology	0	201,924
Specialties	0	0
ADA (Low Risk)	177,060	482,069
ADA (High Risk)	435,170	628,253
Total Estimated Costs	\$19,465,765	\$40,092,407

DEVELOPMENT TEAM

ROLE	FIRM/CONTACT	OWNERSHIP
Developer/Construction Manager	Gerding Edlen Development	Privately Owned by GEDI, Inc., Mark Edlen and Kelly Saito GEDI, Inc. owned by Mark Edlen, Kelly Saito, Roger Krage and Equilibrium Capital
General Contractor	Turner Construction	Private Wholly Owned subsidiary of Hochtief USA, Inc.
Landscape Architect	Spurlock Poirier Landscape Architects	Privately Owned by Andrew Spurlock and Martin Poirier
Architect	Zimmer Gunsul Frasca Architects	Privately Owned, see Attachment G for list of Owners
Subconsultant	Brightworks	Privately Owned by

		Scott Lewis
Subconsultant	KPFF Consulting Engineers	Privately Owned by Multiple Individuals ()
Subconsultant	Lincolne Scott (aka Flack + Kurtz/Advanced Environmental)	Wholly-owned subsidiary of WSP Flack + Kurtz, a Publicly Owned and traded firm on the London Stock Exchange
Subconsultant	MW Steele Group	Privately Owned by Mark W Steele and Harper E Steele

In consideration of the complexity and extent of the analysis contained in this report, a table of contents follows this section to assist the reader.

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1.0 CITY NEGOTIATION TEAM

The Mayor led the City's activities associated with the negotiations for the terms of the Agreement. The following individuals, firms and City departments participated in the Project's negotiations.

FIRM	ROLE
Charles E. Black	Lead Negotiator
Jones Lang LaSalle	Financial and Economic Analysis, Construction Consultant/Cost Estimator
Gensler Architects	Facilities Needs Assessment
Centre City Development Corporation	Development Advisor/Project Continuity
City Real Estate Assets Department	City's Representative
City Attorney's Office	Legal Services
City Engineering & Capital Projects Departments	Review of Design and Construction Contract

2.0 DISCUSSION

Upon approval of the ENA, the City's negotiation team worked to ensure the GED proposal provides the lowest cost occupancy solution to the City both in the near-term and the long-term and would meet all of the goals outlined in the ENA and reiterated in Section 2.1. of this report.

2.1 *ENA between City and GED*

On October 12, 2009, the City Council authorized the execution of an ENA which provided for a period of exclusive negotiation between the parties for the proposed development of a new City Hall and possible ancillary private uses with the objective of reaching the most cost-effective short-term and long-term solution while providing an acceptable level of risk to the City (see Attachment D).

Goals of the ENA

The City required that the following goals be addressed during the exclusive negotiations:

- The Proposed Development's net costs, defined as the City's gross obligations less its projected revenue offsets, shall save City money every fiscal year, as completed to the "hold steady" alternative.
- The Proposed Development shall have no negative impact on City's general fund.
- The development shall assume responsibility for financial risks such as construction cost increases and schedule delays associated with the Proposed Development.
- The City shall bear the costs of any city-requested additions or redesigns during the term of ENA.
- The proposed Development shall preserve, and not displace or disturb the operations of the existing Civic Theater.
- GED shall agree to cooperate with the City Auditor on any audits.
- The Proposed Development shall be constructed in a manner which will be state-of-the-art examples of environmentally friendly construction.
- The Proposed Development shall be constructed in a manner which will receive LEED Certification of Silver or better.
- The Proposed Development shall be construction in a manner which will be fully compliant with the Americans with Disabilities Act or the California Building Code in the California Code of Regulations at Title 24, whichever requirement provides for great access.
- The Proposed Development shall be constructed in a manner which will be free of asbestos and other materials that expose members of the public and employees to health hazards.
- The Proposed Development shall be constructed in a manner which provides adequate fire protection for members of the public and City employees, meeting or exceeding current codes.
- The Proposed Development shall be designed in a manner that ends the City's current reliance on other leased office space in the downtown area.
- The Proposed Development shall be designed in a manner that consolidates City office space to produce efficiency and reduce the overall amount of space currently used for City purposes.

- The Proposed Development shall enhance public access to government meetings and services and improve public gathering spaces.
- GED and City shall pursue all governmental sources of grants, reimbursements, rebates, etc., that could reduce City's costs pertaining to the Proposed Development.
- The City is to retain its public assets by focusing on the options for ground leases for Blocks 1, 13, and 15.

2.2 Key Changes to the "Hold Steady" Alternative

The "Hold Steady" non-development occupancy alternative was identified in the evaluation conducted by CCDC as the lowest cost non-development option and a possible short-term solution in consideration of the City's current financial challenges. However, according to Ernst & Young, "continuing to renovate these buildings on an emergency basis is not an appropriate management plan for the City. This scenario has the most significant risk potential for the City." (Ernst & Young, 2009). Despite Ernst & Young's opinion, this alternative was established as the benchmark in the ENA to which any negotiated development agreement would be compared. The following summarizes the primary assumptions applied to the original "Hold Steady" alternative.

- Assumed the minimum required estimated capital repairs and replacement for safety and functionality to be implemented during the next 10 years as recommended by the AECOM supplemental report
- Assumed the existing City leases are renewed for five years upon their expiration at terms five percent below the building owners' proposals
- Assumes no tenant improvement allowance is sought by the City upon lease renewals to achieve lowest possible rents (owner renewal proposals were adjusted accordingly)
- Assumed a new City Hall is delivered in 2018 through a build-to-suit delivery method with sufficient space to accommodate staff growth through 2032, based on the AECOM report citing the repairs would extend the buildings' life for only ten years
- Eighty percent of the expansion space was assumed to be subleased by the City to offset its costs until needed
- Unmet future space needs were assumed to be leased off-site in downtown Class 'B' space

The ENA provided for modifications to the "Hold Steady" alternative assumptions so that they are comparable to any changes negotiated in the development agreement with GED. The following changes were made to the "Hold Steady" assumptions:

- The 10-year estimated repair and capital improvement costs prepared by AECOM were refined and are described in Section 3.2 of this report.
- The City's space needs and corresponding building size were adjusted based on reduced staff size as described in Section 3.1 of this report.

- The delivery of the new City Hall building has been delayed from 2018 to 2020 to reflect the two-year delay in construction start assumed in the negotiated GED agreement as a result of the additional financial analysis and peer review performed in 2009 and the public vote in 2010.

2.3 Key Changes from GED's Original Project Description

GED's original proposal was a three-phased project covering four city blocks including a New City Hall and significant private development. Phase One consisted of a new 34-story City Hall totaling 965,000 gross square feet of which 706,000 gross square feet would be occupied by the City in 2014. The remaining space was available for the City's growth projections for an estimated 50 years. It also contained 19,060 gross square feet of ground floor retail and 1,576 parking stalls located in an underground parking structure. Phases Two and Three consisted of up to two million gross square feet of mixed-use development including apartments, retail, hotel and office uses and associated underground parking.

The following are the key changes from the original GED proposal:

- The negotiated project now consists of a single-phased municipal development that provides a new City Hall with less space than the original GED proposal. The primary reasons for the reduced building size (from 965,000 to 560,000 square feet) are the recent City staff reductions as a result of deteriorated fiscal and economic conditions and the lack of current market demand for the expansion office space that was originally proposed to be master leased at risk by GED and subleased to private users until the City needed the space. The City's costs of mitigating the expansion space risk were deemed imprudent by the City's negotiating team;
- The ground floor retail has been reduced from 19,060 to approximately 16,087 square feet;
- The quantity of underground parking stalls has been reduced from the original 1,576 to 461 stalls; and
- The future phases of proposed private development, and the associated estimated ground rent revenues, have been eliminated also as a result of the weak market and economic conditions. Staff recommends that the City consider a sale or lease of the surplus blocks for mixed-use development at a future date when the property's value improves.

3.0 ANALYSES PERFORMED DURING NEGOTIATIONS

3.1 Updated Facilities Needs Assessment

Original Facilities Needs Assessment

In April of 2008, the internationally recognized firm of Gensler Architects, chosen through a competitive selection process, conducted a Facilities Needs Assessment of the City's downtown operations. The primary objectives of the needs assessment were to obtain an accurate count of

the number of employees requiring workspace downtown, assess the workspace and functional requirements for each City department included in the study, determine critical adjacencies among departments and between specific staff and the public, benchmark modern workspace standards used in successful private and public office environments, determine an optimal floor plate size for a potential new City facility, prepare a parking study for a potential new facility, and forecast City space needs for the next 50 years.

The following are the key findings from the 2008 needs assessment.

Existing Inefficiencies: Current City-owned and –leased facilities and workspaces are inefficient as a result of fragmented operations dispersed among several buildings, resulting in a redundancy of reception areas, conference rooms, break rooms, file rooms and other spaces commonly shared among departments. Many workspaces were found to be misaligned with department and staff functions. The small building floor plates which commonly benefit multi-tenant operations, provide poor functional space between the building perimeter and the core or a single institutional user such as the City. Most facilities have poor security features and outdated interiors. The Council Chambers location on the twelfth floor of CAB thwarts accessibility and governmental transparency. The dispersed locations of various departments result in a confusing and often frustrating customer service experience.

Opportunity for Space Reduction: Total City workspace needs can be reduced by more than 30 percent from current levels if most operations are relocated into a single optimally designed facility with a large floor plate and modern, efficient workspaces. An efficiently designed building could accommodate the projected staff growth through the year 2063 and still require less total space than the City occupies today.

Workspace Inefficiency: The current average space utilized per FTE is 315 square feet. Following benchmarking of modern public and private-sector office environments, a recommended average space of 180 square feet per FTE should be targeted in a new facility. Workspaces should be aligned to support departmental and staff functions to foster communication and innovation and improve performance.

Staff Growth: Staff growth is expected to remain relatively flat between 2009 and 2013 and is expected to grow at an average annual rate of 0.6 percent during the 50-year forecast period, correlated closely to projected property tax revenues.

Council Access and Transparency: Locating the Council Chambers on or near the ground level in a new facility will greatly improve public access and permit greater perceived transparency.

The Gensler study concluded that a new City facility designed with an optimal floor plate of roughly 32,200 square feet and modern efficient workspaces would require the following rentable square feet over the next 50 years. These space estimates compare to the more than one million square feet currently occupied by the City.

<u>Year</u>	<u>Projected Downtown Staff Positions (FTE)</u>	<u>Gross Square Feet</u>	<u>Rentable Square Feet</u>	<u>Usable Square Feet</u>
2013	3,140	706,440	660,659	565,880
2023	3,362	749,100	700,351	602,168
2033	3,566	788,000	736,172	635,480
2043	3,725	819,605	765,593	662,080
2053	3,881	849,400	793,095	687,128
2063	4,120	898,316	838,576	729,336

Updated Facilities Needs Assessment

During 2009, reductions in the City’s workforce and its projected growth rate prompted a recalibration of the City’s space requirements. Gensler, in collaboration with the City’s Real Estate Assets Department, updated the quantity of current downtown workforce positions.

Key findings of the updated Facilities Needs Assessment are as follows.

Reduction in City Staff: The recent change in the size of the City’s workforce resulted in a reduction of Full Time Equivalent (“FTE”) from 3,140 to 2,420.

Near Term Lease Space Reduction: Due to the reduction of the City’s workforce, the City’s estimated leased space requirement could be reduced by a total of 60,490 rentable square feet. The Real Estate Assets Department staff identified opportunities to vacate discrete amounts of space in three leased buildings until a new City Hall is completed:

- Neighborhood Code Compliance staff will vacate 14,777 rentable square feet in Civic Center Plaza and relocate to the City Operations Building.
- California Border Alliance Group will vacate 8,929 rentable square feet of sublease space in Executive Complex.
- Approximately 36,784 rentable square feet will be vacated in 600 B Street: The Water Department will vacate 14,303 rentable square feet; 14,239 rentable square feet of sublease space occupied by Child Care will be vacated; and 8,242 rentable square comprising three currently unoccupied suites will be vacated.

These changes in the City’s leased space requirements and obligations are expected to be realized in the near term and have been applied to both the GED Project and the “Hold Steady” alternatives. No additional space is projected to be vacated during construction however, as the City’s downtown FTE is projected to remain relatively constant for the next several years.

Gensler’s updated study forecasts the following staff positions and space requirements over the next 50 years assuming that the City adopts new workplace standards and more efficiently designed building floor plates as described in Gensler’s 2008 report. These space estimates compare to the more than one million square feet currently occupied by the City, a 40% reduction.

UPDATED SPACE NEEDS PROJECTIONS – PREPARED MAY 2010

<u>Year</u>	<u>Projected Downtown Staff Positions (FTE)</u>	<u>Gross Square Feet</u>	<u>Rentable Square Feet</u>	<u>Usable Square Feet</u>
2010	2,420	547,184	512,094	437,504
2025	2,569	578,425	541,175	464,424
2035	2,727	611,590	572,047	493,053
2045	2,895	646,796	604,819	523,446
2055	3,073	684,170	639,609	555,709
2065	3,264	724,236	676,908	590,080

Recommended workspace standards, building common area requirements, key adjacencies and functional relationships remain unchanged from the original report published in March 2008. A copy of Gensler’s updated Facilities Needs Assessment is provided in Attachment E.

3.2 Updated Facilities Condition Assessment

Some of the estimated repair and capital replacements costs in the near term Condition Assessment prepared by AECOM have been modified for the negotiated GED Project and the “Hold Steady” alternative. The negotiating team concluded that the following proposed capital replacement items could be avoided or adjusted if the GED Project were approved by the Council and voters and the construction of a new City Hall were imminent within the next 5 years.

- Costs to repair the Concourse building were deleted since this building is anticipated to be demolished in 2011.
- Costs to install fire sprinklers and other code related items were eliminated. Since the City Council approved to extend the compliance date for the fire sprinkler retrofits for high-rise buildings from February 1, 2010 to January 31, 2011. This action was taken to allow time for decisions to be made regarding whether or not the City will move forward with the GED Project. If the City does approve the GED Project, it would not be reasonable to incur these costs, as a new facility will be built in the near term.
- A fifty percent (50%) probability factor was applied to the remaining repair and capital replacement items outlined in the AECOM report based on staff’s estimated possibility that all of those building systems or elements will fail during the next five years until the proposed City Hall is completed.
- Because the new GED Project and “Hold Steady” alternative now assume that the Evan Jones Parkade will not be demolished and remain a long-term asset for the City, the full

renovation costs were included to ensure the building's useful life is extended an additional 30 years.

The following table summarizes staff's adjustments made to AECOM's estimated renovation costs. The costs below exclude seismic retrofit, swing space and staff moves (in 2011 dollars) for both the negotiated GED Project and the "Hold Steady" alternative.

	GED 5 Years	"Hold Steady" 10 Years
Total Estimated Costs	\$19,465,764	\$40,092,407
Less: Closure of Concourse Bldg	(\$3,366,869)	0
Less: Fire Sprinkler and Code Related Items - CAB	(\$5,447,454)	0
Less: Fire Sprinkler and Code Related Items - COB	(\$1,018,791)	0
Less: 50% Avoidance Probability - CAB	(\$3,317,750)	0
Less: 50% Avoidance Probability - COB	(\$1,097,048)	0
Less: Short Term Repairs on Parkade	(\$803,054)	(\$3,030,654)
Add: Parkade Costs for Long Term Use	\$5,833,078	\$5,833,078
Total Adjusted Costs	\$10,247,876	\$42,894,831

Updated Data Center/Voice and Data Specifications

Original specifications for a new City Data Center and voice and data infrastructure to be included in the new City Hall facility were prepared the City's Department of the CIO for inclusion in the GED Project and the "Hold Steady" alternative. Included in the each of these alternatives were costs to construct a 10,000 square-foot data center to function as the City's primary facility for electronic and voice connectivity for City employees. Total costs were estimated at \$18,500,000 for the data center and voice and data infrastructure throughout the new facilities.

Subsequent to the redesign of the proposed GED Project and the "Hold Steady" alternative, City staff decided to retain the existing data center located at Rose Canyon and not include a proposed 10,000 square-foot data center in the new facility. In addition, the specifications for voice and data infrastructure where updated to reflect the new building design which reduced the budget to \$9,000,000. A list of the voice and data specifications is provided in Attachment F.

3.3 City Expansion Space

One of the goals within the ENA was that “The Proposed Development shall be designed in a manner that ends the City’s current reliance on other leased office space in the downtown area.” The original Project included 142,960 gross square feet within the City Hall building to accommodate City workforce growth for 50 years.

Maintaining this amount of expansion space within the Project was determined to substantially increase project costs for the new City Hall because of the decline in the office and capital markets. Therefore, the expansion space was removed from the building and expansion is accommodated in two phases.

According to Gensler’s projections, the first need for expansion will be required after 15 years (2025). Staff proposes that the expansion space be accommodated by relocating the Water Department from the new City Hall, vacating 40,000 square feet and moving to a proposed build-to-suit facility on City-owned land. Relocation of this department will provide sufficient space in the proposed new City Hall through the year 2034. Subsequent phases of expansion could then be accommodated by the City through a public private partnership on one of its three surplus blocks (Blocks 1, 13 and 15, illustrated on the Site Plan in Attachment A) wherein a third party developer could build the building on City-owned land, once there is a sufficient space requirement to justify additional development.

Building Owner Lease Renewal Proposals

In December 2009, the City, through its tenant representative Studley Inc., requested “Best and Final” proposals from the owners of the three properties from which the City leases downtown office space (600B Street, Civic Center Plaza and Executive Complex). The terms of these renewal proposals were based on five-year lease terms and included no tenant improvement allowance in order to achieve the lowest possible occupancy costs. The individual property lease renewal terms have not been disclosed in this report to maintain confidentiality and a favorable negotiating position for the City, should the City Council decide to continue to lease downtown office space.

The Independent Budget Analyst (IBA) confirmed the methodology used to project future lease renewal rates was professionally sound and reasonable. (See Attachment H for detailed explanation of methodology).

4.0 NEW PROJECT DESCRIPTION

GED revised the design of the Project based on the City’s new space needs assessment. The revisions to the Project meet all of the design and development goals outlined in ENA. The revised project description is outlined in detail below.

	Block 14
Site Area	Approx. 60,000 sq. ft. (full block)
Maximum Floor Area Ratio (FAR) Permitted	10.0 (20.0 with TDRs and FAR Bonuses)
Minimum FAR Required	6.0
Proposed FAR	9.71
FAR Bonuses Proposed	None
Stories/Height	19 stories/294 ft.
Amount of Retail Space	16,087 gross sq. ft.
Amount of Office Space	560,006 gross sq. ft.
Type of Housing	N/A
Total Number of Units/Total Residential or Hotel Square Feet	N/A
Affordable Housing	N/A
Fire Station	N/A
Parking	
Required (1.5/1,000 sq. ft. office)	840 spaces
Proposed	461 new spaces (178,400 gross sq. ft.) 1,100 existing in Evan Jones Parkade
Assessor's Parcel No.	533-433-28

Attachment G contains the preliminary design drawings for the proposed negotiated Project.

4.1 Development Program, Phasing and Schedule

Components of City Hall, including Ground Floor Retail and Parking

The proposed development program begins with the demolition of the Concourse building, followed by site excavation and construction of the underground parking structure. GED then proposes to construct a 19-story, 754,493 gross square-foot City Hall facility on Block 14 (illustrated on the Site Map in Attachment A), which is based on the Gensler updated space needs projections. The proposed City facility is designed with a floor plate size averaging approximately 29,500 gross square feet, approximating the 32,000 optimal size recommended by Gensler to achieve maximum workspace functionality and efficiency. The building's iconic tower design, resembling the shape of a sail, is complemented by 1-1/4-acres of multifunctional public plaza and open space and 16,087 square feet of ground floor retail space activating the C Street transit corridor. Parking is included in the new facility in a two-level underground structure containing approximately 461 spaces. The City plans to retain the 1,100-stall Evan Jones Parkade in order to meet the required parking ratio for the new City Hall, which is

1.5/1000 square feet of office space (there is no parking required for the retail space under the Centre City Planned District Ordinance (PDO)). All of the total parking stalls provided are proposed to be available for the City's use.

The Civic Center Complex will occupy Block 14, west of the San Diego Civic Theatre. The building abuts First Avenue on the west, B Street on the north and a portion of C Street on the south. A Civic Square is designed along the majority portion of the Block's C Street frontage. A public 'Paseo' between the Civic Center and the Civic Theatre creates a vital open space that not only works in conjunction with the Civic Square as a framework for public activity but also serves to reinforce the north-south connection across the site from B Street to Horton Plaza. The building lobby is accessed from the civic square on the south and an entrance on the north provides easy access from B Street to the First Floor "One Stop Shop" which supports the City's goal in facilitating and supporting the public's access to City services. Retail spaces front First Avenue, C Street, B Street and the Paseo. Subterranean parking and the loading dock are accessed from First Avenue. The 560,006 gross square foot City Hall office components include, the "One Stop Shop" on the building's ground floor; Council chambers, committee rooms, conference rooms, and various support functions on the building's mezzanine level; and Council District offices are located on the third floor. The Mayor's office is proposed to be located on the fourth floor and the remaining City administrative functions located on floors five through nineteen of the building tower.

As a result of historical findings related to the Evan Jones Parkade, the removing of the Parkade entrance/exit ramps along First Avenue and A Street and the re-opening of B Street to vehicular traffic is not contemplated as part of the negotiated Project.

Phasing

The phasing has been designed to require only a single move of the City's employees from their current locations into the new facility.

The phasing begins with the print shop relocation to an area under the Parkade, where a portion is currently located. The library book distribution area (approximately 10,000 square feet in the Concourse building) will be relocated to the basement area of the Parkade.

Demolition of the Concourse building would then commence, including proper disposal of any hazardous materials. The Concourse and plaza site are proposed to be excavated and shored, the soil remediated, and a new subterranean parking structure and City Hall facility, including adjoining Council Chambers and customer service structure, constructed on the southwest corner of the Civic Center site. GED estimated the demolition and construction will require 30 months. Upon completion of the new facility, all downtown City departments and staff designated for relocation would be moved into the spaces.

The COB would then be vacated, with the exception of Fire Station #1, and will be available for future redevelopment when market conditions permit.

Components of a New City Hall

Based on the updated needs assessment study, the following table compares the departmental composition of the proposed smaller, new City Hall with the previously proposed larger facility.

Component/Department	New GED Project		Original GED Project	
	Staff Positions (FTE) (2013)	Space Requirement (Usable Sq. Ft.)	Staff Positions (FTE) (2013)	Space Requirement (FTE) (2013)
CEO/Mayor	75	13,575	69	18,303
COO/Business Operations/Administration	156	17,014	136	25,829
CFO/Finance Department	351	74,753	403	67,060
Public Safety and Homeland Security	166	30,046	219	44,935
City Planning and Development Services	557	100,817	766	140,844
Public Works	362	65,522	559	104,587
Community Services	0	0	32	5,795
Public Utilities	197	35,657	382	63,463
City Council (9 districts), Independent Budget Analyst and City Clerk	159	28,779	161	39,334
City Attorney	339	61,359	352	85,242
Personnel	58	19,662	62	15,875
Data/Communications Center	N/A	N/A	N/A	10,000
Council Chambers (includes 2 committee rooms, media room and 2 press rooms)	N/A	20,744	N/A	22,990
Meeting and Training Rooms (includes 5 public/city meeting rooms, 1 breakout room)	N/A	7,360	N/A	10,844
Customer Service Center (includes one-stop-shop queuing and business center)	N/A	4,000	N/A	4,444
Totals	2,420	479,288	3,141	660,659

Enhanced Efficiency:

The new building design achieves higher levels of efficiency than the original concept because the reduction in building height led to more uniformity in floor plate size. While the large lower floor plates of the original design were efficient, the upper portion of the building had smaller floor plates that were penalized in terms of efficiency because of the relatively large proportion of the building core elements.

The new design's average floor plate is 29,500 square feet, with only 5,345 square feet of variance between the smallest office floor plate of 27,619 square feet and the largest of 32,964 square feet.

Future Private Development

The Original GED Project planned for nearly two million square feet of private development to be included in the future phases. Due to the recent economic recession, the private development component has been removed from the proposed GED Project. However, the three City-owned blocks (Blocks 1, 13 and 15) are still potential opportunities for future mixed-use, high-density development at a future date. GED has maintained interest in pursuing redevelopment of these three blocks; the current ENA allows for negotiations to continue until October 2011.

Parking Plan

Directly below the new City Hall and plaza area, a proposed two-level underground parking structure will contain 461 parking stalls. The structure may be designed to allow for future installation of mechanical or robotic parking in order to increase the structure's parking capacity. Robotic or mechanical parking has the potential of increasing the number of parking stalls to 840, the number of stalls required under the Planned District Ordinance ("PDO"). To meet the PDO required amount of parking prior to the installation of the mechanical or robotic parking, the City shall continue to utilize the City-owned Evan Jones Parkade, which contains approximately 1,100 parking stalls.

City Operations Building

The revised GED Project no longer includes the private mixed-use development planned for the full city block wherein the City Operations Building ("COB") is located. Therefore, this building is proposed to remain on the site and be vacated by the City when the new City Hall facility is constructed. The COB will be closed for public use and be available for subsequent future redevelopment.

4.2 Civic Theatre

In compliance with the RFP, GED's proposal allows the Civic Theatre to remain in place and fully functional during the demolition and construction of the new City Hall. The Civic Theatre is a performing arts venue of approximately 2,967 seats, the largest of its kind in the San Diego region. It is the only theatre capable of accommodating Broadway performances, the San Diego

Opera and similar productions. The theatre was constructed in the mid-1960s and has undergone only minor renovations since its original construction. San Diego Theatres, Inc., the nonprofit operator of the Civic Theatre, has conducted design studies for a major renovation of the theatre. The theatre's proposed redesign includes a glass façade, additional rehearsal and support function space, interior and seating upgrades and a café. The theatre operator anticipates a fundraising campaign from private donors and patrons to finance the renovation. The GED design concept integrates with the proposed theatre renovation. However, the GED development is not dependent on the theatre renovation being implemented.

4.3 *Sustainability Features*

The RFP set forth the environmental objective that all public and private components of the development program be designed and constructed to an equivalent of LEED®-NC Silver standards, as measured by the U.S. Green Building Council (USGBC). This is a minimum sustainability level adopted by the City Council in April 2002 (CMR 02-060) for construction of all new City-owned facilities.

The design and construction agreement with GED requires extensive sustainability analyses, resulting in a facility that significantly surpasses the City's minimum environmental requirement and creates an innovative and ambitious vision for the project's sustainability elements. GED is one of the country's top sustainable builders with 37 LEED® buildings certified or in progress. All of GED's projects since 2000 will or have been awarded LEED® certification. In response to the RFP and in recognition of the San Diego region's scarce natural resources and abundant sunshine, the GED team's design strives to surpass the requirements to achieve LEED®-Gold or Platinum certification—the highest level of USGBC certification. Several of the proposed eco-friendly design elements include building-integrated solar panels (which could supply up to 75 percent of domestic hot water), rooftop wind turbines, an on-site water treatment and reclamation system (to create net-zero water use), a hydronic heating and cooling system, and thermal storage systems.

Other green features include eco-roofs, low-E coatings on all glazing, use of locally-produced, toxin-free and recycled products, drought-tolerant plants, exterior sun shades and interior light shelves to reduce heat gain and maximize daylight, sensors to switch off exterior lighting when daylight is sufficient, natural ventilation, and bicycle facilities including lockers and showers. The design of the new City Hall places the building to the north and east on the block, thereby creating open spaces to optimize access to the southern exposure, light and warmth, for both the building and the open spaces. The building floor plates are kept narrow with the intent of increasing occupant access to daylight and views. In addition, the Project proposes a partnership with NRG Energy Inc., the downtown district chilled water system operator. The two fold plan is; 1) to connect to the existing NRG chilled water network adjacent to the development site, and 2) provide a satellite NRG chilled/hot water plant to be located on the premises.

4.4 Consistency with Community Plan and Planned District Ordinance

The Downtown Community Plan (“Community Plan”) was adopted in 2006 after two years of community input and deliberations. The Community Plan sets out goals and policies for Downtown San Diego and for each of the specific neighborhoods within Downtown. The Civic Center is envisioned and encouraged to remain a prominent functional and visual landmark serving as a key anchor in the central business district. The Community Plan states that a redeveloped Civic Center that is physically accessible to the surrounding areas and provides an inspiring, yet functional, regional center for government, civic engagement, and culture is important to achieving downtown’s potential.

The Civic Center is located within the Civic/Core neighborhood, with its zoning consisting of the Public/Civic land use district with an Employment Required overlay, which encourages the area to be developed into a high-intensity employment hub where at least half of the land uses are devoted to employment uses such as office, retail, hotel and other commercial uses. Residential uses may be accommodated in this area to encourage a diversity of land uses and add to the 24-hour vitality of the neighborhood. This neighborhood accommodates the highest densities downtown, with Floor Area Ratios (“FAR”s) ranging from a Base of 10.0 (minimum FAR of 6.0) to a Maximum of 20.0. In addition, the Centre City Planned District Ordinance (“PDO”) exempts public buildings and uses from FAR limits, and grants bonuses for private buildings that contain 100% office, retail and similar employment uses in this area.

The Community Plan’s recommendations for the Civic Center include the re-establishment of the street grid right-of-way through the complex (preferably for vehicles, but at least for pedestrians); the accommodation of City employment needs; integration with the surrounding downtown fabric and uses; establishing usable and attractive open spaces; and, provision of inspiring architecture.

Upon careful review, staff concludes the GED proposal meets or exceeds all of these goals proposed in the Community Plan by creating a high-intensity development. The proposal anticipates the achievement of a LEED®-NC Platinum rating, exceeding the sustainability goals of the Community Plan and City policies for new civic buildings.

The GED proposal provides for well placed and designed public open spaces and inspiring architecture that does not attempt to replicate past eras, but establishes an excellent example of the best of modern contemporary architecture, both iconic and inspiring. Public buildings and open spaces should establish high standards to be followed by private sector development, both in architectural and sustainable design, and serve to create public pride and togetherness by creating locations where the public can gather and experience a sense of community, and the GED design meets these challenges.

The GED proposal, as currently designed, complies with the PDO land use regulations and FAR limits. In addition, the plans comply with the building bulk development standards with the exception of tower dimensions above a height of 185 feet, where several buildings exceed the

maximum east/west and north/south dimensions of 150 and 200 feet, respectively. Deviations from these development standards may be requested and permitted through the Planned Development Permit process when it is found that the project, when considered as a whole, will be beneficial to the community, is appropriate for the location, and that the deviations will result in a more desirable project than would be allowed through strict compliance with the standards.

The project proposes to construct a two level underground parking garage whose footprint would be directly below the City Hall facility. The garage would contain 461 spaces while the parking requirement for the Project would be 840 stalls. To meet the PDO requirement the City will have contractual rights to access the City-owned Evan Jones Parkade parking structure directly to the north of the Project. The Parkade provides approximately 1,100 parking stalls, surpassing the PDO requirement of 840 stalls.

Should the City authorize entering into a design and construction contract with GED, the developer would proceed with refinement of the plans and proceed through the Centre City PDO Design Review and entitlement process, where the design and compliance with the development standards will be fully evaluated.

4.5 *Project Schedule*

Should the voters approve the ballot measure in November 2010, the project is anticipated to be complete in July 2014 according to the following critical milestones.

- December 2010— Commencement of design and predevelopment items
- December 2011—City approves financing and issues bonds
- January 2012—Commencement of construction
- July 2014—Construction complete and move in of City staff

5.0 PUBLIC ART AND CULTURAL AMENITIES

A developer RFP requirement was to dedicate an amount equal to two percent of the public improvement costs the acquisition and preservation of on-site public art. The GED development budget commits \$1.5 million, which represents approximately one percent (1.0%) of hard construction costs for the Project. As part of the obligation to meet the two percent requirement, GED will incorporate architectural elements within the Project that incorporate artist-inspired design features. Furthermore, GED suggests establishing a steering committee composed of artists, curators and local collectors to provide guidance and leadership for the final art selection process.

GED proposes a multifaceted public art program in the complex, consisting of a “civic gallery” with art at key locations including lobbies, hallways, and council chambers. Another component of the GED proposal is to promote performance-based art in the new public plaza. A third element is to place free-standing sculptures in the landscape and architecture, creating areas of interest for both children and adults.

Existing public art may also be incorporated within the new facility. In addition to the bas-relief panels attached to the Concourse and Parkade structures, sculptor Malcolm Leland contributed the Bow Wave fountain sculpture in the Civic Plaza. The sculpture is constructed with a basic steel frame and lead connectors supporting two sheets of metal, forming an object reminiscent of a ship's bow cutting through water. GED proposes various placement options for the fountain sculpture based on recommendations from the City and the public and the budget includes a \$150,000 allowance for the fountain's refurbishment and relocation within the Site.

The City's Commission for Arts and Culture ("Arts Commission") reviewed the public art section of the GED proposal and concluded it "addresses the importance of arts and culture in this redevelopment and relates well to the arts and culture plans for adjacent redevelopment projects such as the C Street Corridor." The Arts Commission recognized the GED proposal particularly for its attention to (1) a mix and range of arts and cultural elements, (2) the need for authentic arts and cultural amenities that are unique and reflective of San Diego, and (3) the importance of the Civic Theatre and the GED plan's ability to improve its profile without service interruption.

6.0 FINANCIAL/ECONOMIC ANALYSIS

6.1 *Development Budget*

The GED proposal includes a detailed development budget for the City Hall, associated underground parking structure, retail and public plaza components of the project. CB Urban Development and JLL have validated the development budget quantities, unit costs and construction schedule for reasonableness when compared to similar projects in the southern California region. The proposed new City Hall building totals 754,493 gross square feet, of which 16,087 gross square feet is ground floor retail, 560,006 gross square feet is office space and Council Chambers for the City, and the two levels of subterranean parking total 178,400 gross square feet. According to the Gensler study, the City is estimated to require approximately 547,184 gross square feet upon move-in. Expansion space for the City is anticipated to be required in the year 2025 and will be accommodated by the construction of a 40,000 gross square foot building for the Water Department on City owned land. Development costs have been allocated between the City Hall and retail components of the program. The following summarizes the developer's proposed costs.

GED Development Budget (based on 754,493 GSF)

	Civic Uses	Retail	Costs / GSF
Predevelopment Costs	7,316,975	158,010	9.91
Demolition & Abatement	5,975,926	129,050	8.09
Site Improvements	2,051,776	44,308	2.78
Underground Parking	23,714,244	512,110	32.11
Retail Shell and Core	0	2,349,667	3.11
City Hall Shell and Core	89,870,689	0	119.11
Council Chambers Shell and Core	2,051,193	0	2.72

	Civic Uses	Retail	Costs / GSF
Plaza/Open Space Improvements	6,170,055	133,242	8.35
Retail Tenant Improvements	0	0	0
City Hall – City Space Improvements	38,173,109	0	50.59
Council Chambers Tenant Improvements	2,069,752	0	2.74
Sustainability	7,023,331	151,669	9.51
Soils Remediation	2,199,502	47,498	2.98
City Hall – Furniture, Fixtures and Equip.	16,940,000	0	22.45
Voice and Data Infrastructure	9,000,000	0	11.93
Public Art Program	1,468,292	31,708	1.99
Fountain Relocation	146,829	3,171	0.20
Utility Upgrades	1,049,288	22,659	1.42
Temporary Cooling Towers	117,463	2,537	0.16
Security System	685,203	14,797	0.93
Signage	146,829	3,171	0.20
Permits and Fees	2,278,339	49,201	3.07
Architecture and Engineering	6,926,784	149,584	9.38
Retail Leasing Fees	0	0	0
Builder’s Risk Insurance, CCIP, Subguard, Bonds	12,262,949	264,819	16.54
Project Supervision	734,146	15,854	0.99
Legal and Title	391,545	8,455	0.53
Other Studies and LEED Commissioning	1,688,536	36,464	2.27
Hard Cost Escalation (11.0%)	22,859,252	493,646	30.83
Developer’s Contingency (4.5%)	10,444,215	225,543	14.09
Developer Fee (3.0%)	6,669,151	144,021	8.99
Total Costs Before Financing & City Controlled Costs	280,425,373	4,991,184	378.29
Project & Construction Mgmt- Predevelopment	117,463	2,537	0.16
Project & Construction Mgmt- Development	734,146	15,854	0.99
City Contingency (3%)	6,962,810	150,362	9.43
Total Costs Before Financing	\$288,239,792	\$5,159,937	\$388.87

The development budget provided above is based on a conceptual design and program and represents the *absolute* maximum amount of \$293,500,000 that the developer is contractually limited to spend on the Project (the “Project Cost Cap”). As design is more fully developed and refined, the budget will adjust accordingly but in no event will be greater than the Project Cost Cap.

6.2 Project Financing

Various financing structures were analyzed to determine the most cost-effective structure for the financing of the Project. It is expected that the City would finance the \$294.4 million maximum project cost through a long term tax-exempt lease-financing type structure, such as Lease Revenue Bonds or Certificates of Participation. The bonds will be issued as General Fund obligations by the City under the Joint Powers Authority legal framework. To pay for the annual debt service, the City would utilize existing revenues that are currently allocated to leasing and maintaining the office space that will be replaced by the Project; no new taxes will be proposed to support the financing.

Lease-financing is a widely used financing vehicle in California, and has been used by other municipalities to finance City Hall projects including Oakland's Administration Center and San Jose's City Hall. The City has used a lease-financing vehicle for various outstanding General Fund financings, such as the recently issued Master Refunding Lease Revenue Bonds, Series 2010A, the Fire and Life Safety Facilities Lease Revenue Bonds, Series 2002B, and the Ballpark Refunding Lease Revenue Bonds, Series 2007A.

Under the current estimated Project schedule, the bonds are expected to be issued in late calendar year 2011 just in time to provide funding for the Project as it enters the construction phase in January 2012. Subject to voter approval of the Project, in fall 2011, the CFO's Office will prepare a financing ordinance for the proposed bond issuance and a detailed financing plan including all structuring elements for City Council consideration.

6.3 Project's Projected City's Net annual Costs Compared to "Hold Steady"

JLL prepared 10-year, 20-year and 50-year forecasts for the City's costs for the GED Project and the "Hold Steady" alternative based on the updated data provided in the Gensler and AECOM reports, expert analysis of various sub consultants, the non-binding lease renewal proposals received from the owners of the three properties from which the City leases downtown office space and utilizing lease revenue bond financing as directed by Debt Management. A summary of results of these analyses are contained in Attachment I.

The following table summarizes the City's total projected net costs for the GED Project and the "Hold Steady" alternative over the next 10-, 20- and 50-year periods. The term "net costs" refers to gross financial obligations minus revenue offsets such as parking income, and rental income retail space and meeting space within the new City Hall building. The 50-year projection is presented in both non-discounted dollars and on a Net Present Value (NPV) basis. NPV is a financial formula frequently used to impartially compare two or more cash flow forecasts and presents the values in dollars for a given year (2010 for purposes of this analysis). The formula adjusts the values for differences in the timing of cash flows and considers the time value of money. JLL applied a discount factor (or cost of money factor) of 5.25% based on Debt Management direction in each NPV calculation used in this analysis.

Projected City's Net Annual Costs
 (in millions)

		GED	"Hold Steady"
1	2010	\$14.1	\$14.1
2	2011	17.5	25.0
3	2012	25.3	25.5
4	2013	25.2	25.6
5	2014	25.7	25.9
6	2015	17.2	17.4
7	2016	17.2	17.6
8	2017	17.3	17.9
9	2018	23.4	31.5
10	2019	23.4	29.8
10-year Total	2019	\$206.3	\$230.2
20-year Total	2029	\$448.3	\$489.7
50-year Total	2059	\$964.7	\$1,196.9
50-year (NPV)	2059	\$372.8	\$431.4

Note: Totals may differ due to rounding

The table below illustrates the GED Project savings over the "Hold Steady" alternative on a year-by-year basis for the first 10 years and on a 20-year and 50-year basis.

GED Project (Savings)/Costs vs. "Hold Steady"
 (in millions)

		Annual	Cumulative
1	2010	\$0	\$0
2	2011	(\$7.5)	(\$7.5)
3	2012	(0.2)	(7.7)
4	2013	(0.4)	(8.1)
5	2014	(0.2)	(8.2)
6	2015	(0.2)	(8.4)
7	2016	(0.4)	(8.8)
8	2017	(0.6)	(9.4)
9	2018	(8.1)	(17.5)
10-year Total	2019	(\$6.4)	(\$23.9)
20-year Total	2029	(\$3.9)	(\$41.3)
50-year Total	2059	(\$0.0)	(\$232.2)

Note: Totals may differ due to rounding

6.4 Economic / Fiscal Impacts

In August 2008 AECOM (formerly Economics Research Associates) was retained by JLL to perform a fiscal and economic impact study on the project's potential benefits. Based on the methodology prepared by AECOM in the data from the 2008 report, the updated economic and fiscal impacts for the proposed Project are summarized in the following table.

Construction Jobs	2,399 FTE
Construction Wages	\$105,130,000
Long Term Jobs	86 FTE
Long Term Wages (annually)	\$3,455,500
Sales Tax Revenue (to City annually)	\$56,305
Property Tax Revenue (to City annually; estimated to begin in year 2025)	0

Induced economic and fiscal impacts would also be likely from new business and development surrounding the project. The value of such impacts have not been assessed by AECOM nor included in the JLL analysis.

6.5 Sensitivity Analyses

Breakeven Lease Renewal Rate Analysis

A breakeven analysis was prepared by JLL which sought the average lease renewal rate upon expiration of the City's existing leases that results in costs to the City equal to those in the Project until a new project would be delivered in the Hold Steady scenario (year 2020). Over the 10-year analysis period, an initial monthly lease rate of \$1.51 per square foot commencing in 2013/2014 would be required in the "Hold Steady" alternative to equal the costs of the Project over the first 10 years of the analysis period. The breakeven lease rate is below today's market rate for comparable office space, with the weighted average rate included in the landlord proposals for renewals in 2013/2014 being \$2.17.

Breakeven Interest Rate Analysis

A sensitivity analysis was prepared by JLL to determine what the affect would be on the Project costs should interest rates fluctuate prior to issuance of the bonds in 2012. According to a Bloomberg report, historical municipal bond rates for 30 year, AAA rated issuances have averaged 5.31% over the last 20 years and as of June 14, 2010 are at 4.07%. A 5.25% interest rate is used in the financial analyses, which is 20 basis points higher than the rate experienced for a recent 2010 City issuance. Debt Management also provided projections at a 6.25% rate in order to facilitate evaluating sensitivity to a higher rate upon issuance as of January 1, 2012. If interest rates increase from 5.25% to 6.25%, debt service costs over the life of the bonds would increase by \$91 million, with the total savings compared to the Hold Steady at \$5.8 million over the first 10 years and \$141.3 million over the 50 year analysis period. A breakeven analysis was

also prepared which concluded that the interest rate could increase to 7.80% in order to equal the costs in the “Hold Steady” alternative over the 50 year analysis period.

7.0 EVALUATION OF PROJECT MEETING GOALS OF ENA

In response to the goals outlined in the ENA authorized by the City Council in October 2009, GED and the Negotiation Team worked to revise the GED Original Proposal to ensure those goals were achieved. The following table evaluates the GED Project compliance with the ENA goals.

GED Design & Construction Agreement Compliance with ENA Objectives

Goals/Objectives	GED Agreement
The Proposed Development’s net costs, defined as the City’s gross obligations less its projected revenue offsets, shall save City money every fiscal year, as completed to the “Hold Steady” alternative.	Results in the lowest cost solution to the City over the next 10-, 15- and 50-year periods.
The Proposed Development shall have no negative impact on City’s general fund.	Results in savings over the “Hold Steady” alternative, providing the least impact of the two alternatives. The savings over hold steady has no negative
The development shall assume responsibility for financial risks such as construction cost increases and schedule delays associated with the Proposed Development.	Once the City delivers to GED a notice to proceed with construction of the Project, all the risks of exceeding the Project Cost Cap are shifted to GED, Turner Construction and their respective sureties.
The City shall bear the costs of any city-requested additions or redesigns during the term of ENA.	No additional redesign was required from City-requested additions.
The proposed Development shall preserve, and not displace or disturb the operations of the existing Civic Theatre.	Civic Theatre remains in its current location and its operations are undisturbed.
GED shall agree to cooperate with the City Auditor on any audits.	Agreement contains provisions to allow the City the right to review and audit GED’s compliance with the provisions of the Agreement.
The Proposed Development shall be	Proposes icon tower design resembling

Goals/Objectives

constructed in a manner which will be state-of-the-art examples of environmentally friendly construction.

The Proposed Development shall be constructed in a manner which will receive LEED Certification of Silver or better.

The Proposed Development shall be construction in a manner which will be fully compliant with the Americans with Disabilities Act or the California Building Code in the California Code of Regulations at Title 24, whichever requirement provides for great access.

The Proposed Development shall be constructed in a manner which will be free of asbestos and other materials that expose members of the public and employees to health hazards.

The Proposed Development shall be constructed in a manner which provides adequate fire protection for members of the public and City employees, meeting or exceeding current codes.

The Proposed Development shall be designed in a manner that ends the City's current reliance on other leased office space in the downtown area.

The Proposed Development shall be designed in a manner that consolidates City office space to produce efficiency and reduce the overall amount of space currently used for City purposes.

The Proposed Development shall enhance public access to government meetings and services and improve public gathering spaces.

GED Agreement

the shape of a sail and utilizing design and construction standards agreed to by the parties.

Proposes high-performance water conservation and energy efficiency measures that will exceed a LEED® Platinum rating.

Agreement outlines GED's requirement to ensure construction is fully compliant with these design and construction standards.

Proposes removal of all hazardous material during demolition of existing City Hall and new City Hall to be built with hazardous-free materials.

GED development budget includes the costs for the installation of fire protection that will meet or exceed current codes.

Provides for City expansion requirement within the new City Hall building until 2035. Thereafter the City will again be required to lease space in the downtown area.

The new City Hall provides a 40% reduction in space efficiency over the existing facilities.

The new City Hall provides a one-stop shop on ground floor providing citizens with direct access to City services, a 400-seat Council chambers on 2nd floor,

Goals/Objectives

GED and City shall pursue all governmental sources of grants, reimbursements, rebates, etc., that could reduce City's costs pertaining to the Proposed Development.

The City is to retain its public assets by focusing on the options for ground leases for Blocks 1, 13, and 15.

GED Agreement

providing a 43% increase in seats; and a 1¼-acre public plaza.

Due to the Project Schedule pursuit of grants, reimbursements, etc. was too premature as the Project was not near a "shovel-ready" condition required to receive the grants. Such grants will be pursued should the Project be approved by the voters in November 2010.

City will ground lease Block 14 only and retain ownership of Blocks 1 and 15.

8.0 DESIGN AND CONSTRUCTION AGREEMENT

The relationship between the City and GED will be memorialized in the Agreement, a **draft** of which is included in Attachment J. The Agreement will ensure the City meets its program needs within fixed schedule and cost constraints. The challenge of the Agreement is to create a process that guarantees that the City will have its program needs met, within precise annual and cumulative cost constraints, by a date certain. Aside from such program descriptions and cost constraints, the process begins with an image of the Project and proceeds to design, bid, construction and occupancy of the new Civic Center. The basic elements of the Agreement are summarized below.

1. City Design Criteria and Requirements. The Agreement describes the City's design criteria, space and functionality requirements. The building described in the Agreement has 19 floors with 754,493 gross square feet, including 551,794 gross square foot of City office space, 8,212 gross square feet for Council Chambers (560,006 gross square feet of total City space), 16,087 gross square feet of retail and up to 461 subterranean parking spaces contained in 178,400 gross square feet. Floors 1 through 3 of the building have functional requirements that include ingress/egress, lobby, "one stop shop" where the City interacts with the public, a 400-seat Council Chamber, meeting rooms and Council offices. The fourth floor will house the Mayor and his staff while floors 5 through 19 will be generally configured as open office space with a number of conference rooms of various sizes and private offices to accommodate the City's needs. The specific layout of each floor will be determined in a space planning effort during the construction. The driving principle of the design is to accommodate the City's needs in a highly efficient and sustainable environment (LEED® Platinum) to minimize City operation costs while maximizing employee productivity.

2. Budget Controls. The Agreement establishes a "Project Cost Cap" of \$293,500,000 Million which is the maximum amount the City will pay for the Project. The budget is comprised of predevelopment costs, construction hard costs, soft costs (permit fees,

insurance, legal fees, etc.), City/GED contingency, GED fee and City Project costs. City and GED will prepare and update Project cost estimates at each stage of the design (schematic, early design development, advanced design development and construction documents). These numbers will be validated in a guaranteed maximum price (GMP) proposal from Turner Construction before construction commences.

3. Project Schedule. Design begins with approval by the electorate; construction begins on January 1, 2012 with the final date for delivery of the Project on July 1, 2014. GED must pay liquidated damages to the City based on the City's out-of-pocket expenses for each day delivery is delayed.

a. Predevelopment Phase. Beginning with the City's delivery of a notice to proceed, GED will contract with the Project architect Zimmer Gunsul Frasca Architects (ZGF) for the design of the building. The Agreement creates an iterative process during which ZGF (through GED) presents initial design and refinements to the City for its review and approval at various stages of design evolution.

b. GMP Phase. When construction drawings are 50% or more complete, GED will cause Turner Construction to obtain bids and prepare the cost analysis necessary for a GMP. Due to the level of specificity of the drawings, the GMP will be less than the hard construction cost numbers in the Project Cost Cap contained in the Agreement.

4. Construction Phase. When the GMP is approved by the City and the City successfully completes its financing, the City will deliver to GED a notice to proceed with the construction of the Project.

a. Form of Contract. During the construction phase, the relationship between GED and the City follows the "CM at Risk" format, similar to construction of the proposed New Main Library.

b. FF&E, Moving and IT. The Project Budget includes an appropriate allowance for furniture, fixtures and equipment, moving and communication/IT for the Project.

5. Termination for Convenience of City. The Structure of the Agreement with GED includes several "exit ramps" that limit the City's exposure prior to commencement of construction. The following are circumstances that will permit termination by the City:

a. Costs in Excess of Project Cost Cap. If the GMP or other Project costs exceed the Project Cost Cap before construction is commenced, the City may terminate without penalty with its total exposure limited to approximately \$7 Million for predevelopment costs and GED's partial fee.

b. Financing Costs. The financial analysis for the Project is based on an assumed City bond yield of 5.25%. If the financial markets drive bond yields to the point where the Project no longer achieves cost savings over Hold Steady every year, the City may terminate

without penalty with its total exposure limited to approximately \$7 Million for predevelopment costs and GED's partial fee.

6. City's Exposure after Commencement of Construction. Once the City delivers to GED a notice to proceed with construction of the Project, all the risks of exceeding the Project Cost Cap are shifted to GED, Turner Construction and their respective sureties.

9.0 ENVIRONMENTAL IMPACT

The Fourth Addendum to the Final Environmental Impact Report (FEIR) for the Downtown Community Plan was conducted for this project.

The Redevelopment Agency ("Agency"), acting as the Lead Agency under the California Environmental Quality Act (CEQA), certified the FEIR for the Proposed Downtown Community Plan, Centre City Planned District Ordinance and 10th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (SCH No. 2003041001) on March 28, 2006 per Agency Resolution R-04001, which serves as a "Program EIR" in compliance with CEQA Guidelines Section 15168. The Agency prepared an Initial Study for the proposed Civic Center project and, based on the results of the Initial Study, concluded that neither the Civic Center project, nor the circumstances under which the project is being undertaken, would result in any new significant impacts not discussed in the FEIR, or any substantial increase in the severity of impacts identified by the FEIR. In addition, no new information of substantial importance has become available since the FEIR was prepared regarding new significant impacts, or feasibility of mitigation measures, or alternatives that apply to the proposed project. Therefore, none of the conditions requiring the preparation of a subsequent or supplemental EIR under CEQA Guidelines Sections 15162 and 15163 are present.

Therefore, the Agency has caused the preparation of the Fourth Addendum to the 2006 FEIR for the Civic Center project in accordance with CEQA Guidelines Section 15164(a). The Draft Fourth Addendum was circulated for a 14-day review period from May 5 to 19, and no comments were received from the public. Therefore, the Final Fourth Addendum was completed and made available for public review 14 calendar days in advance of the first public hearing on the project consistent with the City of San Diego Municipal Code.

In consideration of the Site's buildings approaching 45 years of age, an historical study was conducted by ICF International to determine the potential historic significance of the Civic Center Complex and the individual buildings and features located within. The study of the Site's history and architecture found that all the buildings on the Site, except for the City Operations Building, are all historical resources for CEQA purposes. In addition, the Bow Wave Fountain, designed by the artist Malcom Leland and located in the plaza, is a historical resource for CEQA purposes. The Historical Resources Technical Report ("Report") found that the Civic Center Complex as a whole, consisting of the City Administration Building, the Concourse, the Civic Theater and the Evans Jones Parkade, is eligible for designation on the San Diego Register for Historical Resources ("San Diego Register") as they "exemplify or reflect special elements of the city's, community's, or neighborhoods, historical, archeological, cultural, social, economic,

political, aesthetic, engineering, landscaping, or architectural development “ and “are identified with persons or events significant in local, state, or national history.” In addition, the Report found that both the City Administration Building and Civic Theater qualified individually for consideration of designation on the San Diego Register. The Evan Jones Parkade and Bow Wave fountain also both qualified for consideration of designation on the San Diego Register, and the Report also found that they could potentially qualify for designation on the California Register of Historic Places.

The 2006 FEIR found that there would be significant impacts to historical resources due to implementation of the Centre City Redevelopment Project and Downtown Community Plan, as some resources may be demolished to achieve the redevelopment goals of the City, and a Statement of Overriding Considerations was adopted by the Agency, finding that the benefits associated with the implementation of the Centre City Redevelopment Project and Downtown Community Plan outweighed the impacts from the loss of such resources. However, the 2006 FEIR assumed that resources found to be significant at the State or Federal level were to be protected according the Secretary of Interior Standards consistent with the policies of the Downtown Community Plan. Any significant alterations to such resources would require further environmental review.

The Civic Center project would demolish two of the four structures within the Civic Center Complex found to be eligible for local designation, and one building found to be eligible for local designation on an individual basis. The 2006 FEIR provides mitigation measures for the demolition of such resources, which includes review for designation under standard City procedures and documentation by narrative, drawings and photographs according to the standards of the Historic American Buildings Survey, and deposited in appropriate local archives (including the San Diego Main Library). Because the elevated plaza of the Community Concourse which will be demolished as part of the Civic Center project is attached to the Evan Jones Parkade (considered eligible at the State level), the alterations to the Parkade will be reviewed according to City procedures to ensure compliance with the Secretary of Interior Standards. Because neither the Civic Theater nor the Bow Wave fountain are affected by the Civic Center project, no mitigation measures were identified for these resources.

10.0 CONCLUSION

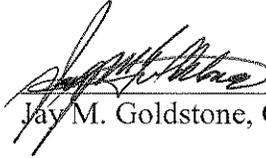
City and CCDC staff, in conjunction with highly specialized consultants, have identified and evaluated numerous non-development and development alternatives to satisfying the City’s downtown occupancy needs in the short and long terms. This extensive study resulted in the City entering into an ENA with GED in an effort to reach an agreement on terms for the replacement of the City-owned facilities. The final terms for the new City Hall facility substantially meet the goals outlined in the ENA and, the Office of Mayor Jerry Sanders recommends that the City approve a ballot measure requiring a public vote for the City to approve the Agreement and move forward with the development of a new City Hall.

Respectfully submitted,

Concurred by:



Phil Rath, Deputy Director of Policy



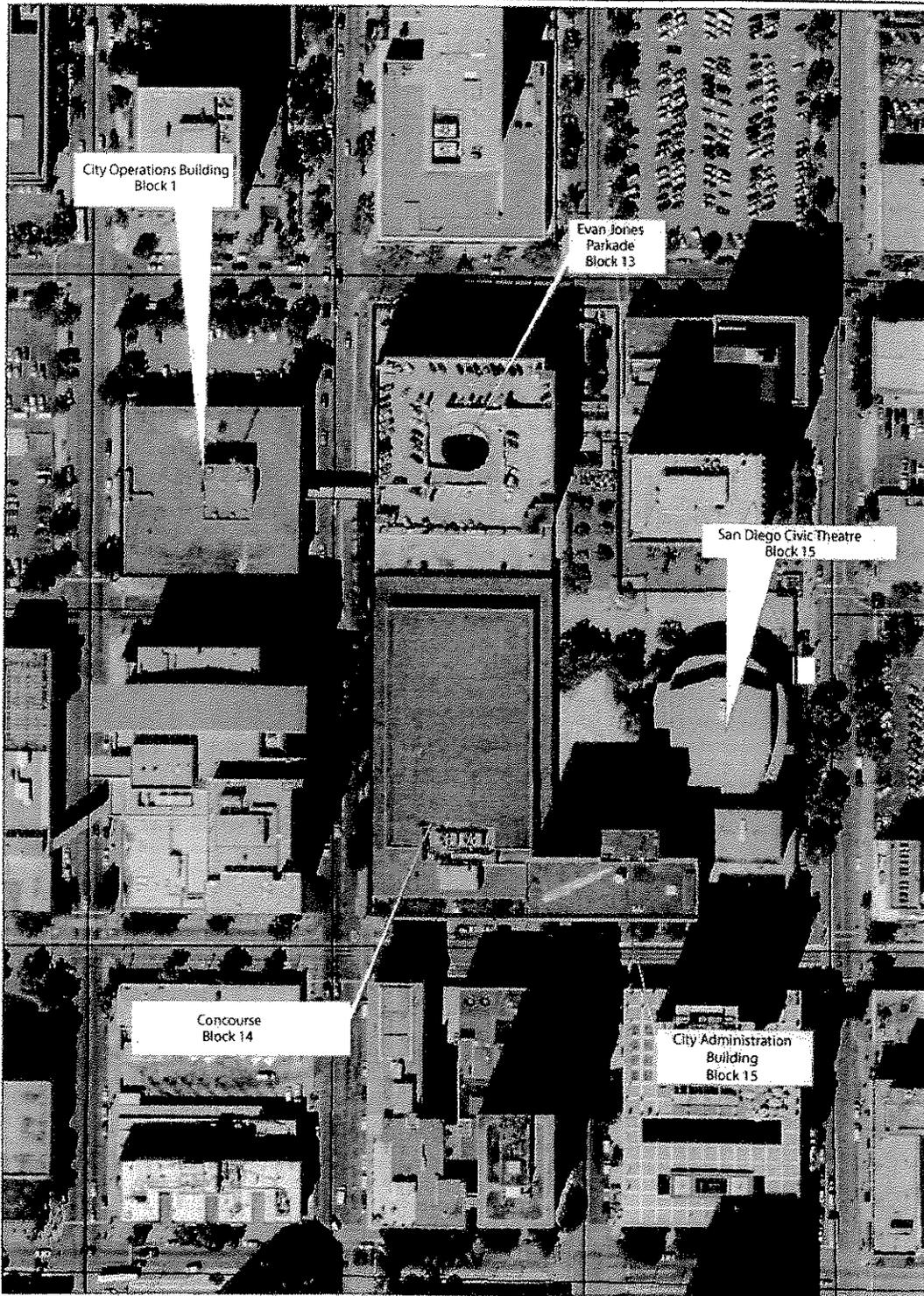
Jay M. Goldstone, Chief Operating Officer

Attachments:

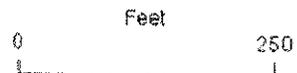
- A - Site Map
- B - City Attorney Opinion Letter
- C - AECOM Supplemental Condition Assessment Report
- D - Exclusive Negotiation Agreement
- E - Gensler Updated Needs Assessment Study
- F - City Revised Voice and Data Specifications
- G - GED Preliminary Design Drawings
- H - Memorandum to Independent Budget Analyst from Real Estate Assets Department
- I - Revised JLL Analysis of GED Project and "Hold Steady" Alternative
- J - Draft Civic Center Design and Construction Agreement

ATTACHMENT A
SITE MAP

SAN DIEGO CIVIC CENTER COMPLEX



APPROXIMATE CIVIC CENTER REDEVELOPMENT AREA



ATTACHMENT B

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: February 19, 2009
TO: Council President Ben Hueso and Councilmembers
FROM: City Attorney
SUBJECT: Potential Liability of a City Arising out of Building Ownership

INTRODUCTION

On November 7, 1988, the City Council adopted Ordinance Number O-17172 requiring the installation of automatic fire sprinkler systems in all existing high-rise buildings. Buildings or structures owned by governmental agencies other than the City of San Diego are excluded under the definition of "high-rise buildings." The original ordinance established January 1996 as the compliance date for fire sprinkler retrofitting. The compliance deadline was subsequently extended in 1991, 2001, 2004, and 2008 by the City Council. Please see the attached *Executive Summary* for the February 2, 2009 City Council hearing, for more information on the history of the City's changes to the fire sprinkler requirements. The current deadline for compliance under the Municipal Code is January 1, 2009.

On February 2, 2009, the City Council once again discussed whether or not to extend the deadline for compliance with the requirement for the installation of fire sprinklers for the City Administration Building [CAB]. At that meeting, the Council requested a legal analysis of potential liability for the City that may result from extending the compliance date.

QUESTION PRESENTED

What is the potential tort liability of a city resulting from building ownership?

SHORT ANSWER

Generally, a city- like all governments- is immune from tort liability except as provided by statute under the state Government Claims Act. However, there are certain statutory exceptions to immunity such that a city may be held liable for failure to discharge a mandatory duty, for maintaining a hazardous condition on city property, and/or public nuisance.

ANALYSIS

A. Governmental Immunities from Tort Liability

1. General Immunity from Liability under the Government Claims Act

The California Government Claims Act (Government Code section 810 et seq.) provides the exclusive scope of governmental tort liability.¹ Under the Government Claims Act, all government tort liability must be based on statute. The general rule is set forth in Government Code section 815 as follows:

Except as otherwise provided by statute:

- (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity, a public employee, or any other person.
- (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

Government Code section 815 abolished all common law or judicially declared forms of liability for public entities, except such liability as may be required by the federal or state constitution. *Cochran v. Herzog Engraving Co*, 155 Cal. App. 3d 405, 409 (1984). Thus, a city may not be held liable for "common law negligence." *Van Kempen v. Hayward Area Park*, 23 Cal. App. 3d 822, 825 (1972); *People ex rel. Dept. of Transportation v. Superior Court*, 5 Cal. App. 4th 1480, 1484 (1992). Nor can liability be evaluated by the general negligence provisions of Civil Code section 1714. *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1132 (2002). It is well-established that liability against a public entity is confined to the statutory scheme of the Government Claims Act. *Id.* at 1127-1128; *See also, Cochran* at 409 (explaining that "in the absence of some constitutional requirement, public entities may be liable *only* if a statute declares them to be liable...In short, sovereign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute").

2. Immunity for City's Failure to Enforce, Enact, or Revoke

The Government Claims Act expressly provides that "[a] public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." Gov. Code § 818.2. Government Code section 818.4 establishes immunity for issuance or failure to issue or revoke any permit or approval, stating as follows:

¹ Because the statutory scheme of Government Code section 810 et seq. includes claims sounding in contract and in tort, the Supreme Court of California determined "that 'Government Claims Act' is a more appropriate short title than the traditional 'Tort Claims Act.'" *City of Stockton v. Superior Court of Sacramento County*, 42 Cal. 4th 730, 741-742 (2007).

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

B. Statutory Exceptions Under the Government Claims Act

The following exceptions to the Government Claims Act may be a potential basis for tort liability arising out of building ownership by a city:

1. Dangerous Condition of Public Property

Under the Government Claims Act, dangerous condition of public property is a statutory species of liability. Gov. Code § 835. Government Code section 835 provides:

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, and that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

To state a cause of action against a public entity under Government Code section 835, a plaintiff must plead: (1) a dangerous condition existed on the public property at the time of the injury; (2) the dangerous condition proximately caused the injury; (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of property and sufficient time prior to the injury to have taken measures to protect against the dangerous condition. *Vedder v. County of Imperial*, 36 Cal. App. 3d 654, 659 (1974); *Ducey v. Argo Sales Co.*, 25 Cal. 3d 707, 715-716 (1979).

The Law Revision Commission Comment to Government Code section 830 states:

The definition of “dangerous condition” defines the type of property conditions for which a public entity may be held liable but does not impose liability. A public entity may be held liable for a “dangerous condition” of public property *only if it has acted unreasonably* in creating or failing to remedy or warn against the condition under the circumstances described in subsequent sections. (Emphasis added.)

Public property may be in a dangerous condition because of the design or location of the improvement, the interrelationship of its structural or natural conditions, or the presence of latent hazards associated with its normal use. *Bonanno v. Central Contra Costa Transit Authority*, 30 Cal. 4th 139, 149 (2003). “A condition is not dangerous within the meaning of the statute ‘unless it creates a hazard to those who foreseeably will use the property ... with due care.’” *Sambrano v. City of San Diego*, 94 Cal. App. 4th 225, 239 (2001) (citing *Mathews v. City of Cerritos*, 2 Cal. App. 4th 1380 (1992)).

In *Vedder*, the court determined that the County was not immune under Government Code sections 850 and 850.2 from a claim that injury had resulted from County property maintained in a hazardous condition under Government Code section 835. In that case, third parties leasing the airport property stored large amounts of gasoline and other combustible materials on the property. It was alleged that the County’s “property was in a dangerous condition in that normal airport operations and the operation of businesses involving storage of large amounts of gasoline and other highly combustible chemicals created a severe risk of fire and/or explosion.” *Id.* at 659. The County also allegedly “caused, permitted, and encouraged such operations with full knowledge that there were no means available to prevent or control gasoline fires.” *Id.*

In that situation, the court held that:

One who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others.

Id. at 660. The court went on to explain that the immunities of Government Code sections 850 and 850.2:

should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition to exist on the property. In that situation, lack of fire protection is a proper factor to be considered as contributing to the existence of a dangerous condition on the property. (citation omitted).

Id. at 660-661.

In *Vedder*, the County knew, allowed, and encouraged explosive chemicals to be stored on the property and the failure to provide fire protection was a factor in the court's determination that the property was maintained in a hazardous condition.

In this case, the Fire Department recommends extending the deadline for compliance for fire sprinkler retrofitting because the risk of fire in CAB is not as high as in residential high-rise buildings. In addition, the fire station is close by and the response time minimal.

Finally, the Municipal Code provides more stringent fire sprinkler requirements than state law requires. The 2007 California Building Code requires fire sprinkler retrofitting in limited circumstances for existing high-rise buildings of Type II-B, III-B, or V-B construction. 2007 CBC § 3412.27. CAB is of a Type I-A construction; therefore, the California Building Code does not require fire sprinklers to be installed in CAB.

Generally, the City Council has adopted the California Building Code by reference. However, the City Council has also made findings and adopted different, more stringent fire sprinkler retrofitting requirements within the Municipal Code. Specifically, San Diego Municipal Code section 55.0903 requires the installation of fire sprinkler systems in all existing high-rise buildings, as those buildings are defined in that section. Sub-section 903.6.2.8, Violations, states:

- (1) It is unlawful for any owner of a high-rise building to allow any person to occupy any portion of a high-rise building subject to the provisions of this section except where:
 - (1) the *Fire Code Official* or City Manager has, in writing, authorized the occupancy; or (2) the owner is complying with the implementation schedule set forth in this section; or (3) the occupant is performing construction or maintenance related to installation or maintenance of an automatic fire sprinkler system; (4) the owner of the high-rise building agreed in writing prior to January 1, 2004 to demolish the high-rise building by January 1, 2000.
- (2) It is unlawful for any owner of a high-rise building to allow any person to occupy any portion of a high-rise building after January 1, 2009, where occupancy has been authorized pursuant to this section, except where: (1) the occupant is performing minimal maintenance to prevent the high-rise building from being in an unsafe condition; or (2) the occupant is performing construction or maintenance to the building related to the installation or maintenance of an automatic fire sprinkler system; or (3) an approved fire sprinkler has been completely installed.

2. Fire Hazard and Public Nuisance

The *Vedder* court determined that the County's failure to provide fire suppression facilities at the airport was also a factor in establishing the existence of public nuisance for which the County could be held liable: As the court explained:

Government Code section 815 does not bar nuisance actions against public entities to the extent that such actions are founded on Civil Code sections 3479, 3480 and 3481, which define public and private nuisances. (Citations omitted). A fire hazard constitutes a public nuisance. (Citations omitted)...

What we have said earlier with respect to proximate cause and non-applicability of Government Code sections 850 and 850.2 applies equally here. The pleading makes it clear that plaintiffs are contending the negligent acts of the nonpublic defendants and the existence of a public nuisance (a fire hazard) on the publicly owned and managed airport property both proximately caused their injuries and damage. It is also clear that plaintiffs are contending the public nuisance on the airport property resulted from a combination of permitting the storage of gasoline and other highly combustible chemicals and not requiring or providing adequate fire protection facilities. The Government Code sections respondents rely upon are not intended to provide immunity under these circumstances, nor do they preclude consideration of a lack of fire protection in determining whether a public nuisance in fact existed.

Vedder at 661.

Again, in the *Vedder* case there were other hazardous conditions on the property that when combined with the lack of fire suppression facilities were the basis for liability for public nuisance.

3. Failure to Discharge a Mandatory Duty

Government Code section 815.6 provides an exception to the general rule that a public entity is not liable for an injury, whether the injury arises out of an act or omission of the public entity, a public employee, or any other person, stating as follows:

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Government Code section 815.6 allows liability to be imposed on a public entity for breach of a mandatory duty where an express enactment (statutory or regulatory) imposes a non-discretionary obligation designed to protect against the risk of a particular injury. *Haggis v. City of Los Angeles*, 22 Cal. 4th 490, 498-499 (2000). A three-prong test is used to determine whether liability may be imposed on the public entity under this section: (1) the enactment must impose an "obligatory" function, rather than describing a "merely discretionary or permissive" course of action; (2) the enactment must be "designed" to protect against the type of injury suffered; and (3) breach of the mandatory duty must be the proximate cause of the injury suffered. *Id*; *Sutherland v. City of Fort Bragg*, 86 Cal. App. 4th 13, 19 (2000).

Even where language of an enactment appears mandatory, if significant discretion is required to carry out any duty imposed, "that duty is not mandatory within the meaning of section 815.6 and thus breach of the duty will not support tort liability." *Sutherland v. City of Fort Bragg*, 86 Cal. App. 4th at 18-20 (immunity found under section 815.6 related to failure to enforce two-exit provision of Uniform Fire Code); *See also, MacDonald v. State of California*, 230 Cal. App. 3d 319, 326-328 (1991).

If adopted by the City Council, the proposed ordinance will extend the deadline for compliance with fire sprinkler retrofitting requirements for high-rise buildings from January 1, 2009 to January 1, 2011. If the ordinance is not adopted by City Council, the City will not be in compliance with the requirements of the Municipal Code.

CONCLUSION

Generally, a city- like all governments- is immune from tort liability except as provided by statute under the state Government Claims Act. However, there are certain statutory exceptions to immunity such that a city may be held liable for failure to discharge a mandatory duty, for maintaining a hazardous condition on city property, and/or public nuisance.

JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:pev
Attachment
cc: Darren Greenhalgh, Deputy Director
Jeff Sturak, Office of the Independent Budget Analyst
MS-2009-2

**EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE ISSUED:	REPORT NO:
ATTENTION:	Council President and City Council
ORIGINATING DEPARTMENT:	Engineering and Capital Projects Department
SUBJECT:	Fire Sprinkler Retrofitting for High Rise Buildings
COUNCIL DISTRICT(S):	2 (Faulconer)
CONTACT/PHONE NUMBER:	Darren Greenhalgh, (858) 573-5019

REQUESTED ACTION:

Introduction of an Ordinance amending Chapter V, Article 5, Division 9 of the San Diego Municipal Code by amending Section 55.0903 pertaining to Fire Protection and Prevention, to extend the required compliance date for sprinkler retrofits of high rise buildings to January 1, 2011.

STAFF RECOMMENDATION:

Approve the Ordinance.

EXECUTIVE SUMMARY:

In 1986, the Mayor and City council passed Ordinance Number O-17172 requiring fire sprinkler retrofitting for high rise buildings. Specific exemptions were granted including all Government buildings except for those owned by the City of San Diego. In 1991 the Council extended the deadline for compliance from 1996 to 1999, unless the owner declared their intent to demolish the building by January 1, 2000. In 1995 the City passed resolution number R-286760 declaring the City's intent to demolish the City Administration Building (CAB) prior to January 1, 2000.

On June 5, 2001 Ordinance Number O-18946 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofit Ordinance until January 1, 2004. In addition, the City Council authorized a phase funded design build contract to continue with the installation of a fire sprinkler system.

On January 13, 2004 Ordinance Number O-19254 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2008.

On January 8, 2008 Ordinance Number O-19696 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2009.

On December 2, 2008 an ordinance to extend the compliance deadline for the Fire Sprinkler Retrofitting Ordinance was heard, but not approved by the City Council.

The current Fire Sprinkler system includes the: backflow valve, pump, transfer switches, standpipe, alarm system, and sprinklers in the basement and on the 10th, 11th, 13th, 14th and 15th floors. Remaining work includes the: emergency backup generator, additional upgrades to the alarm system, and fire sprinklers in all the elevator lobbies and on the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 12th floors. The cost of this remaining work is estimated to be in excess of \$5,000,000.

On July 31, 2007, CCDC issued a request for qualifications to redevelop the Civic Center Complex. The proposed redevelopment of the Civic Center Complex has proceeded with the peer review and financial analysis which was estimated to be complete in December. Presentations to the Centre City Development Board (CCDC), the Rules Committee and the City Council are anticipated in early 2009. If this project were to move forward the completion of the fire sprinkler system in CAB would not be necessary. Should the proposed redevelopment of the Civic Center Complex not take place, the completion of the final phase of the sprinkler system project would need to be

completed. Extending the deadline for compliance with the Fire Protection and Prevention Ordinance to 2011 will allow time for the completion of the evaluation of the redevelopment process for Civic Center Complex.

FISCAL CONSIDERATIONS:

No funding is currently necessary for this action; however, if City Council does not approve the extension \$5,000,000 will need to be added to this year's Capital Improvement Program Budget in order to complete the fire Sprinkler System at CAB. Funding for this project has not been identified.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

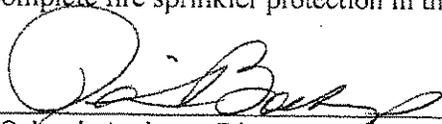
- o 1986, the Mayor and City Council passed Ordinance Number O-17172 requiring fire sprinkler retrofitting for high rise buildings .
- o 1991 the Mayor and City Council extended the deadline for compliance from 1996 to 1999 \$1,200,000 appropriation for the South Course Renovation through the FY 2006 budget process.
- o 2001 Ordinance Number O-18946 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofit Ordinance until January 1, 2004
- o 2004 Ordinance Number O-19254 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2008
- o 2008 Ordinance Number O-19696 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2009
- o On December 2, 2008 an ordinance to extend the compliance deadline for the Fire Sprinkler Retrofitting Ordinance was heard, but not approved by the City Council.

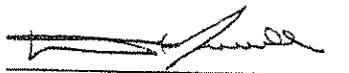
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

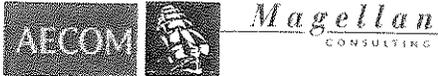
None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

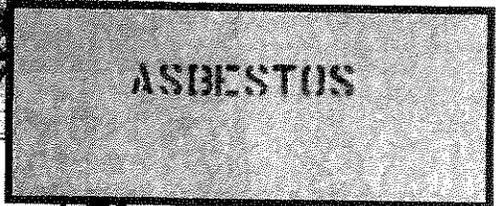
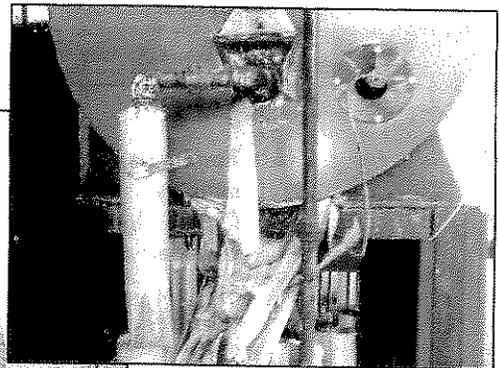
The City of San Diego's City Administration Building is one of the few remaining high rise building without complete fire sprinkler protection in the City of San Diego.


Afshin Oskoui, Assistant Director
Engineering & Capital Projects Department


David Jarrell, Deputy Chief
Public Works



Facilities Condition Assessment Supplement
**San Diego Civic Center
Complex**



Facilities Condition Assessment
Jones Lang LaSalle
San Diego, California

May 2009

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

San Diego Civic Center Complex Facilities Condition Assessment Supplement

Summary

In March of 2008, the CCDC contracted with AECOM for a comprehensive assessment of four City-owned buildings, as well as the leased Civic Center Plaza. A report of that assessment was presented in April of 2008 with findings that included \$92.6 million in current deficiencies across the four City-owned buildings. In addition to the current deficiencies, the assessment also found an additional \$1 million in life cycle capital renewal deficiencies for building systems that are anticipated to reach the end of their serviceable life in the next five years, bringing the total five-year need to \$93.6 million.

CCRP Facility Cost Index (FCI) Summary

Site Name	Age	Site	Total Permanent Square Feet	Facility Condition Cost	Total Cost w/Life Cycle	FCI w/Life Cycle
City Administrative Building	1963	4.3	188,926	\$ 37,007,842	\$ 37,523,887	50.3%
City Operations Building	1965	4.9	213,905	\$ 22,491,833	\$ 22,491,833	26.6%
Concourse	1963	3.6	158,119	\$ 26,907,134	\$ 27,229,737	51.4%
Evan Jones Parkade	1963	14.5	580,076	\$ 6,184,235	\$ 6,341,649	12.7%
			1,141,026	\$ 92,591,044	\$ 93,587,106	35.7%

The Facility Condition Index (FCI) is used throughout the facility condition assessment industry as a general indicator of a building's health. The FCI is calculated by dividing the Capital Needs Value by the Replacement Value. As a rule of thumb, an FCI below 10% is considered good. An FCI above 65% would suggest the building for replacement.

In May of 2009, the CCDC requested a supplemental review of that original assessment to identify those critical building repairs that should be anticipated over the next five- and ten-year periods. More specifically, the supplemental analysis was to address the cost of building repairs and life cycle system replacements that are prudent for the City to plan to address under two scenarios:

- The **Gerding Edlen** scenario is a development alternative where the City would continue to operate the four buildings until a new City Hall was ready for occupancy. The scenario anticipated that three buildings, including the City Administrative Building, the City Operations Building, and the Evan Jones Parkade would operate for five years, while the Concourse, part of the early phased construction, would operate for two years. At the end of these periods, the buildings would be demolished.
- The **Hold Steady** scenario is considered a non-development alternative where the City would continue to operate the buildings for a ten-year period, eight years for the Concourse, and then the buildings would be demolished for a replacement City Hall.

Under either of these scenarios, the City would plan to make minimal maintenance and capital investment in the buildings since the disposition plan is to demolish the buildings either in five or ten years. The purpose of the supplemental assessment was to identify

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

critical repairs or system replacements in each building necessary to provide for a safe work environment; specifically consider a number of special circumstances including, but not limited, to fire and life safety, hazardous materials, and seismic considerations; and consolidate the costs for these repairs into an estimate of probable cost for inclusion in the financial analysis of each alternative by Jones Lang LaSalle (JLL).

Approach

To accomplish the supplemental review, AECOM mobilized the team that conducted the original assessment, reviewed prior findings, and assembled a listing of unique deficiencies for each building from the assessment database. The team then toured each facility on May 7, 2009, to review previously identified deficiencies, understand any work in progress, and evaluate the priority of each deficiency in light of the two scenarios. The team concluded the building tours and incorporated their findings into this supplemental report.

Conclusion

The overall conclusion is that these buildings all have substantial need for individual deficiency repairs as well as system-wide capital renewal replacements. These buildings are approaching 50 years of a life cycle, and many of the existing systems have reached or exceeded their serviceable life. The maintenance staffs responsible for the buildings have made use of available resources to maintain the buildings in operational condition; however, many of these systems are beyond what can be maintained on a daily basis without near-term replacement. A summary of the analysis for the two scenarios suggests that the projected expenditures under a five-year Gerding Edlen scenario are **\$19.5 million**, and the projected expenditures under a ten-year Hold Steady scenario are **\$40.1 million**.

Minimum Expenditure Summary

Summary	Gerding Edlen		Hold Steady	
	5-Years	%	10-Years	%
City Administrative Building	\$ 12,082,954	33%	\$ 16,379,577	44%
Concourse	\$ 3,366,869	13%	\$ 13,299,312	49%
City Operations Building	\$ 3,212,887	14%	\$ 7,382,864	33%
Evan Jones Parkade	\$ 803,054	13%	\$ 3,030,654	49%
	\$ 19,465,765		\$ 40,092,407	

It should be noted that a minimum expenditure approach to maintaining these buildings over a five-year period, and especially a ten-year period will render these buildings in a condition that will force them to be demolished at the end of the pro forma period. The City Administrative Building and the Concourse have Facility Condition Index (FCI) values above 50 percent today. FCIs over 65 percent generally warrant building replacement, and a minimal expenditure approach will, in all likelihood, render these buildings in an FCI category above 65 percent within the next five to ten years. In addition, should the electrical or mechanical systems fail it could require the buildings to be vacated during repairs, disrupting City activities.

Facilities Condition Assessment 2009 Supplemental Analysis
 San Diego Civic Center Complex

Deficiency Categories

For the supplemental analysis, the AECOM team identified unique deficiencies for each building and classified them according to 15 distinct categories. Then, within each category, the team evaluated each line item deficiency with consideration given to whether the deficiency was critical to occupant safety or to ongoing operation of the building. The team further reviewed each deficiency with respect to the likelihood that the building component might fail over the five- and ten-year timeframe, forcing the City to expend funds to make necessary repair or system replacements. A summary of findings follows:

Summary by Deficiency Category

Summary	Gerding Edlen		Hold Steady	
	5-Years		10-Years	
A - Fire	\$ 6,726,030	35%	\$ 8,226,687	21%
B - Life Safety	\$ 1,293,847	7%	\$ 1,308,460	3%
C - Elevator	\$ 72,886	0%	\$ 92,322	0%
D - Site	\$ 118,177	1%	\$ 118,177	0%
E - Roofing	\$ 46,668	0%	\$ 2,182,945	5%
F - Exterior	\$ 289,187	1%	\$ 3,022,115	8%
G - Structural	\$ 94,768	0%	\$ 189,536	0%
I - Interior	\$ 335,899	2%	\$ 4,272,641	11%
J - Mechanical	\$ 2,745,256	14%	\$ 8,741,578	22%
K - Electrical	\$ 6,760,336	35%	\$ 8,340,330	21%
L - Plumbing	\$ 370,481	2%	\$ 2,285,370	6%
M - Technology	\$ -	0%	\$ 201,924	1%
N - Specialties	\$ -	0%	\$ -	0%
O - ADA (Low Risk)	\$ 177,060	1%	\$ 482,069	1%
P - ADA (High Risk)	\$ 435,170	2%	\$ 628,253	2%
	\$ 19,465,765		\$ 40,092,407	
Other Items Included in Full Condition Assessment Report				
Elevator - Work in Progress	\$ 294,784		\$ 294,784	
Civic Center Plaza	\$ 7,117,685		\$ 7,117,685	
Asbestos	\$ 11,346,066		\$ 11,346,066	
Excluded Deficiencies	\$ 61,484,429		\$ 40,857,787	
Reconciliation Check	\$ 99,708,729		\$ 99,708,729	

The deficiency categories have been organized into three major groups:

- **Fire, Life Safety, and Elevators:** Fire deficiencies are related to items considered critical to preventing and containing a fire in the building and may include fire sprinklers, fire suppression systems, fire alarms, and fire walls or doors. Life safety deficiencies include repairs to emergency lighting and emergency exit signage as well as building hazards. Elevator deficiencies include components that are critical to vertical circulation, particularly in the high-rise City Administrative Building.
- **Building Systems:** Deficiencies related to the building's core components, including roofing, mechanical or air conditioning and heating systems, and the electrical systems. It is important to note that many of these systems have reached the end of their serviceable life, and while they may be operating today, the continued viability is questionable over a five-year or ten-year period. These systems include the roof on the CAB and Concourse, the aluminum doors at the CAB plaza level, non fire rated interior doors at the CAB and Concourse, mechanical air handlers and controls, domestic water piping, plumbing fixtures, emergency lighting, electrical panel boards, disconnects, and transformers, and older energy inefficient T-8 lighting.
- **Americans with Disabilities Act of 1994:** Deficiencies associated with accommodating individuals with disabilities. These deficiencies are a City risk management consideration, and while the building code may not require the City to address all of these issues, there is a potential for injury or law suit. They have been further grouped into two sets: those that might be considered low risk, primarily concerning need like building signage, and those that might be considered high risk, including door hardware, access clearances, and cross slope or tripping hazards.

Major Assumptions

In the course of developing the supplemental analysis, a number of major assumptions have been incorporated. Major assumptions are:

- The original and supplemental assessment was limited to a visual assessment, without benefit of any destructive testing;
- Architectural, mechanical, electrical, plumbing, and structural engineers participated in the visual assessments;
- The buildings have limited availability of construction documents, so quantities are estimates based, in some cases, on rules of thumb;
- The structural assessment was limited without detailed structural calculations from original construction documents. Because the buildings were built in accordance with code requirements in place at the time of construction, no seismic upgrades are legally required under either the five-year or ten-year scenarios, however significant or entire building renovation work could trigger a requirement to upgrade the structural system to meet modern, more stringent seismic protection requirements, and costs have not been included;
- The Civic Center Plaza assessment data has been excluded;
- Both the five-year and ten-year scenarios assume two-year and eight-year operational periods for the Concourse building. Under this minimum expenditure approach, it must be recognized that any significant systems failure may require closing the facility prior to even the short-term planned obsolescence date, necessitating early relocation of the current occupants;

- The current work in progress to repair and upgrade the CAB and Parkade elevators will be completed, and no costs have been included;
- The costs include provisions to address major fire and life safety needs. While the City has been granted a waiver for many years for a fire sprinkler in the 13-story CAB, the costs for both scenarios assumes sprinklers will be installed prior to 2011. The total cost of fire sprinkler upgrades when combined with the necessary spot asbestos abatement is estimated to be approximately \$5.1 million;
- Removal of asbestos, other than spot abatement for sprinklers, is done at demolition;
- Implementation of major system replacements may be disruptive depending upon phasing of repairs. As such, it is likely that building occupants may require temporary relocation during major repairs and sprinkler installations; and,
- Cost estimates include soft costs (48 percent) for customary professional fees and contingency, and the costs are escalated three years from 2008 to 2011 at 6 percent.

Building Summaries by Deficiency Category

City Administrative Building

The Facility Condition index (FCI) for this building is **50.3%**. This facility currently serves the City administrative functions including the Council Chambers and Committee rooms used for public meetings, Office of the City Clerk, Department of City Planning and Community Investment, Financial Management, City Comptroller, department directors and the Mayor and City Council offices. The building also has several other City departments. The administration building is a thirteen story cast-in-place concrete building. While these floors are dedicated to mechanical functions, the main chillers and electrical service is from the central plant in the basement between the exhibition hall and this administrative building. The building was originally constructed in 1963, and as is often found, has a great deal of asbestos contained above the ceiling and in mechanical spaces. This material will have to be abated under any major renovation scenario, even if the building is demolished. While floors 6 and 7 have had the asbestos containing material abated, a significant amount is reported to remain on other floors. The majority of this building's mechanical systems, including the air handlers, controls and ducts have reached or significantly passed the end of their life. The roof, possibly the original roof, is well beyond its useful life. Almost all of the interior areas feature outdated and energy inefficient lighting, plenum air supply in the ceilings, and poor condition finishes on floors, walls, and ceilings. The elevators appear to be the original elevators and are reaching the end of their life; however, work is in progress currently to repair and upgrade the elevators. The exterior requires cleaning, and the building is only partially ADA compliant and will in many cases still not meet ADA provision under the pending revised ADA guidelines. The exterior windows are single pane aluminum windows that should be replaced. While the building is structurally sound, there are numerous cracks in the walls for the upper mechanical spaces.

The following table provides a categorical cost estimate summary for the building, assuming minimum expenditures to maintain operational status.

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

City Administrative Building		
Summary	Gerding Edlen	Hold Steady
	5-Years	10-Years
A - Fire	\$ 5,482,671	\$ 5,813,205
B - Life Safety	\$ 659,087	\$ 659,087
C - Elevator	\$ -	\$ -
D - Site	\$ 118,177	\$ 118,177
E - Roofing	\$ 46,668	\$ 46,668
F - Exterior	\$ 69,120	\$ 389,232
G - Structural	\$ 94,768	\$ 94,768
I - Interior	\$ -	\$ 947,324
J - Mechanical	\$ 1,348,958	\$ 2,941,029
K - Electrical	\$ 3,936,598	\$ 3,936,598
L - Plumbing	\$ 86,712	\$ 991,371
M - Technology	\$ -	\$ 201,924
N - Specialties	\$ -	\$ -
O - ADA (Low Risk)	\$ 42,105	\$ 42,105
P - ADA (High Risk)	\$ 198,089	\$ 198,089
	\$ 12,082,954	\$ 16,379,577
Other Items Included in Full Condition Assessment Report		
Elevator - Work in Progress	\$ 294,784	\$ 294,784
Asbestos	\$ 7,020,965	\$ 7,020,965
Excluded Deficiencies	\$ 17,609,139	\$ 13,312,516
Reconciliation Check	\$ 37,007,842	\$ 37,007,842

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

Concourse

The Facility Condition index (FCI) for this building is **51.4%**. This facility is currently underutilized, as there is a new San Diego Convention Center. The exhibition hall is two stories above grade with a basement which houses the central plant. It has three large ballrooms. Currently the building supports the Opera in the Copper and Silver rooms. Additionally, Plaza Hall contains the City print shop, and a small library is located in a portion of the lobby of Golden Hall. The library space is inadequate and is not served by restrooms without allowing entry into other portions of the building, which can pose a security risk. The mechanical systems are located on the roof with three undersized boilers, one of which is abandoned and one of which is in substantial disrepair. The building was originally constructed in 1963, and has a great deal of asbestos containing fireproofing above the ceiling in the catwalks over Golden Hall. This material will require abatement under any scenario, even if the building is demolished. The majority of this building's mechanical systems have reached or significantly passed the expected useful life of the equipment including the boilers, air handlers, and controls. The roof, possibly the original roof, is well beyond its useful life. Almost all of the interior areas feature outdated and energy inefficient lighting, and poor condition finish on floors, walls, and ceilings. The elevators appear to be the original elevators and are reaching the end of their life. The exterior is in need of cleaning, and the building is only partially ADA compliant and will in many cases still not meet ADA provision under the pending revised ADA guidelines.

The following table provides a categorical cost estimate summary for the building, assuming minimum expenditures to maintain operational status.

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

Concourse	Summary	
	Gerding Edlen 2 Years	Hold Steady 8 Years
A - Fire	\$ 151,249	\$ 1,321,373
B - Life Safety	\$ 326,516	\$ 341,129
C - Elevator	\$ -	\$ 19,436
D - Site	\$ -	\$ -
E - Roofing	\$ -	\$ 2,111,263
F - Exterior	\$ 61,028	\$ 248,265
G - Structural	\$ -	\$ 94,768
I - Interior	\$ -	\$ 796,919
J - Mechanical	\$ 362,015	\$ 4,147,239
K - Electrical	\$ 2,325,260	\$ 2,755,116
L - Plumbing	\$ 140,800	\$ 965,713
M - Technology	\$ -	\$ -
N - Specialties	\$ -	\$ -
O - ADA (Low Risk)	\$ -	\$ 305,009
P - ADA (High Risk)	\$ -	\$ 193,083
	\$ 3,366,869	\$ 13,299,312
Other Items Included in Full Condition Assessment Report		
Elevator - Work in Progress	\$ -	\$ -
Asbestos	\$ 1,941,040	\$ 1,941,040
Excluded Deficiencies	\$ 21,599,224	\$ 11,666,781
Reconciliation Check	\$ 26,907,134	\$ 26,907,134

City Operations Building

The Facility Condition index (FCI) for this building is **26.6%**. The Operations Building has a basement level, five stories above ground and a two story mechanical penthouse. This facility currently serves the City planning department functions as well as a fire station. The first floor has a secure fire arson investigation unit and the City's emergency command center is located in the sub basement. The basement is almost entirely storage and mechanical support, although the primary chillers, circulating pumps and electrical service is in the central plant located in the basement between the exhibition hall and the City Administrative Building. The building was originally constructed in 1965, and is reported to contain asbestos materials above the ceiling of the first floor and in some mechanical spaces. This material will have to be abated under any scenario, even if the building is demolished. The majority of this building's mechanical systems have reached or significantly passed the end of the typical useful life for equipment of this type and age. The exterior requires cleaning and the building is only partially ADA compliant, and will in many cases still not meet ADA provision under the pending revised ADA guidelines. While there have been some spot interior renovations, almost all of the interior areas are outdated. Old energy inefficient lighting should be replaced and poor condition finishes on floors, walls, and ceilings are in need of replacement or renovation. The elevators appear to be the original elevators and are reaching the end of their useful life. Should the COB continue to house a fire station and an emergency operations center, renovation of the COB could trigger the need for compliance with the "Essential Service Building" requirements as per the California Building Code. These requirements would likely entail a major structural retrofit of this building. It should be noted that renovation of the structural system to a condition compliant with current seismic codes or "Essential Service Building" requirements could require extensive and costly work. (Cost estimates for any such structural upgrades are not included in this report.)

The following table provides a categorical cost estimate summary for the building, assuming minimum expenditures to maintain operational status.

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

City Operations Building

Summary	Gerding Edlen	Hold Steady
	5-Years	10-Years
A - Fire	\$ 1,018,791	\$ 1,018,791
B - Life Safety	\$ 188,680	\$ 188,680
C - Elevator	\$ 72,886	\$ 72,886
D - Site	\$ -	\$ -
E - Roofing	\$ -	\$ -
F - Exterior	\$ -	\$ 146,564
G - Structural	\$ -	\$ -
I - Interior	\$ 335,899	\$ 2,405,676
J - Mechanical	\$ 1,034,282	\$ 1,653,309
K - Electrical	\$ 68,077	\$ 1,218,216
L - Plumbing	\$ 122,235	\$ 306,705
M - Technology	\$ -	\$ -
N - Specialties	\$ -	\$ -
O - ADA (Low Risk)	\$ 134,955	\$ 134,955
P - ADA (High Risk)	\$ 237,082	\$ 237,082
	\$ 3,212,887	\$ 7,382,864
Other Items Included in Full Condition Assessment Report		
Elevator - Work in Progress	\$ -	\$ -
Asbestos	\$ 2,384,061	\$ 2,384,061
Excluded Deficiencies	\$ 16,894,885	\$ 12,724,909
Reconciliation Check	\$ 22,491,833	\$ 22,491,833

Evan Jones Parkade

The Facility Condition index (FCI) for this building is **12.7%**. This facility provides parking for approximately 1,100 cars. The structure has eleven floors of cast in place concrete parking levels, plus roof parking. There is a mezzanine level that currently houses the Exhibition Center Plaza Hall City print shop, a terrace level used primarily for vehicular circulation with some parking, and a terrace intermediate level to transition vehicular circulation to the parking levels. This facility was constructed in 1963 and is all open air with limited or no mechanical service. Deficiencies observed in the walk through included water marks and discolored concrete around the exterior perimeter which should be pressure washed. The barrier walls in the elevator and stairwells had minor cracks which should be patched. The initial concrete mix for the barrier walls was not well vibrated. The concrete in these areas has a dimpled surface due to the air pockets that were created. The concrete stairs and stair columns at the first floor level had minor non-structural cracks in several locations and should be patched. Other stair wells had minor cracks which will need to be patched. The exterior façade concrete panels had minor cracks in several areas which will need to be patched. Two exterior ramps have major structural cracks and will need to be repaired with a crack injection system. The exterior is in need of substantial cleaning and painting, and there are several areas of concrete that require repair, for the most part non-structural in nature. The electrical service has had minimal upgrades and the fluorescent lighting will require replacement in a portion of the structure. The remainder of the electrical system is characterized by unsecured electrical panes, some with open buses, corroding electrical conduits, and a fire alarm and emergency exit system that is significantly beyond its serviceable life. The elevators serving the structure are the original elevators and are due for replacement.

The following table provides a categorical cost estimate summary for the building, assuming minimum expenditures to maintain operational status.

Facilities Condition Assessment 2009 Supplemental Analysis
San Diego Civic Center Complex

Evan Jones Parkade

Summary	Gerding Edlen	Hold Steady
	5-Years	10-Years
A - Fire	\$ 73,318	\$ 73,318
B - Life Safety	\$ 119,564	\$ 119,564
C - Elevator	\$ -	\$ -
D - Site	\$ -	\$ -
E - Roofing	\$ -	\$ 25,014
F - Exterior	\$ 159,038	\$ 2,238,054
G - Structural	\$ -	\$ -
I - Interior	\$ -	\$ 122,723
J - Mechanical	\$ -	\$ -
K - Electrical	\$ 430,400	\$ 430,400
L - Plumbing	\$ 20,734	\$ 21,582
M - Technology	\$ -	\$ -
N - Specialties	\$ -	\$ -
O - ADA (Low Risk)	\$ -	\$ -
P - ADA (High Risk)	\$ -	\$ -
	\$ 803,054	\$ 3,030,654
Other Items Included in Full Condition Assessment Report		
Elevator - Work in Progress	\$ -	\$ -
Asbestos	\$ -	\$ -
Excluded Deficiencies	\$ 5,381,181	\$ 3,153,580
Reconciliation Check	\$ 6,184,235	\$ 6,184,235

**ORIGINAL
DUPLICATE****COPY**

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement"), is entered into this 30 day of October, 2009 ("Effective Date"), between the City of San Diego, a municipal corporation ("City"), and GEDI California, Inc., an Oregon corporation ("Developer"), on the terms and provisions set forth below.

RECITALS

WHEREAS, City owns approximately 6.07 acres located in the downtown area of the City of San Diego, as depicted on "Exhibit A," the Site Map attached hereto (the "Site"). The Site is currently used for the operation of City business, including uses for City Council Chambers, City offices, Public Service and/or Meeting Centers, and public parking; and

WHEREAS, in response to a Request for Proposals (RFP) issued by the Centre City Development Corporation (CCDC), Developer has submitted a proposal for a new Civic Center and mixed-use development project ("Proposed Development") at the Site; and

WHEREAS, on December 20, 2007, the CCDC Selection Panel approved the selection of Developer and on May 20, 2009, the CCDC Board recommended authorization for City entering into exclusive negotiations with Developer for the purpose of negotiating a Development Agreement and other associated documents pertaining to the Site; and

WHEREAS, on June 10, 2009, the Rules Committee directing the Mayor to develop an Exclusive Negotiation Agreement for presentation to the City Council for review and approval with conditions included in Paragraph A.1 of this Agreement; and

WHEREAS, City and Developer (collectively referred to as the "Parties") now desire to enter into an exclusive negotiating agreement concerning the Proposed Development at the Site;

NOW, THEREFORE, City and Developer hereto mutually agree as follows:

A. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to provide for a period of exclusive negotiation by the Parties in order to arrive at mutually-agreeable terms and conditions for a Development Agreement and associated documents required for the Proposed Development, which provide for, among other items:

DOCUMENT NO. 305312FILED OCT 12 2009OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1) Scope of Proposed Development

The negotiation hereunder shall be based on a development concept, which includes one or more projects on the Site's respective Parcels (i.e., "City Hall on Block 14"; "Mixed-Use on Block 13"; "Theatre Renovation and Mixed-Use on Block 15"; and "Fire Station and Mixed-Use on Block 1") described in that certain July 18, 2008, proposal submitted on behalf of Developer, entitled "Developer Proposal Centre City Development Corporation New San Diego Civic Center Complex" which was submitted in response to the RFP issued by CCDC. The ultimate design may or may not include all of the blocks referred to above. Design and architecture will continue to be developed by the Parties during the negotiation of the Development Agreement, and as approved by City. It is agreed that in preparation of development plans for the Site, the primary project to be developed shall be those for a new City Hall.

Notwithstanding the provisions of this Section, nothing in this Agreement shall obligate the City or Developer to approve a Development Agreement, or otherwise expressly or impliedly obligate City to Developer or to the Proposed Development.

2) Development Goals for the Site

It is the desire of the City that the following goals be addressed as primary considerations during exclusive negotiations for the Proposed Development:

- (a) The Proposed Development's net costs, defined as the City's gross obligations less its projected revenue offsets, shall save City money every fiscal year, as compared to the "hold steady" alternative set forth in Exhibit "B." The "hold steady" alternative may be adjusted as a consequence of any revisions to the City's future space needs forecasts during the term of this Agreement;
- (b) The Proposed Development shall have no negative impact on City's general fund;
- (c) The Developer shall assume responsibility for financial risks such as construction cost increases and schedule delays associated with the Proposed Development. Financial responsibility as a result of force majeure delays and the cost of unanticipated environmental remediation shall be determined during the negotiation process during the term of this Agreement, provided in no event shall the City's financial obligation exceed the annual "Hold Steady" costs;
- (d) However, the City shall bear the costs of any City-requested additions or redesigns during the term of this Agreement. The City's expenditures for this purpose shall be limited to that amount approved by City Council;
- (e) The Proposed Development shall preserve, and not displace or disturb the operations of the existing Civic Theater;

- (f) The Developer for the Proposed Development shall agree to cooperate with the City Auditor on any audits;
- (g) The Developer for the Proposed Development shall agree to cooperate with a City-sanctioned citizen oversight committee;
- (h) The Proposed Development shall be constructed in a manner which will be state-of-the-art examples of environmentally friendly construction;
- (i) The Proposed Development shall be constructed in a manner which will receive LEED Certification of Silver or better;
- (j) The Proposed Development, and individual Proposed Projects, shall be constructed in a manner which will be fully compliant with the Americans with Disabilities Act or the California Building Code in the California Code of Regulations at Title 24, whichever requirement provides for the greater access;
- (k) The Proposed Development shall be constructed in a manner which will be free of asbestos and other materials that expose members of the public and employees to health hazards;
- (l) The Proposed Development shall be constructed in a manner which provides adequate fire protection for members of the public and City employees, meeting or exceeding then current codes;
- (m) The Proposed Development shall be designed in a manner that ends the City's current reliance on other leased office space in the downtown area;
- (n) The Proposed Development shall be designed in a manner that consolidates City office space to produce efficiency and reduce the overall amount of space currently used for City purposes;
- (o) The Proposed Development shall enhance public access to government meetings and services and improve public gathering spaces;
- (p) The Developer and City shall pursue interest by governmental partners for occupancy of space in Block 14 of the Proposed Development;
- (q) The Developer and City shall pursue all governmental sources of grants, reimbursements, rebates, etc., that could reduce City's costs pertaining to the Proposed Development; and
- (r) The City is to retain its public assets by focusing on the options for ground leases for Blocks 1, 13, and 15.

B. EXCLUSIVE RIGHT TO NEGOTIATE

1) Good Faith Negotiations

The Parties agree to negotiate in good faith pursuant to the terms and conditions of this Agreement, for the purposes set forth above. City agrees not to negotiate with, or invite proposals from, any other person or entity regarding the development of the Proposed Development without the consent of Developer. The City is entering into this Agreement merely as an agreement to begin a period of exclusive negotiations according to the terms and conditions hereof, reserving final discretion and approval by City, Redevelopment Agency, and/or CCDC as to any actions required of it.

2) Negotiation Term

The term of this Agreement ("Term") shall commence on the Effective Date, and shall terminate twelve months thereafter, unless extended or earlier terminated as provided herein. The term may be extended a maximum of two (2) times, each extension being for 6 additional months, upon the mutual written agreement of City acting through and in the discretion of the Mayor or his designee and Developer, provided that Developer has acted in good faith and no uncured breach of this Agreement has occurred or is continuing, and that Developer continues to diligently perform its obligations hereunder in a timely manner. In the event that any legal action is filed that delays the Parties' ability to comply with the term of this Agreement, there shall be an automatic extension of the term as may be necessary, but not to exceed twelve months.

3) Due Diligence

Developer will cooperate with City and demonstrate to the City's reasonable satisfaction that Developer is capable of performing the tasks and obligations set forth herein and completing any Proposed Development of the Site and surrounding property based upon Developer's (and its principals') background, expertise, credentials and financial wherewithal. Developer will promptly provide, upon the request of representatives of City, Developer's pertinent financial, accounting and business records, including organizational documents, financial statements, contracts and other business, financial and legal documents. City's approval of Developer's qualifications shall be granted or withheld within 30 days after receipt of such information, which approval shall not unreasonably be withheld. Notwithstanding the foregoing, City shall require, and Developer shall provide, updated information prior to execution of any Development Agreement.

City is hereby permitted to generally conduct a commercial, accounting and legal investigation (including, without limitation, background and credit checks) of:
(i) the business and affairs of the Developer, and the major, active individuals or

entities comprising Developer; and (ii) such other matters reasonably determined by City to relate to the Proposed Development.

Due diligence materials to be provided by Developer shall include any items reasonably requested by City, including, without limitation:

- (i) the organizational and corporate governance documents of Developer;
- (ii) Developer financial statements, and the financial statements of any entity or individual directly or indirectly controlling Developer, prepared in accordance with generally accepted accounting principles, for the last full fiscal year of the entity or individual and as of the most recent date for which financial statements are available;
- (iii) upon the request of City, Developer shall permit City to speak or meet with any appropriate third parties required to confirm representations made by Developer to City concerning Developer's financial ability;
- (iv) if Developer anticipates funding a portion of its obligations with debt issued to lenders authorized to do business in California and/or undertakings obligating one or more third parties to provide funds to or on behalf of the Developer, Developer shall provide City legal counsel with copies of term sheets from such lenders or investors; and
- (v) Developer will provide a proforma financial plan, in a form reasonably acceptable to City, that sets forth Developer's expected financing of the Proposed Development. The financial plan shall also provide information reasonably supporting the financial feasibility of the Proposed Development described therein, including information regarding Developer's ability to provide or obtain financing for construction and operation, if appropriate, of the Proposed Development. If Developer proposes to involve identified third parties in a significant role in the development, the plan shall further provide information demonstrating that such third party has the background, expertise, credentials and financial wherewithal to successfully meet its obligations as set forth in the Proposed Development's business plan.

All due diligence items obtained by City which include financial information about Developer, or Developer's principals or affiliates, shall be marked as "Confidential" and be preserved as such. The due diligence information shall not be disclosed to the public, unless such disclosure is authorized by Developer or mandated by a court of competent jurisdiction.

4) Developer's Representations

Within this section, Developer makes certain representations and warranties to City, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of these warranties and representations not to be true, Developer shall immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City. The following are Developer's representations and warranties: (i) Authority - Developer is a corporation, duly organized and in good standing under the laws of the State of Oregon and in good standing and authorized to do business in the State of California. Developer has the

full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer, enforceable in accordance with their respective terms; (ii) No Conflict - Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound; (iii) No Litigation or Other Proceeding - No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement; and (iv) No Developer Bankruptcy - Developer is not the subject of a bankruptcy or insolvency proceeding.

5) Change in Ownership or Control of Developer

Developer understands that City is entering into this Agreement based on the experience and qualifications of the following individuals: Mark C. Edlen and Kelly T. Saito, who control and work for Developer as of the date of this Agreement. Therefore, without the prior written approval of City, Developer shall not assign, sell or otherwise transfer any or all of its rights under this Agreement to any party not owned, in the majority, or controlled by the Developer, as set forth by Developer during the RFP process, nor shall Developer effect a change of control resulting in said individuals no longer being in control of Developer.

6) Disclosure

Developer warrants that none of its principals, officers, partners, joint venturers, employees, associates, or affiliates who have any economic interest in this Agreement or the contemplated development of the Site or the Proposed Development, have a familial, financial, or other material relationship with any elected or appointed official or employee of the City.

7) Non-Discrimination

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

C. TERMINATION OF AGREEMENT

This Agreement may be terminated by either party prior to its natural expiration under either of the following circumstances:

1) Default

If either party hereto fails timely to perform any of its obligations hereunder or is otherwise in material default under this Agreement after receipt of a fifteen (15) day written notice and a reasonable opportunity to cure; provided, however, if any default is not reasonably curable within fifteen (15) days, then the allegedly defaulting party shall not be in default, and this Agreement shall not terminate, if the allegedly defaulting party promptly notifies the other party that the alleged default cannot be cured within fifteen (15) days, provides assurances that steps to cure will be promptly undertaken and such party, in fact, commences to cure such default within such fifteen (15) day period and diligently prosecutes the same to completion.

2) Without Cause

Without cause, should either party determine that further negotiations regarding a Development Agreement are not likely to result in an agreement acceptable to such party.

D. FINANCING PLAN

The Parties shall use commercially-reasonable efforts to develop a program of financing in conformance with and for the Proposed Development, which would result in a financially beneficial plan, with an objective to minimize City's costs compared to other viable alternatives studied, while reflecting a risk level that is acceptable to City. The proposed financial structure for Block 14 of the Proposed Development shall be negotiated as part of the Development Agreement, however, the proposed financial structure must demonstrate a source of revenue generated from Blocks 1, 13, and 15 if revenue from such blocks is proposed to be dedicated to the City to offset the City's costs of a new City Hall.

E. ENVIRONMENTAL REQUIREMENTS

Certain State, Federal and/or local environmental requirements may be applicable to the Proposed Development. The Developer agrees to supply information and otherwise assist the City as requested to determine the environmental impact of the Proposed Development and to prepare such additional environmental impact documents, as may need to be completed for the Proposed Development. Once a development program for the Site has been agreed upon, the parties shall authorize all CEQA work to proceed, with the parties to allocate the cost of such work in

proportion to that percentage of the Site which will be public ownership (without private development or master leasing) compared to that percentage of the Site which included private development. The CEQA analysis shall be certified and adopted prior to or concurrent with the consideration of the Development Agreement. The Parties agree to allocate the cost of defending any challenges to the CEQA certification in proportion to that percentage of the Site which will be public ownership (without private development or master leasing) compared to that percentage of the Site which included private development.

F. OTHER TERMS AND OBLIGATIONS

1) City Ownership of Site

The City owns and prefers to retain ownership of the Site. However, for purposes of the Proposed Development, City is open to considerations of alternatives that may call for ownership of portions of the Site to be transferred to Developer. City-retained portions of the Site would be available for lease. Potential ground lease rates for the Site would be subject to approval by the City Council, and will be based, without limitation, on such factors as market conditions, density of the development, costs of development, risks to the City, risks to the Developer, estimated Developer profit, public purpose and/or fair value for the uses permitted to be developed, and financial requirements of the City.

2) Public Outreach

It is anticipated that a negotiated Development Agreement may be subject to a vote of the public. To assist the public in receiving timely and accurate information pertaining to the Proposed Development, City and Developer agree that they will work cooperatively in scheduling and conducting informational gatherings, including but not limited to community meetings, workshops, hearings, etc., for such purpose(s). The Developer is to use its best efforts to provide a qualified representative to attend public or other meetings at the City's request. The City will strive to provide at least two weeks notice.

3) City's Right to Additional Information

City reserves the right, during the Term, to request reasonable additional information and data from Developer necessary for review and evaluation of the Proposed Development. Developer agrees to provide such additional information or data as requested in a timely manner. Information sought regarding the Developer's business practice which may be provided to City shall remain confidential to the extent permissible by law.

4) City's Right to Purchase Documents

Developer agrees, upon City's request(s), promptly to deliver to City, without representation or warranty except as to Developer's ownership thereof, upon City's payment to Developer an amount of \$1,079,597 which represents 100% of the documented reasonable cost and expense to Developer thereof, any or all studies, drawings, site plans, reports, surveys, investigations, and environmental assessment test results relating to all or any portion of the Site and/or the improvements thereon (collectively, "Site Plans and Reports"), together with a bill of sale therefor for the full measure of Developer's ownership rights. In addition, City may retain copies of any Site Plan and Reports already in its possession. The Site Plans and Reports shall thereupon be the sole property of City free from all claims or interests of Developer or any other person, and City may use, grant, license, or otherwise dispose of those Site Plans and Reports to any person for development of all or any portion of the Site or any other purpose in its sole and absolute discretion.

5) Confidentiality; Dissemination of Information

During the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement shall prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations. Nothing contained in this section shall be construed or interpreted to prevent or restrain compliance with the provisions of the California Public Records Act or the Ralph M. Brown Act. Members of the City Council shall not be subject to this confidentiality provision.

City and Developer enter into this Agreement with the understanding that Developer may provide or authorize City to obtain certain information of a confidential nature during negotiations. Such information may be necessary for City to verify information that is relevant to negotiations. City and Developer agree that they will keep confidential and not disclose any information submitted by Developer in the course of the negotiations and identified as privileged or confidential under the law unless ordered to do so by a final order of court. The City agrees to make all reasonable efforts to notify Developer of any requested disclosure of information marked "Confidential" pursuant to Section B.3 in sufficient time for Developer to notify City of any objection to disclosure. Developer agrees to bear all costs and expenses (including attorney's fees) related to any litigation that is filed seeking disclosure of said Confidential information, if Developer has objected to the disclosure. Notwithstanding the provisions of this Section, in no event shall any Party

be required to disclose to any other party information which is protected by the attorney-client privilege.

6) Expenses/Costs

Except as otherwise expressly provided in Exhibit "C" City shall not be liable for any costs associated with the preparation of any reports to be prepared by Developer or Developer costs associated with planning activities for the Site pursuant to or arising from this Agreement. All other costs and expenses (including, without limitation, all legal fees and expenses) incurred in connection with this Agreement and the activities contemplated hereby shall be paid by the Party incurring the same. Nothing in this Section is intended to or shall be interpreted to affect any City policy regarding payment of City fees for processing permits and approvals by applicants.

7) Governing Law

This Agreement shall be interpreted and enforced in accordance with the provisions of California law in effect at the time it is executed, without regard to conflicts of laws provisions.

8) Limitation on Remedies for Breach or Default and Release of Claims

City and Developer would not have agreed to any part of this Agreement if it were to be liable to the other for any amount of monetary damages, consequential damages or other remedies except as set forth herein. Accordingly, Developer acknowledges and agrees that Developer's exclusive right and remedy upon any breach or default of City is to terminate this Agreement, except for payment of any sums due in accordance with Exhibit C. City acknowledges and agrees that, except for the City's right to purchase documents as set forth in section F.4, City's exclusive right and remedy upon any breach or default of Developer shall be to terminate this Agreement. City and Developer shall not in any event be entitled to, and each hereby waives, any right to seek consequential damages of any kind or nature arising out of or in connection with this Agreement.

City and Developer each acknowledge it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her would have materially affected his or her settlement with the debtor.

Subject to the last sentence of this paragraph, Civil Code Section 1542 notwithstanding, it is the parties' intention to be bound by the limitation on remedies set forth in this paragraph, and each party hereby releases the other from any and all claims for monetary and consequential damages or other legal or equitable relief which have arisen or may arise out of this Agreement ("Claims"), whether or not the released Claims were known or unknown to Party as of the date of its entry

into this Agreement. The parties hereby waive the benefits of Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect as to the Claims. The parties understand, acknowledge and agree the foregoing release does not apply to Claims which may arise from an approved and fully signed Development Agreement, or to claims for payment of sums due pursuant to Exhibit C.



City Initials



Developer Initials

9) Indemnity

9.1 Indemnification by Developer. Developer hereby agrees to indemnify, defend and hold harmless the City, the Agency, CCDC and their respective directors, officers, employees, agents, attorneys, consultants, financial advisors and representatives (collectively, the "City Parties"), from and against any and all liabilities, claims, demands, obligations, losses, actions and causes of action whatsoever, including reasonable attorneys' fees and expenses, arbitration or court costs, and costs and expenses incurred in investigating, preparing or defending against any arbitration, litigation, claim, action, suit, proceeding or demand of any kind or character (collectively, "Losses"), arising out of, related to, or in connection with (a) the failure of Developer to perform Developer's obligations under this Agreement; (b) the Developer's breach of any of the representations or warranties of Developer set forth in this Agreement; or (c) any negligence or willful misconduct on the part of Developer, or Developer's partners, officers, employees, agents, attorneys, consultants, financial advisors or representatives (collectively, the "Developer Parties"); provided, however, that Developer's duty to indemnify, defend and hold the City Parties harmless shall be limited to the extent caused by (a), (b) and (c) and not be applicable to matters covered by the City's indemnity of the Developer Parties as set forth in Section 9.2 below.

9.2 Indemnification by the City. The City hereby agrees to indemnify, defend and hold the Developer Parties harmless from and against any and all Losses arising out of, related to, or in connection with: (a) the failure of the City to perform the City's obligations under this Agreement; (b) the City's breach of any of the representations or warranties of the City set forth in this Agreement; or (c) any negligence or willful misconduct on the part of the City Parties; provided, however, that the City's duty to indemnify, defend and hold the Developer Parties harmless shall be limited to the extent caused by (a), (b) and (c) and not be applicable to matters covered by the Developer's indemnity of the City Parties as set forth in Section 9.1 above.

9.3 Procedures for Indemnification. Any party eligible for indemnification under Sections 9.1 or 9.2 (each, the "Indemnified Party") shall give notice to the party obligated under such Section (each, an "Indemnifying Party") to indemnify such Indemnified Party each time that the Indemnified Party becomes aware of any fact or

circumstance which would reasonably be expected to give rise to an obligation to indemnify under such Section 9.1 or 9.2, which notice shall be accompanied by a copy of any claim made which may result in such obligation to indemnify. If such notice is not given within thirty (30) days after the Indemnified Party becomes aware of any such fact or circumstance, the Indemnified Party shall not be entitled to recover from the Indemnifying Party the amount of any Losses which would not have been incurred by the Indemnified Party, but for the Indemnified Party's failure to provide such notice in a timely manner. The Indemnifying Party shall have the right and obligation to assume the defense or settlement of any such claim in respect of which it is obligated to provide indemnity hereunder, provided that the Indemnifying Party shall not settle or compromise any such claim without the Indemnified Party's prior written consent thereto (which shall not be unreasonably withheld or delayed), unless the terms of such settlement or compromise discharge and release the Indemnified Party from any and all liabilities and obligations thereunder.

Notwithstanding the foregoing, the Indemnified Party at all times shall have the right, at its option and expense, to participate fully in the defense or settlement of such claim, and if the Indemnifying Party does not proceed diligently to commence to defend or settle such claim within thirty (30) days after its receipt of notice of the assertion or commencement thereof, then the Indemnified Party shall have the right, but not the obligation, to undertake the defense or settlement of such claim for the account and at the risk of the Indemnifying Party, and the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make to such claim, which is confirmed by a court after a hearing first noticed to the Indemnifying Party. The parties agree that, for the purpose of enforcing any right of indemnity hereunder, the Indemnified Party may join the Indemnifying Party in any third-party claim as to which such right of indemnity would or might apply. The parties shall cooperate fully in defending or settling any third-party claim.

10) Relationship of the Parties

The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

11) No Third-Party Beneficiaries

City and Developer expressly acknowledge and agree they do not intend, by their execution of this Agreement, to benefit any persons or entities not signatory to this Agreement, including, without limitation, any brokers representing the parties to this transaction.

12) Execution of Definitive Agreements

If the Parties successfully negotiate an agreement for the development of the Site, City staff shall recommend approval of the agreement to the City Council. The City shall have no legal obligation to grant any approvals or authorizations for the

Proposed Development prior to City Council approval of the Proposed Development or individual Proposed Projects and/or related agreements.

13) Development to Supersede this Agreement

Except for the confidentiality provisions as set forth in Paragraphs B.3 and F.5, this Agreement will be superseded by the Development Agreement, if and when the proposed Development Agreement is executed by Developer and approved and executed by City in the manner required by law.

14) Notices

Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

To City:

City of San Diego
Office of the Mayor
202 C Street, 11th Floor
San Diego, CA 92101

To Developer:

GEDI California, Inc.
c/o Mark C. Edlen
1120 NW Couch, Suite 600
Portland, OR 97204

15) Entire Agreement, Amendments, Counterparts

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject

matter. This Agreement may be amended only by a written instrument executed by the Parties or their permitted successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

16) Captions

The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

17) Severability

If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

18) Attorney Fees

In any action between the parties to interpret, enforce, award, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, to reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its, Mayor, pursuant to Resolution No. R-305312 authorizing such execution, and by Developer, pursuant to the bylaws of MEDI California, Inc

CITY OF SAN DIEGO

By: 
Jay M. Goldstone
Chief Operating Officer

Date: 10.30.09

DEVELOPER

GEDI California, Inc., an Oregon
corporation

By: [Signature]
Title: CEO
Date: 10-22-09

I hereby approve the form and legality of the foregoing Agreement this 2nd day of NOV, 2009.

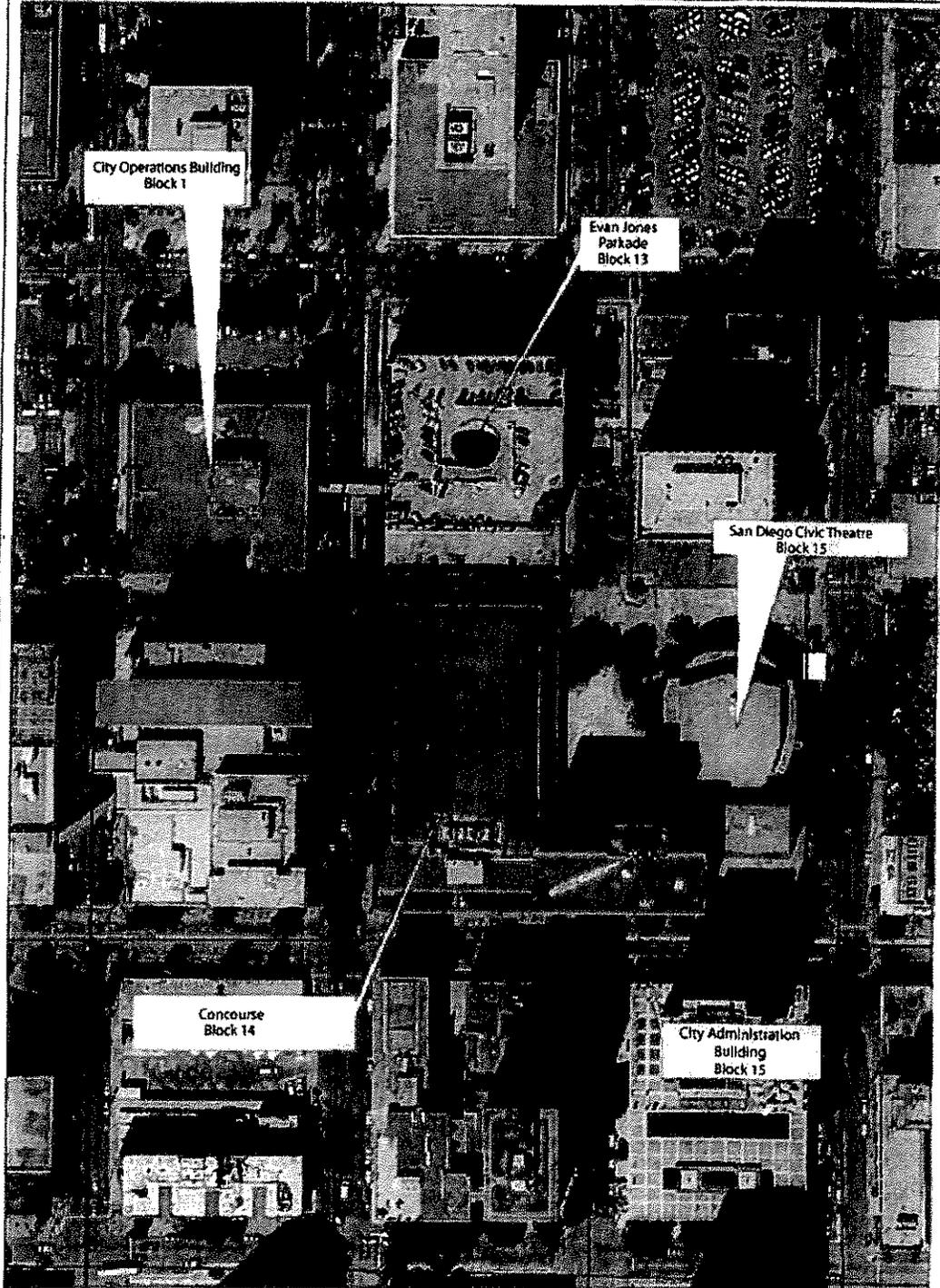
JAN I. GOLDSMITH, City Attorney

By: [Signature]
Deputy City Attorney

EXHIBIT A – SITE

SITE MAP

SAN DIEGO CIVIC CENTER COMPLEX



APPROXIMATE CIVIC CENTER REDEVELOPMENT AREA

Feet

0

250

**EXHIBIT B – "HOLD STEADY" ALTERNATIVE
CITY'S TOTAL ANNUAL NET COSTS**

"Hold Steady" Alternative Calendar Year		City's Total Net Costs ⁽¹⁾
2008	1	\$14,154,291
2009	2	\$16,288,736
2010	3	\$15,053,404
2011	4	\$23,369,279
2012	5	\$23,856,577
2013	6	\$24,291,846
2014	7	\$25,779,050
2015	8	\$25,634,216
2016	9	\$24,022,630
2017	10	\$24,396,365
2018	11	\$40,819,249
2019	12	\$39,411,314
2020	13	\$39,575,735
2021	14	\$39,744,392
2022	15	\$39,917,383
2023	16	\$41,680,824
2024	17	\$41,902,432
2025	18	\$42,129,667
2026	19	\$42,362,659
2027	20	\$42,601,539
2028	21	\$42,846,442
2029	22	\$43,097,503
2030	23	\$43,354,860
2031	24	\$43,618,655
2032	25	\$43,889,030
2033	26	\$53,734,237
2034	27	\$48,148,313
2035	28	\$48,582,540
2036	29	\$49,028,043
2037	30	\$49,485,099
2038	31	\$49,953,987
2039	32	\$50,434,997
2040	33	\$50,928,420
2041	34	\$51,434,556
2042	35	\$51,953,711
2043	36	\$62,181,482
2044	37	\$58,658,848
2045	38	\$59,450,524
2046	39	\$60,263,076
2047	40	\$61,097,031
2048	41	\$28,551,552
2049	42	\$29,429,954

2050	43	\$30,331,424
2051	44	\$31,256,542
2052	45	\$32,205,903
2053	46	\$47,559,079
2054	47	\$42,779,507
2055	48	\$44,177,537
2056	49	\$45,612,802
2057	50	\$47,086,271

Nominal (50)		\$2,028,123,512
Nominal (15)		\$416,314,466
Nominal (10)		\$216,846,393
NPV (50)	5.25%	\$803,671,747
NPV (15)	5.25%	\$344,971,852
NPV (10)	5.25%	\$205,133,014

(1) amounts subject to future adjustment based on changes in applicable financial assumptions which may be included in the analysis of an eventual Development Agreement as a result in changing economic, market or City operating conditions (i.e. City's future space needs, interest rates, construction cost escalation factor, etc.).

EXHIBIT C – CITY'S COST RESPONSIBILITIES

- City negotiating team and City staff costs
- Financial analysis of the project and the comparison against the benchmark non-development alternative
- City's construction consultant and cost estimator
- Update to the City's facilities needs assessment
- Phase I and, if needed, Phase II environmental investigation (all blocks)
- Site seismic investigation (all blocks)
- City's legal costs, including drafting of an ultimate development agreement
- CEQA environmental studies and reports, in proportion to the percentage of the Site that is public ownership
- The cost of defending any challenges of the CEQA filings, in proportion to the percentage of the Site that is public ownership
- Studies or design costs related to design or program changes requested by the City
- Water Supply Assessment, if required

0.1 Detailed Space Program

City of San Diego Downtown Civic Center

Baseline Space Requirement

Program Summary

Workplace	sf	QTY	avg sf	%
Private Office	400	17	6,800	
Private Office	200	64	12,800	
Private Office	120	360	43,200	
Open Office	80	357	28,560	
Open Office	64	1,038	66,432	
Open Office	48	584	28,032	
	2,420	185,824	77	42% of USF

Support	sf	QTY	avg sf	
Reception	240	16	3,840	
Service Counter	8,500	1	8,500	
L Conference	650	8	5,200	
M Conference	420	16	6,720	
S Conference	240	16	3,840	
Quiet Room	120	64	7,680	
L Work / copy	480	4	1,920	
Work / copy	240	16	3,840	
Print	120	32	3,840	
High Density Plan Storage	10,000	1	10,000	
XL File	2,000	2	4,000	
L File	640	8	5,120	
File	240	16	3,840	
L Storage	800	8	6,400	
Storage	240	16	3,840	
Supply	68	16	1,088	
Break	240	16	3,840	
Pantry	120	32	3,840	
Technology	400	8	3,200	
IDF	240	16	3,840	
	2,420	94,388	39	22% of USF

Circulation	sf	FTE	avg sf	
	2,420	157,300	65	36% of USF
Useable Area	2,420	437,512	181	100% of USF
				85% of RSF

Notes:
 1 per floor
 Staff area for One-stop Shop
 1 per 2 floors
 1 per floor
 1 per Council District plus 1 per every 4 floors
 4 per floor
 1 per 4 floors or could be aggregated
 1 per floor
 2 per floor
 For DSD records (could locate in basement)
 1 for City Clerk, 1 for DSD microfiche
 1 per 2 floors
 1 per floor
 1 per 2 floors
 1 per floor
 1 per floor
 1 per floor
 1 per floor
 1 per 2 floors or could be aggregated
 1 per floor
 assume 16 story office tower

0.2 Workplace Allocation by Department
City of San Diego Downtown Civic Center
Staff and Space Requirements Summary

Previous	Current	Department	Space Type	A	B	C	D	E	F
			ASF	400	200	120	80	64	48
69	75	Mayor							
	1	CEO / Mayor		1					
	21	Admin - Mayor			1	2		18	
	37	Community & Legislative Services			1	11		20	5
	3	Special Events				1		2	
	-	Special Promo Events							
	6	Commission for the Arts				1		5	
	7	Ethics Commission			1	2		2	2
136	156	COO / Business Operations / Administration							
	2	COO		2					
	2	Deputy COO		2					
	40	IT & SAP Support			1	4		19	16
	16	Human Resources			1	12		2	1
	4	Training & Development				1		3	
	7	Labor Relations			1	1		4	1
	9	Business Office			1	2		6	
	14	Internal Audit			1	2		11	
	62	Purchasing & Contracts			1	5		34	22
403	351	CFO / Finance Department							
	3	CFO		1	1				1
	92	Auditor & Comptroller			1	3		66	22
	31	Financial Management			1	5		21	4
	122	City Treasurer			1	5		30	86
	82	Risk Management			1	6		55	20
	21	Debt Management			1	2		15	3
219	166	Public Safety & Homeland Security							
	12	Office of Homeland Security				1		8	3
	154	San Diego Fire - Rescue			1	7		146	

0.2 Workplace Allocation by Department **City of San Diego Downtown Civic Center**
 Staff and Space Requirements Summary

Previous	Current	Positions	Department	Space Type							
				ASF	A	B	C	D	E	F	
559	362	Public Works	362	Engineering & Capital Projects	5	14	114	226	3		
766	557	City Planning & Development	4	ADA							
	326	Development Services	326	Development Services	5	3	185	70	63		
	64	Neighborhood Code Compliance	64	Neighborhood Code Compliance		1		13	50		
	6	Local Enforcement Agency	6	Local Enforcement Agency		1		4	1		
	123	City Planning & Community Investment	123	City Planning & Community Investment	2	13	26	61	21		
	34	Real Estate Assets	34	Real Estate Assets	1	6		22	5		
32	-	Community Services		Community Services							
382	197	Public Utilities	185	Water	3	10	30	52	90		
	12	Metropolitan Wastewater	12	Metropolitan Wastewater	1	1	2	8			
161	159	City Council		City Council							
	10	Council District 1	10	Council District 1	1	2		4	1		
	10	Council District 2	10	Council District 2	1	2		4	1		
	10	Council District 3	10	Council District 3	1	2		4	1		
	10	Council District 4	10	Council District 4	1	2		4	1		
	10	Council District 5	10	Council District 5	1	2		4	1		
	10	Council District 6	10	Council District 6	1	2		4	1		
	10	Council District 7	10	Council District 7	1	2		4	1		
	10	Council District 8	10	Council District 8	1	2		4	1		
	10	New Council District 9	10	New Council District 9	1	2		4	1		
	45	City Clerk	45	City Clerk	1	0	3	15	26		
	14	City Council Administration	14	City Council Administration	1	3		7	3		
	10	Independent Budget Analyst	10	Independent Budget Analyst	1	8			1		
352	339	City Attorney		City Attorney							
	339		339		1	9	175	34	120		
62	58	Personnel		Personnel		2	30	20	6		
	58		58								
3,141	2,420	Total			17	64	360	357	1,038	584	



THE CITY OF SAN DIEGO

Department of Information Technology
 ○ Information Technology Division
General Services Department
 ○ Communications Division

Rough Order of Magnitude (ROM) Budget Estimate for:

The New Civic Center Plaza (Downtown SD)

- I. Minimal Infrastructure Requirements
 - A. Voice/Data
 - B. Public Safety Wireless
- II. ROM Budget Estimate

Civic Center Plaza Voice/Data Infrastructure

I. Minimal Infrastructure Requirements

A. Voice and Data Infrastructure

<u>Item</u>	<u>Quantity</u>	<u>Comments</u>
MDF/MPOE	1	1200 sq ft supporting data/voice build-out
IDF	38 closets	10X12 closets supporting 66 v/d drops
UPS	38 units	UPS for network LAN equipment
LAN/WAN	2500 port	Cisco data switch equipment
Voice	2500 port	Telephone equipment and plenum cable (3-4pr. CAT6 per drop)

Assumptions:

- Building size approximately 438,000sq. ft. (19 floors), supporting up to 2500 users
- All MDF/IDF locations will be centrally located and have sufficient pathways (conduits to be provided by others)
- All Telecom spaces will be provisioned with HVAC and sufficient electrical outlets (to be provided by others)
- Any Automated Call Distribution (ACD) provisions by others
- Conformance to **EIA/TIA telecommunications wiring standards** for commercial buildings, pathways and spaces.

B. Public Safety/Service Wireless infrastructure

- 600 square feet of space in a room directly under the roof and adjacent to the elevator shaft to house public safety/public service wireless communications equipment
- 500 square feet on the ground floor or basement, as appropriate, for equipment, storage and technician area (size dependent on Emergency Operations Center requirements)
- Full access to the roof for wireless communications antennas.
- Sufficient cable access and conduits between floors, top to bottom, for cable routing
- Minimum two (2) parking spaces for Comm. Division, and dock access for heavy equipment transfer

Civic Center Plaza Voice/Data Infrastructure

- Thirty foot lattice tower directly over item 1 room (assumes overall elevation of the new Civic Center building to be equal to or higher than the existing City Admin Building)
- Special structural considerations for roof mount of antenna support structure and ancillary antennas
- Intense structural load bearing floor design, top and bottom floors (up to 4,000 lbs.)
- HVAC for all rooms
- High capacity 120/240VAC power to all floors with UPS
- Telephone, enterprise data access cabling to all rooms
- Static electricity treatments for all equipment room floors
- Direct access to building ground on a main grounding buss for lightning protection at roof level, equipment room below the roof, and ground level
- Emergency generator power available to equipment rooms and any public safety/EOC areas
- Inclusion in the planning of Bi-Directional Amplifiers (for in-building wireless coverage), security, camera, CCTV, voice paging, and other systems

II. Rough Order of Magnitude Budget Estimate

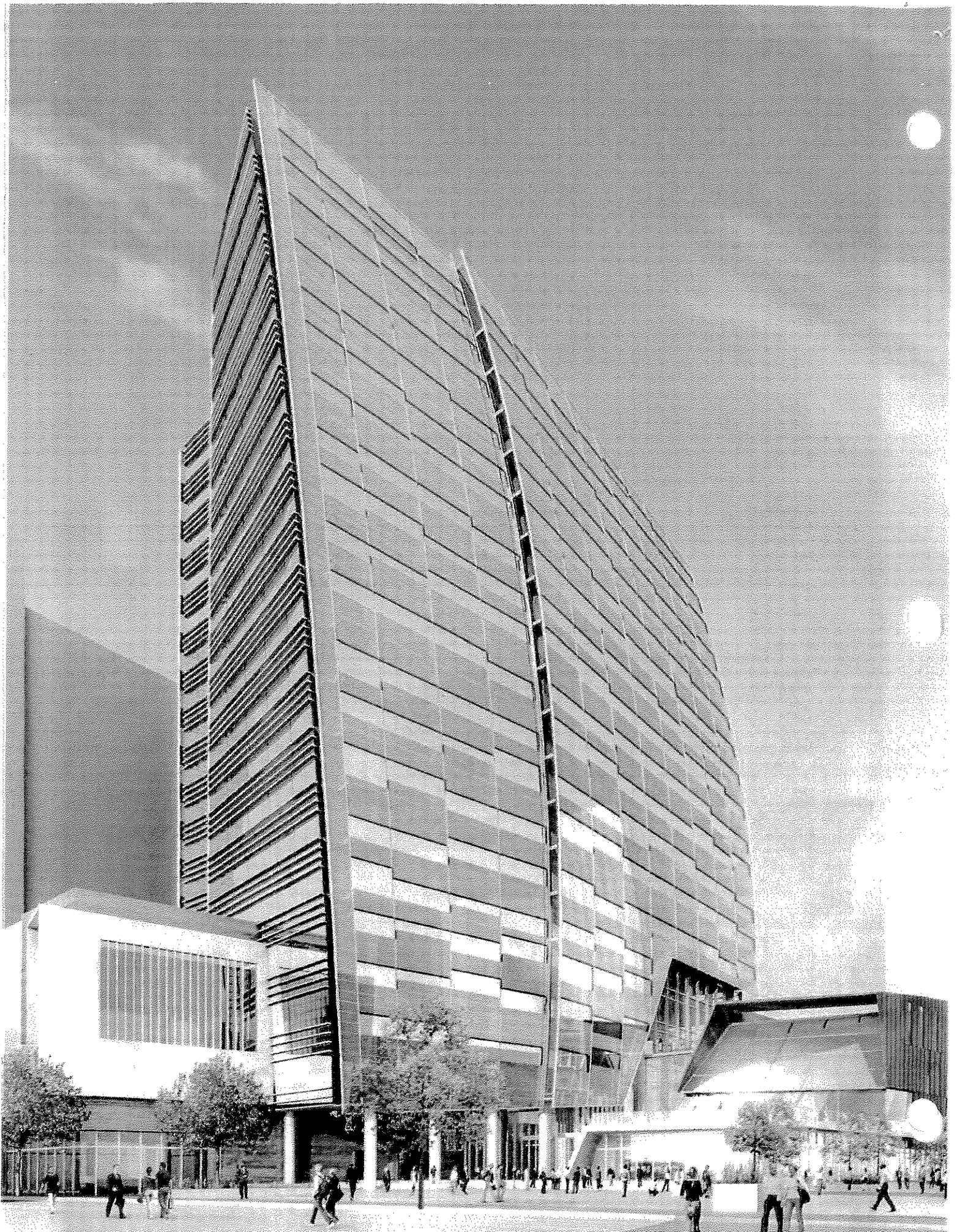
- A. Voice/Data infrastructure \$7M
- B. Public Safety Wireless \$2M

Assumptions:

- Office space for on-site IT support personnel will be provided; 10 offices at 150 sq. ft. each (1500 sq. ft. total).
- Additional 1200 – 1500 sq. ft. staging space will be provided for IT support stock equipment.
- Costs for server racks, office furniture, operations work center, etc. will be provided by others.
- Costs for conduit, plenum, and other facilities costs will be provided by others
- Costs for desktop computers, file/application servers, overhead paging, building controls and security systems will be provided by others.

ATTACHMENT G



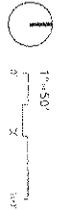
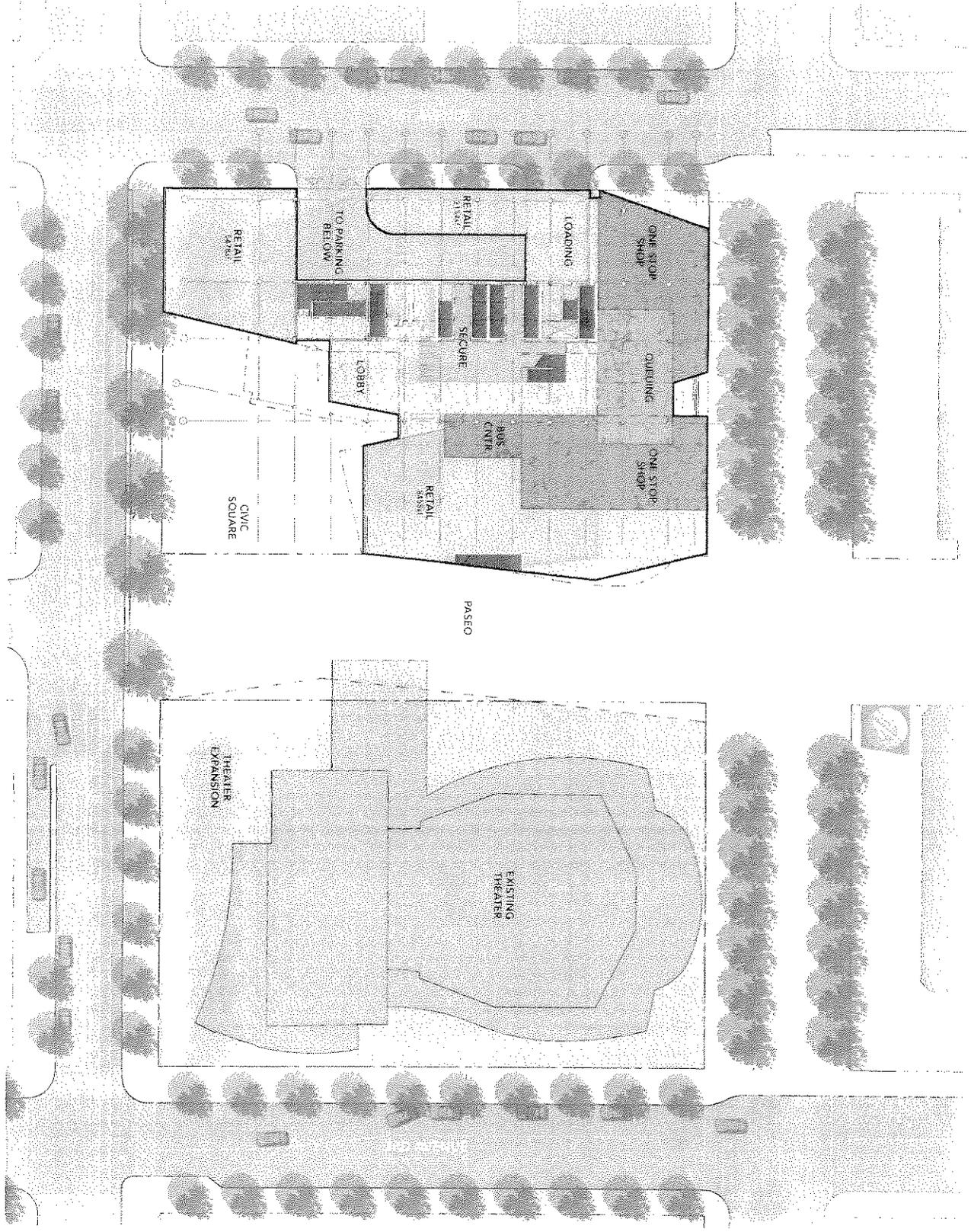


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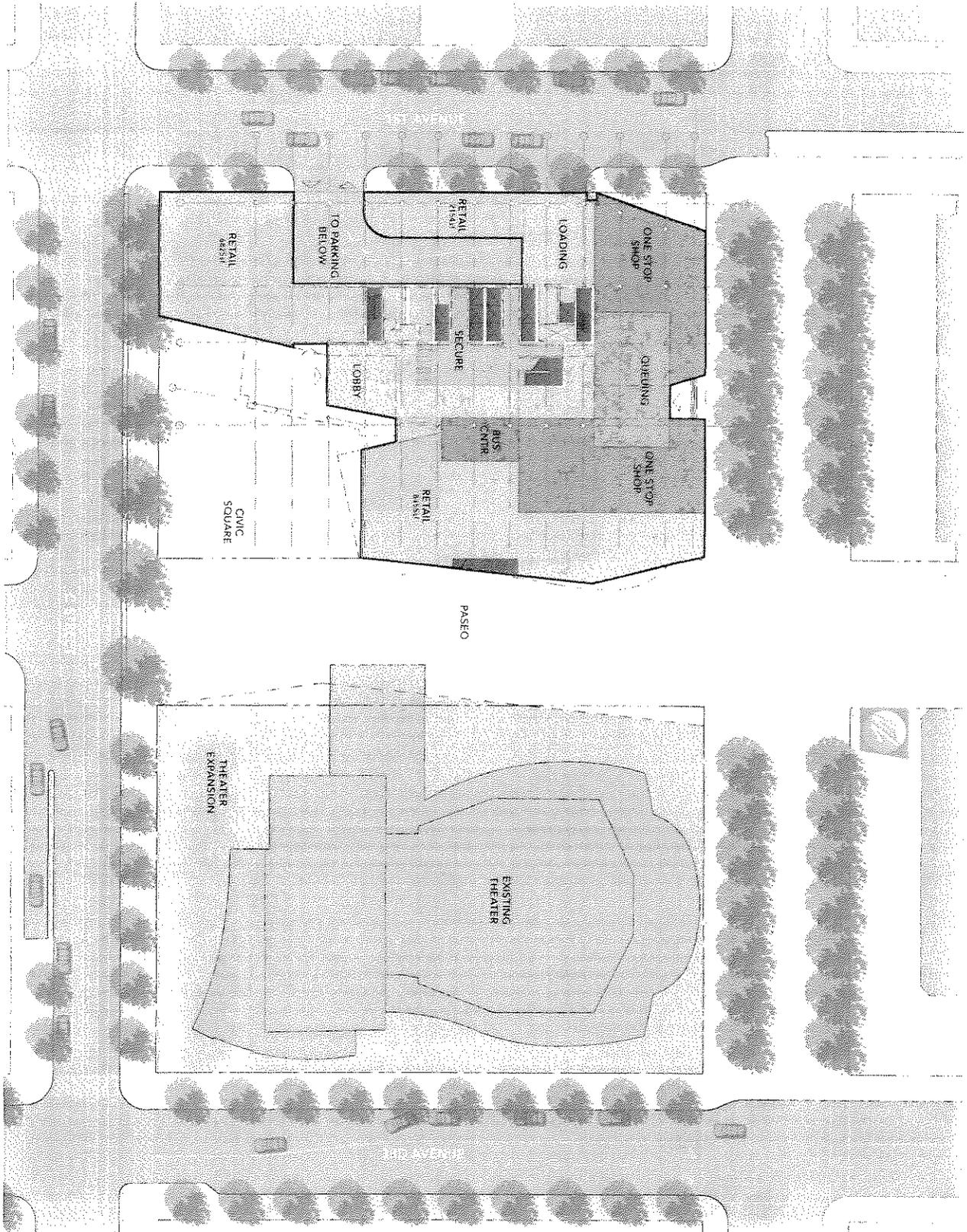
SAN DIEGO CIVIC CENTER COMPLEX

SITE PLAN - PARKING SCHEME F



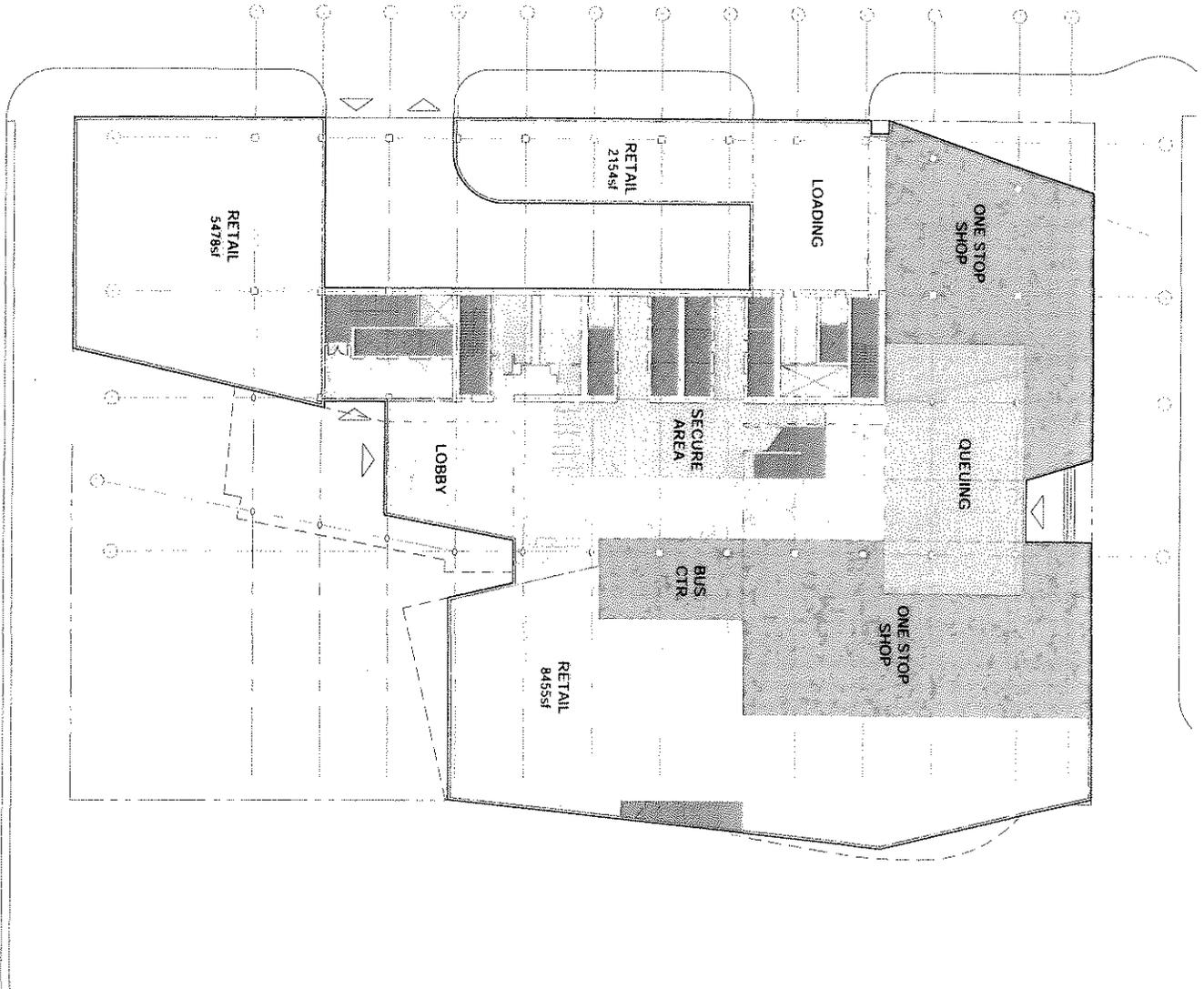
SAN DIEGO CIVIC CENTER COMPLEX

SITE PLAN - PARKING SCHEME K



SAN DIEGO CIVIC CENTER COMPLEX

FIRST FLOOR PLAN - PARKING SCHEME F

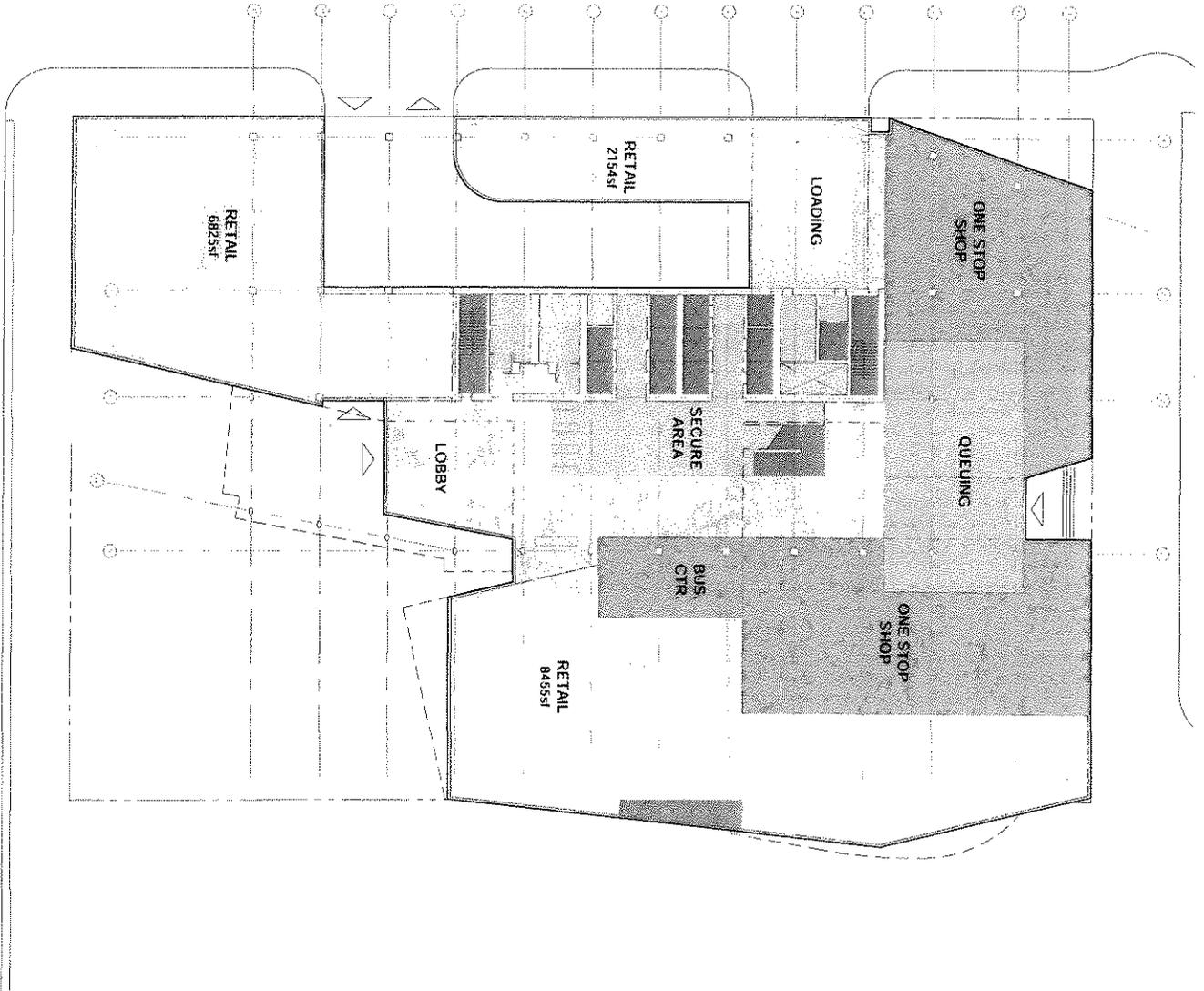


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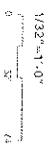


SAN DIEGO CIVIC CENTER COMPLEX

FIRST FLOOR PLAN - PARKING SCHEME K

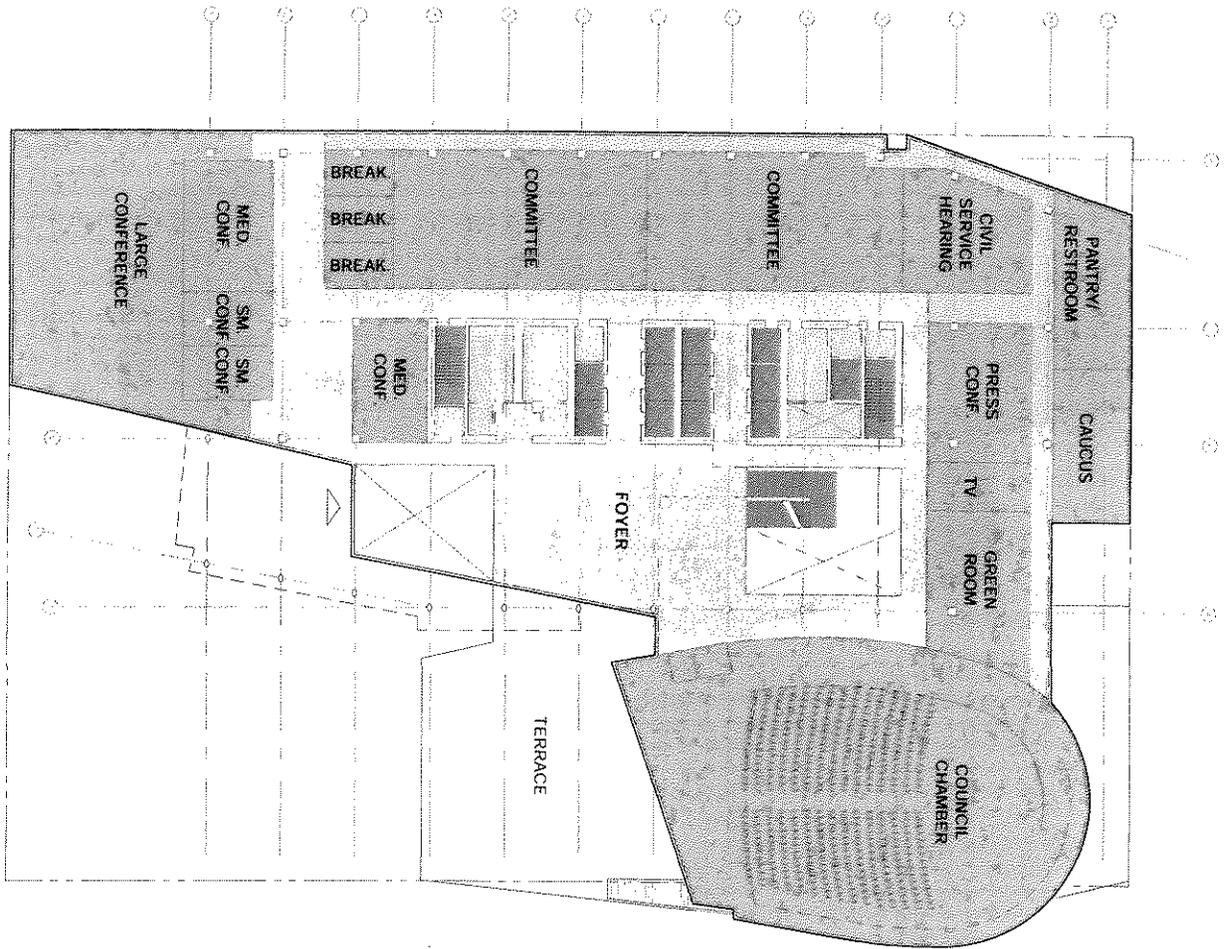


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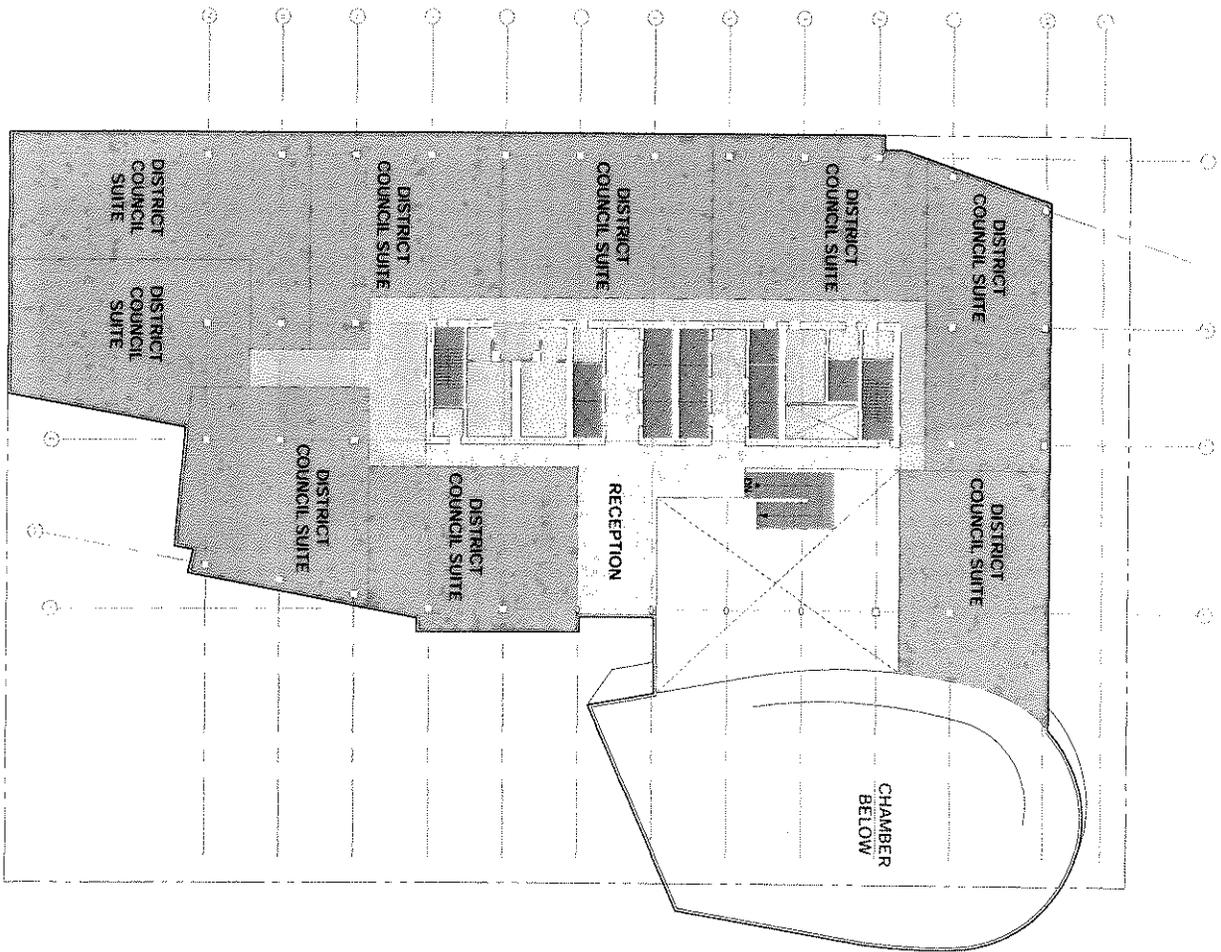
SAN DIEGO CIVIC CENTER COMPLEX

SECOND FLOOR PLAN



SAN DIEGO CIVIC CENTER COMPLEX

THIRD FLOOR PLAN

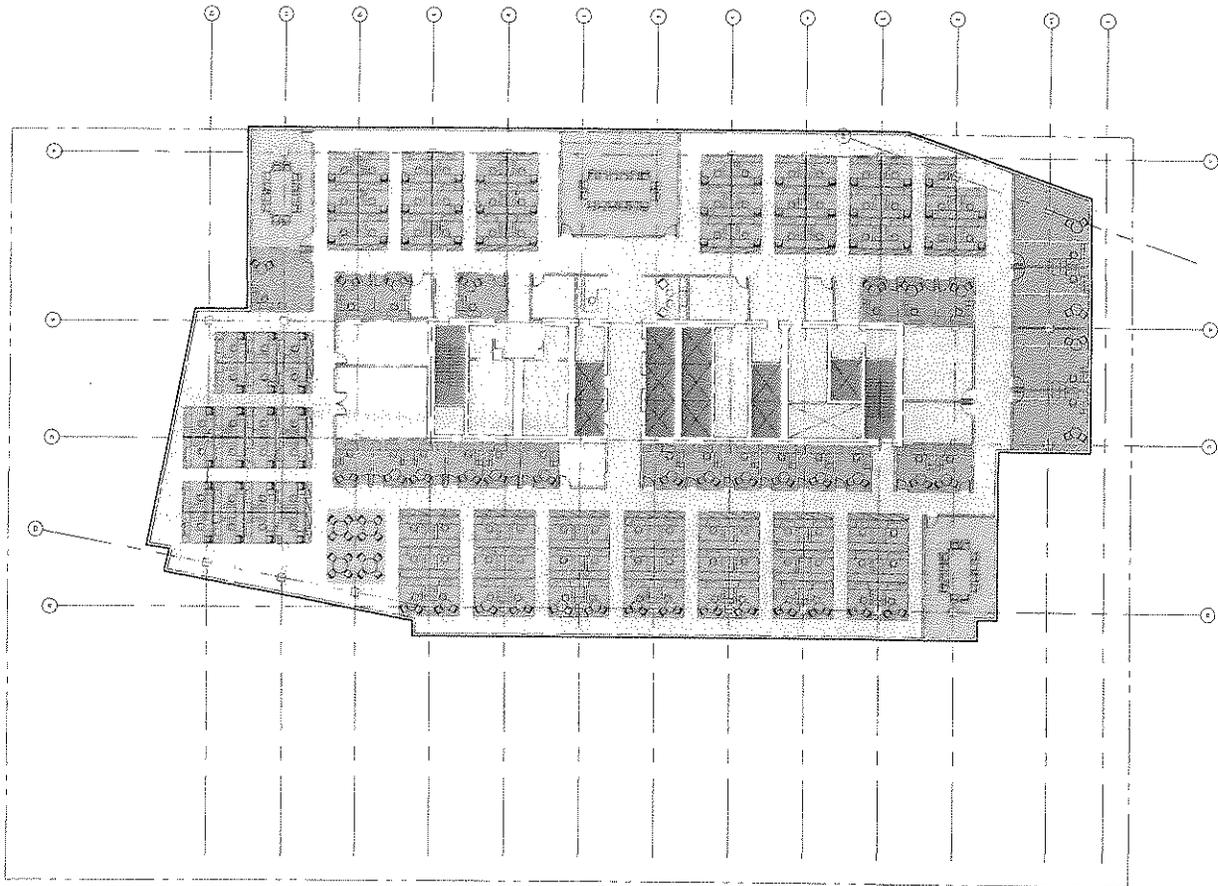


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SAN DIEGO CIVIC CENTER COMPLEX

TENTH FLOOR - TEST FIT PLAN

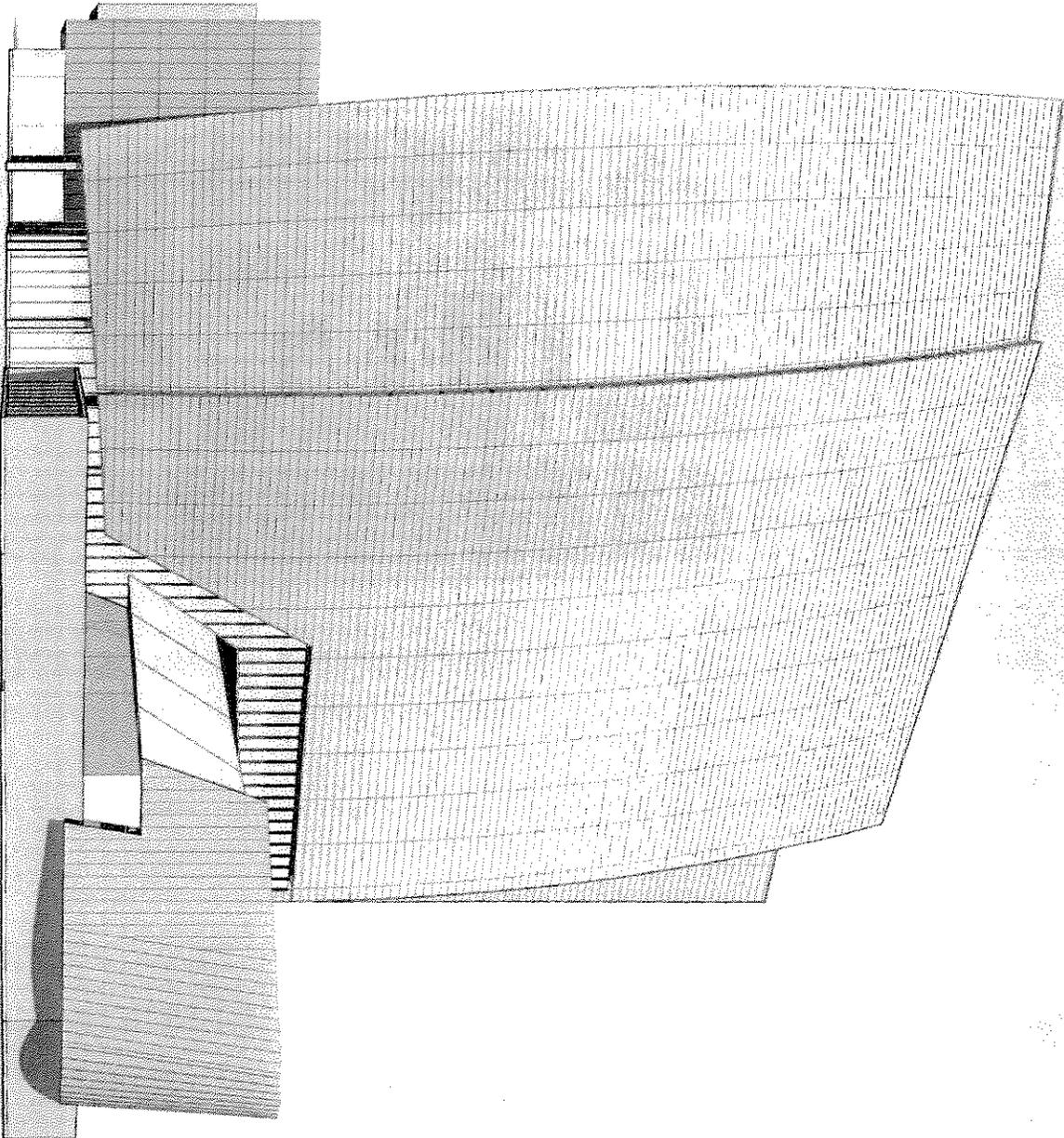


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ARCHITECTS

SAN DIEGO CIVIC CENTER COMPLEX

MODEL VIEWS

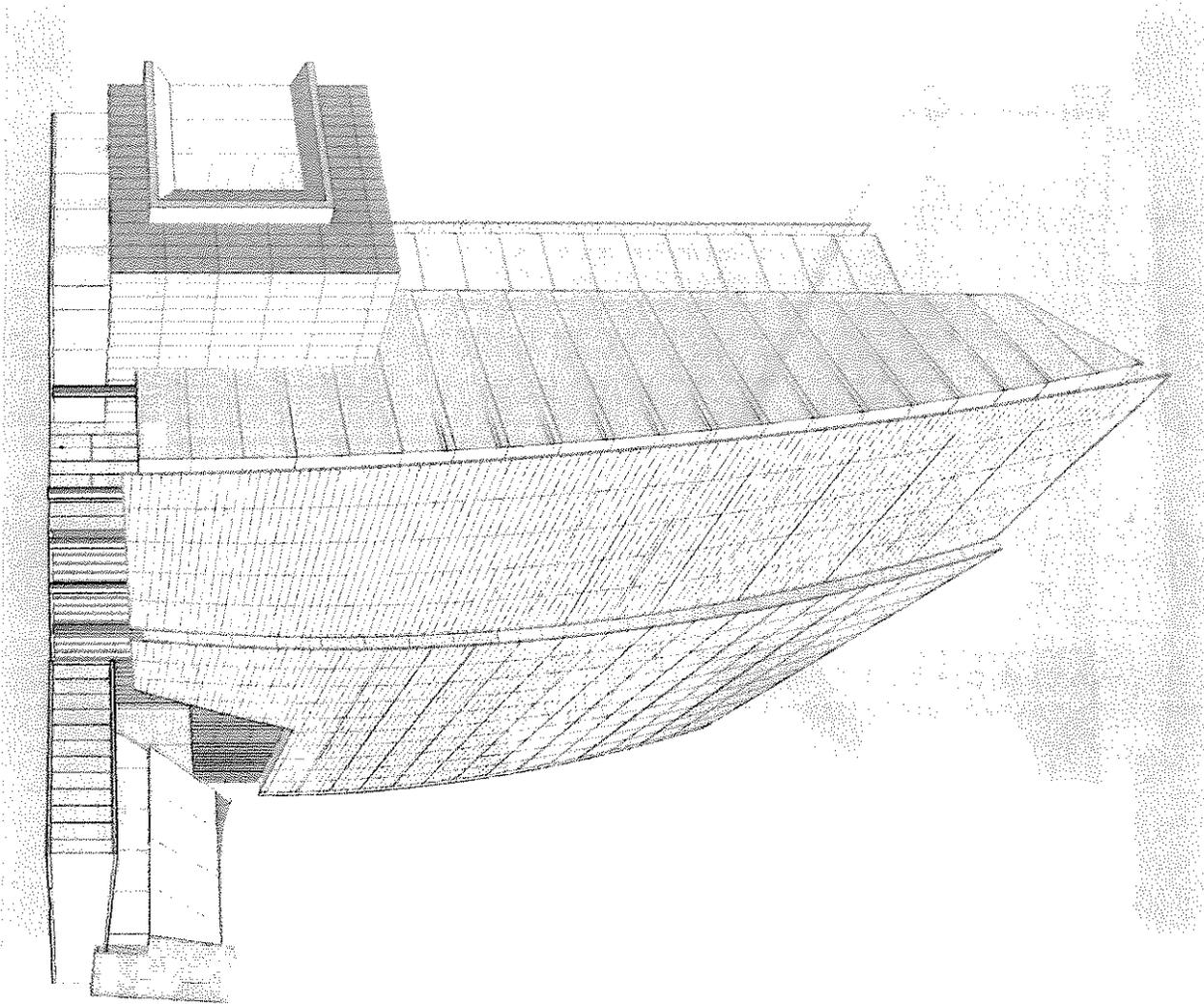
VIEW FROM EAST



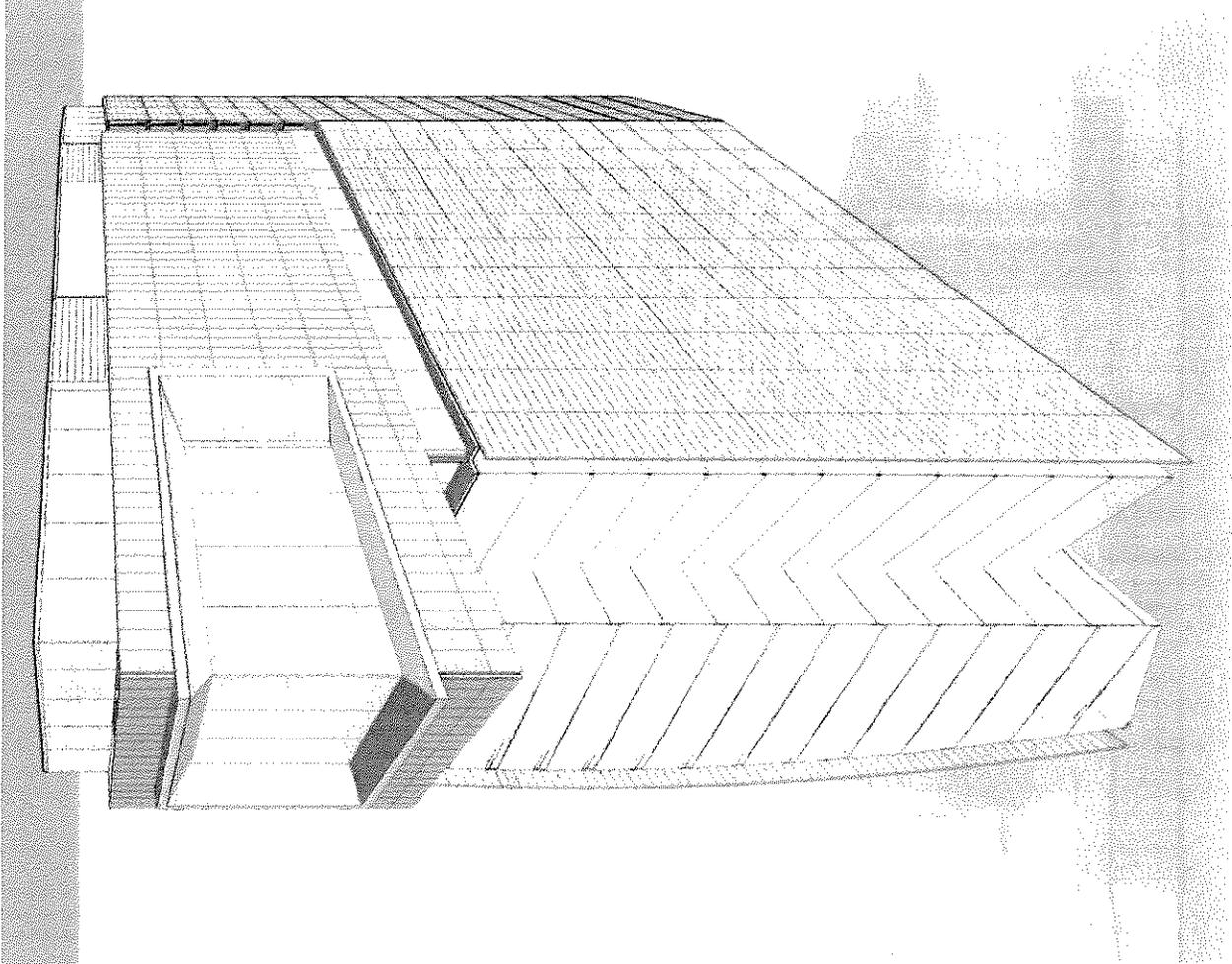
SAN DIEGO CIVIC CENTER COMPLEX

MODEL VIEWS

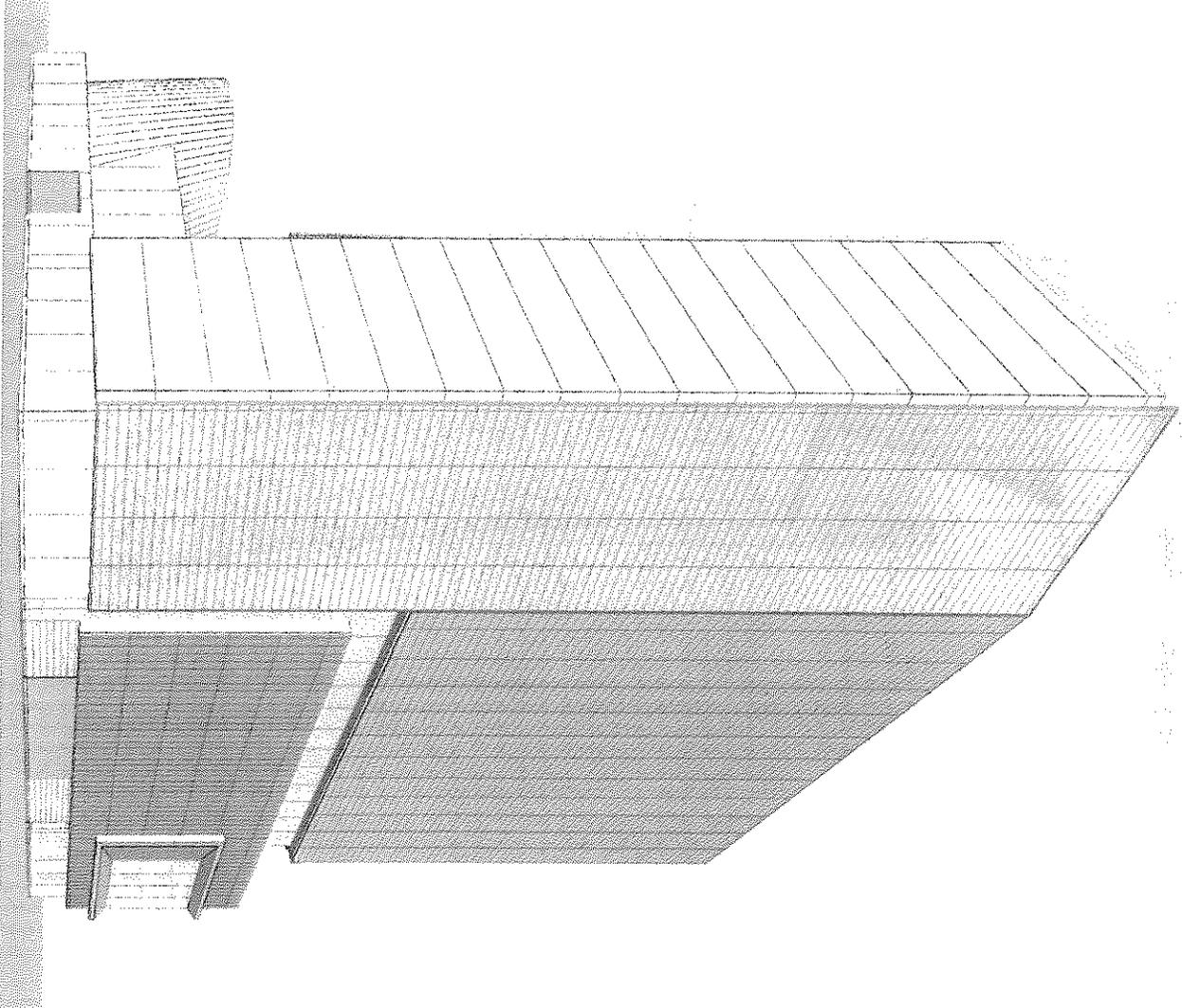
VIEW FROM SOUTHEAST



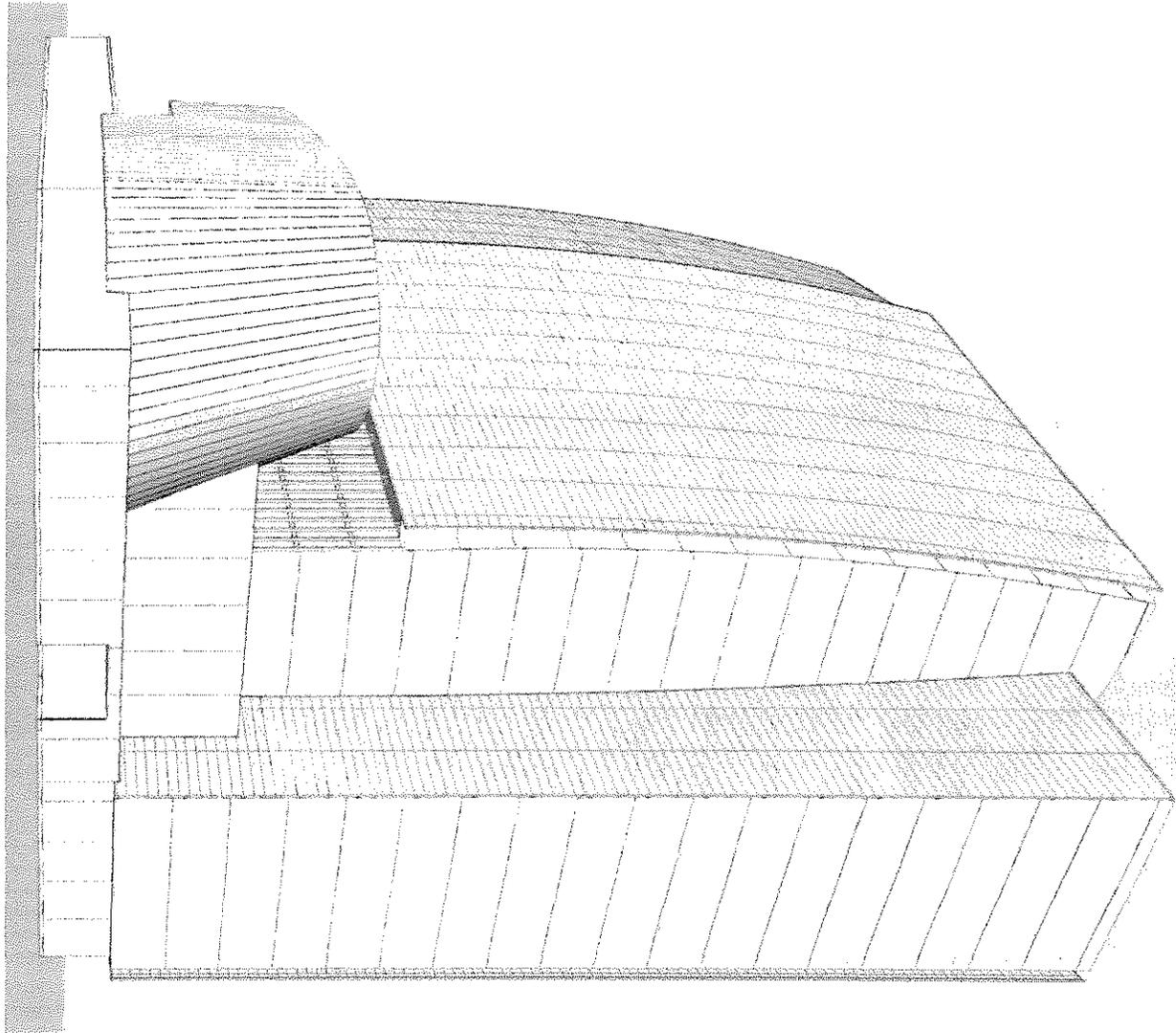
VIEW FROM SOUTHWEST



VIEW FROM NORTHWEST

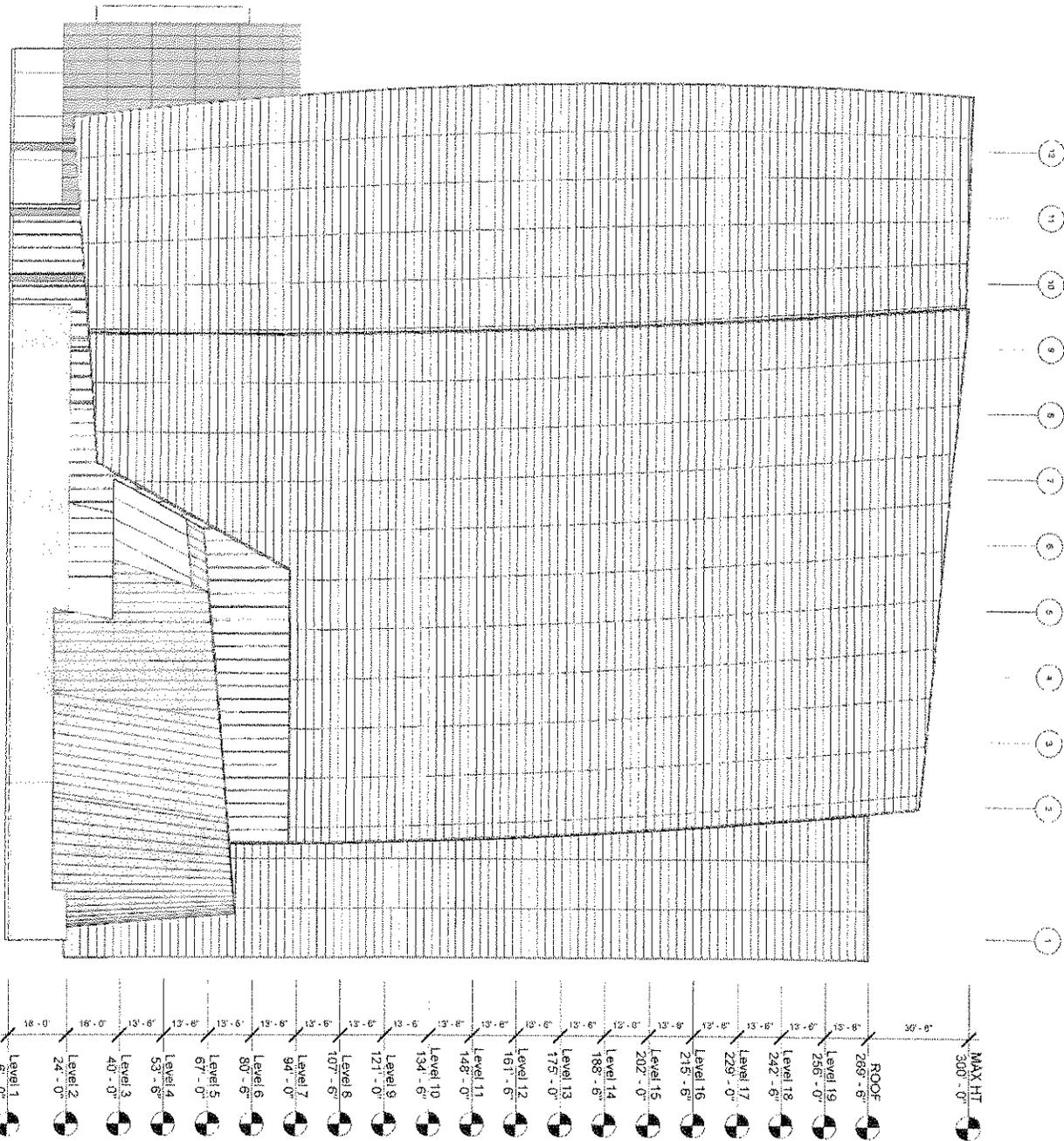


VIEW FROM NORTHEAST



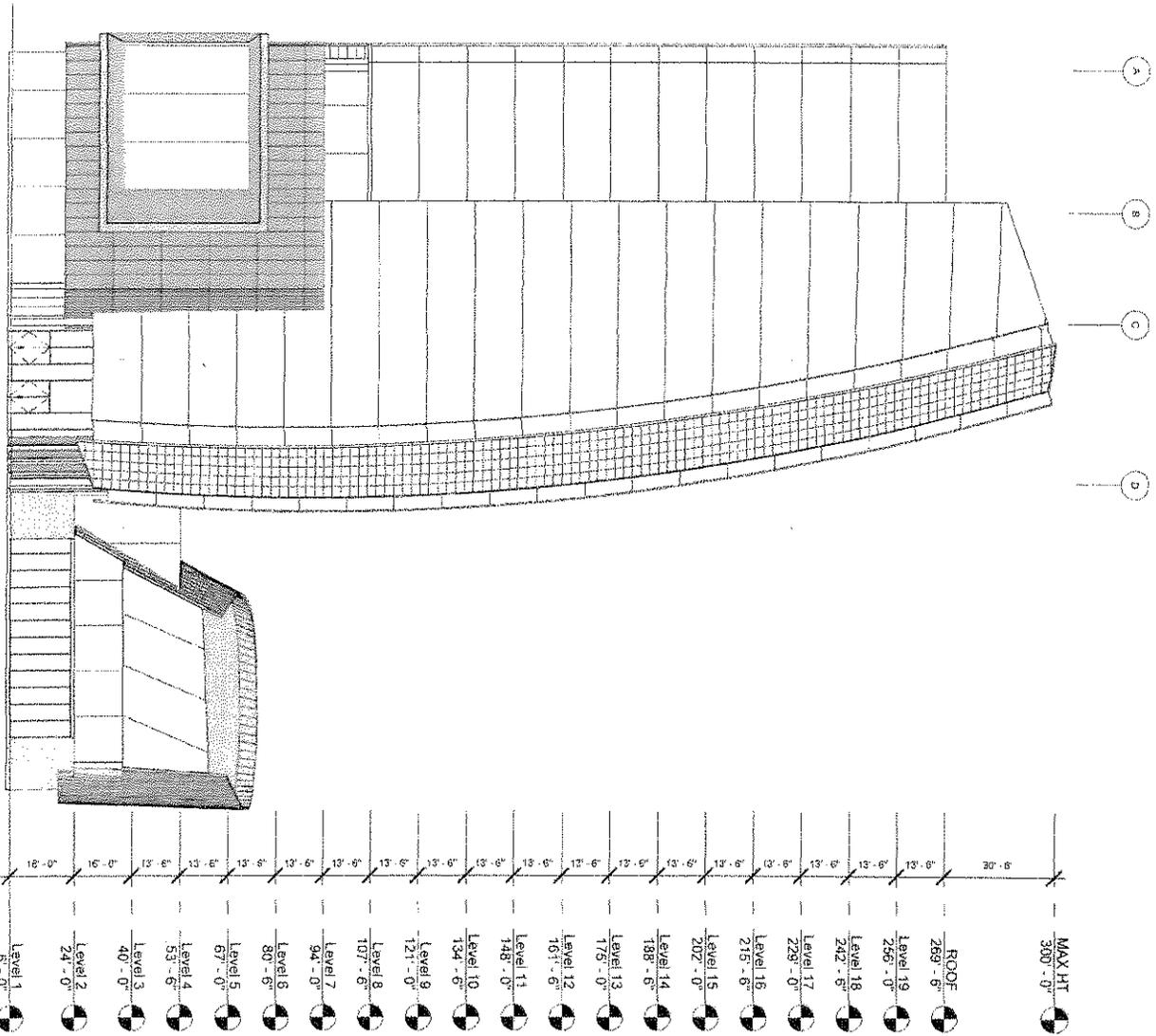
SAN DIEGO CIVIC CENTER COMPLEX

EAST ELEVATION



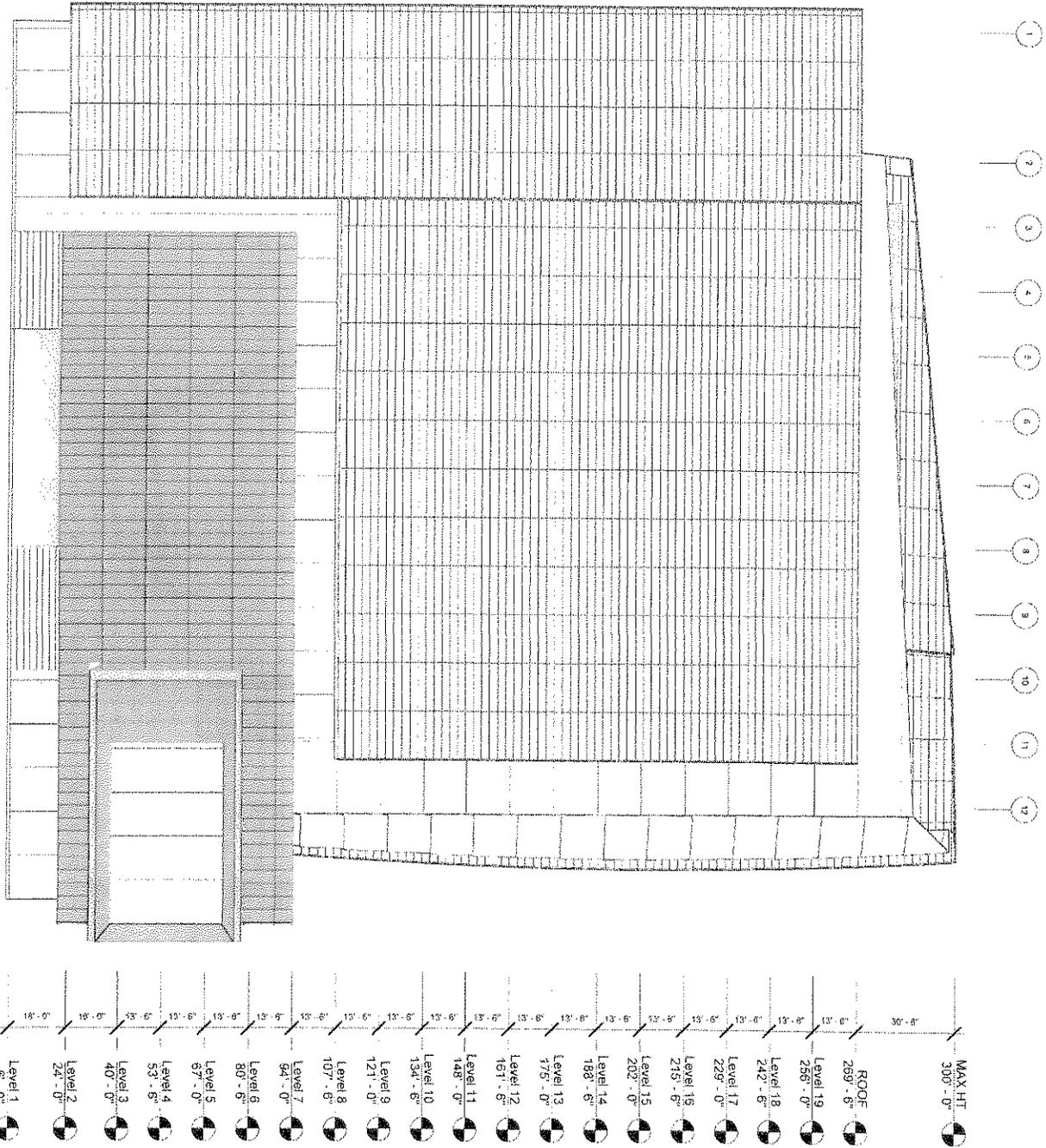
SAN DIEGO CIVIC CENTER COMPLEX

SOUTH ELEVATION



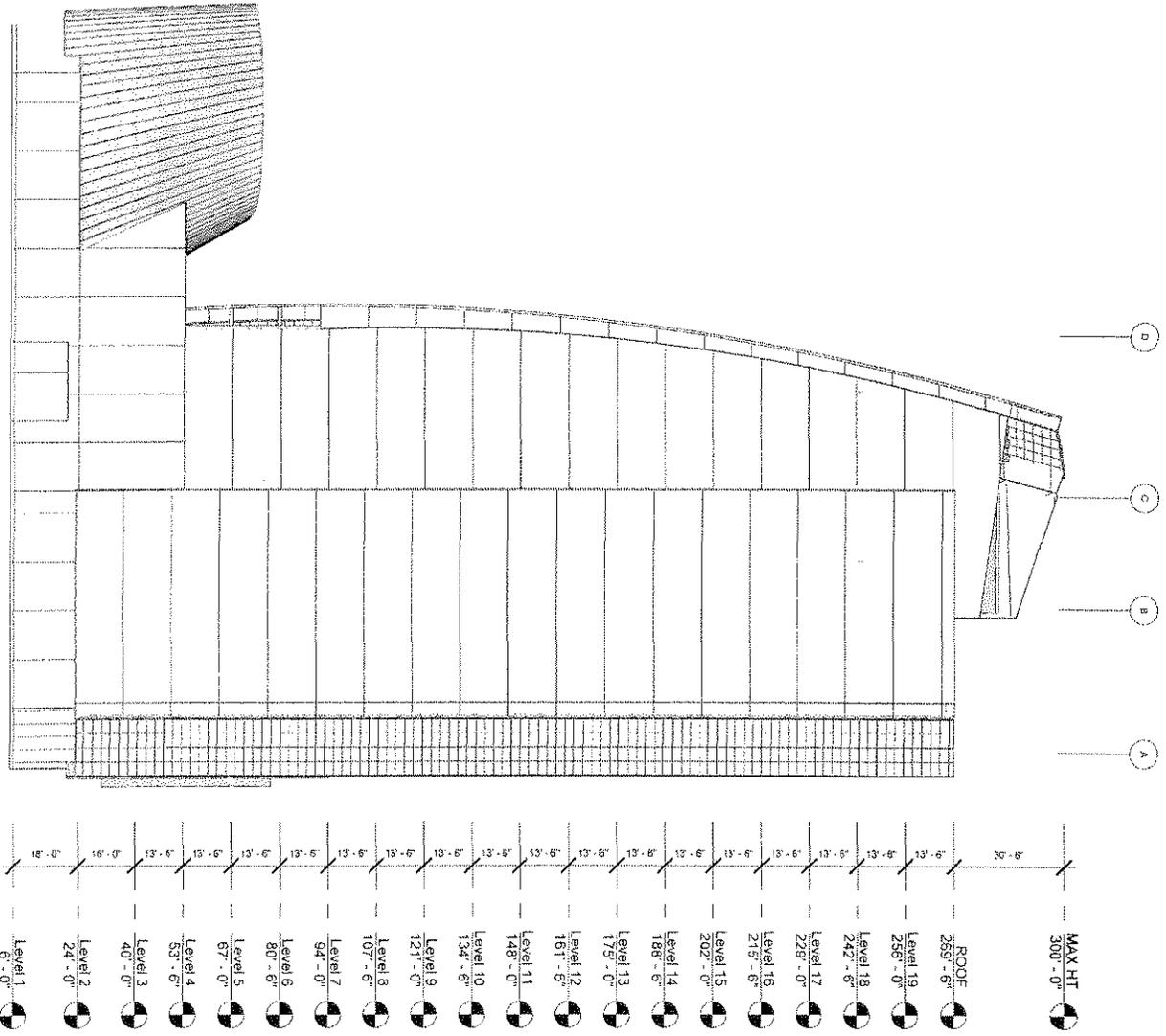
SAN DIEGO CIVIC CENTER COMPLEX

WEST ELEVATION



SAN DIEGO CIVIC CENTER COMPLEX

NORTH ELEVATION



SAN DIEGO CIVIC CENTER COMPLEX

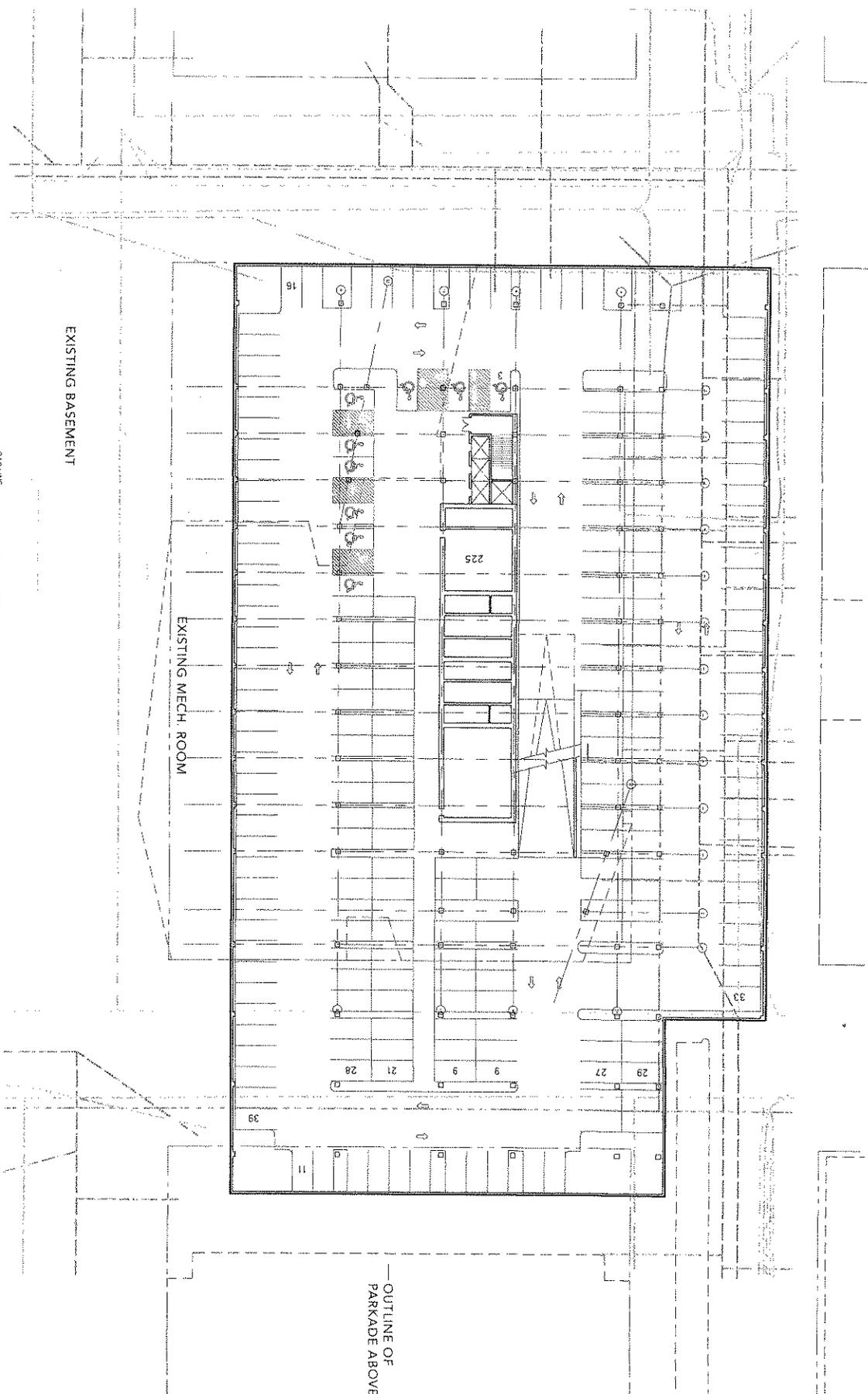
PARKING SCHEME F2

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ARCHITECTS

SCHEME F2 - LEVEL P1

SQUARE FOOTAGE		PARKING STALLS		EFFICIENCY	
P1 - 89,200SF	P1 - 225 (138 SINGL. E. 86 TANDEM)	P1 - 388SF/SPACE			
P2 - 85,200SF	P2 - 239 (132 SINGL. 0/4 TANDEM)	P2 - 378SF/SPACE			
TOTAL - 174,400SF	TOTAL - 461 (271/190)	TOTAL - 387SF/SPACE			

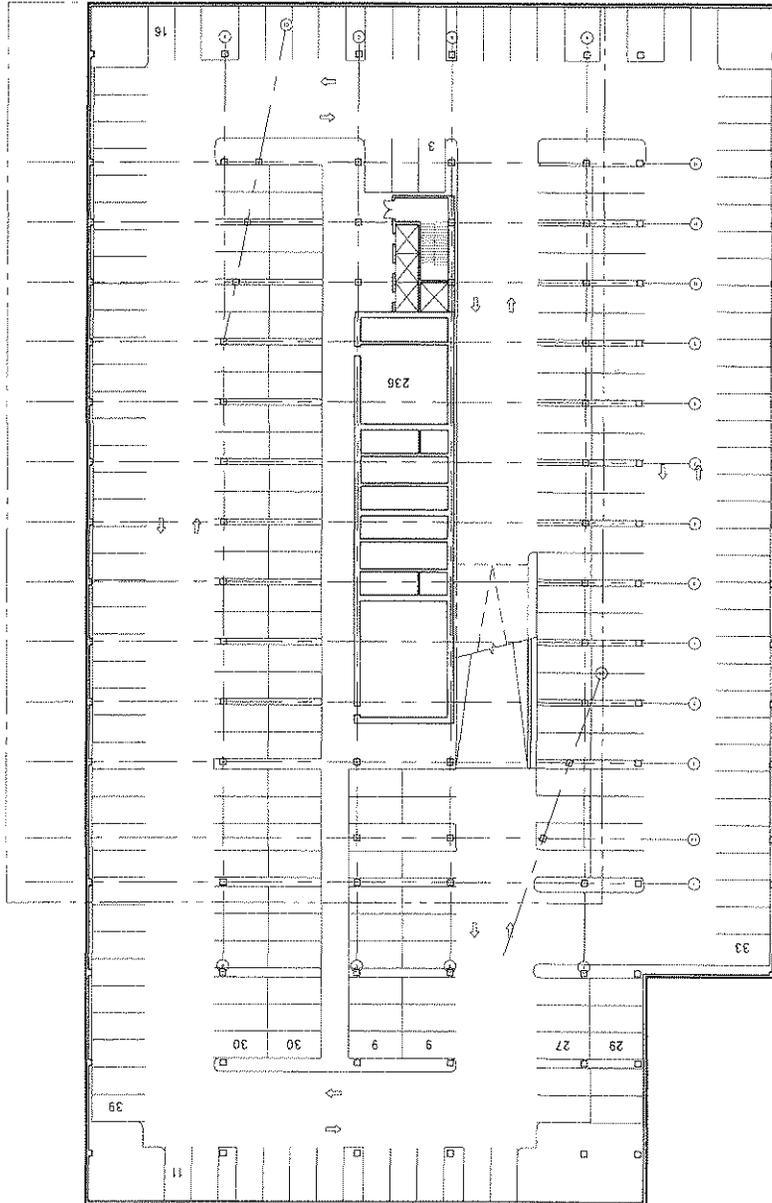
GAS LINE		SANITARY SEWER	
.....
TELEPHONE		UNDERGROUND ELEC.	
.....
DOMESTIC WATER			
.....		



— OUTLINE OF
 PARADE ABOVE



SCHEME F2 - LEVEL P2



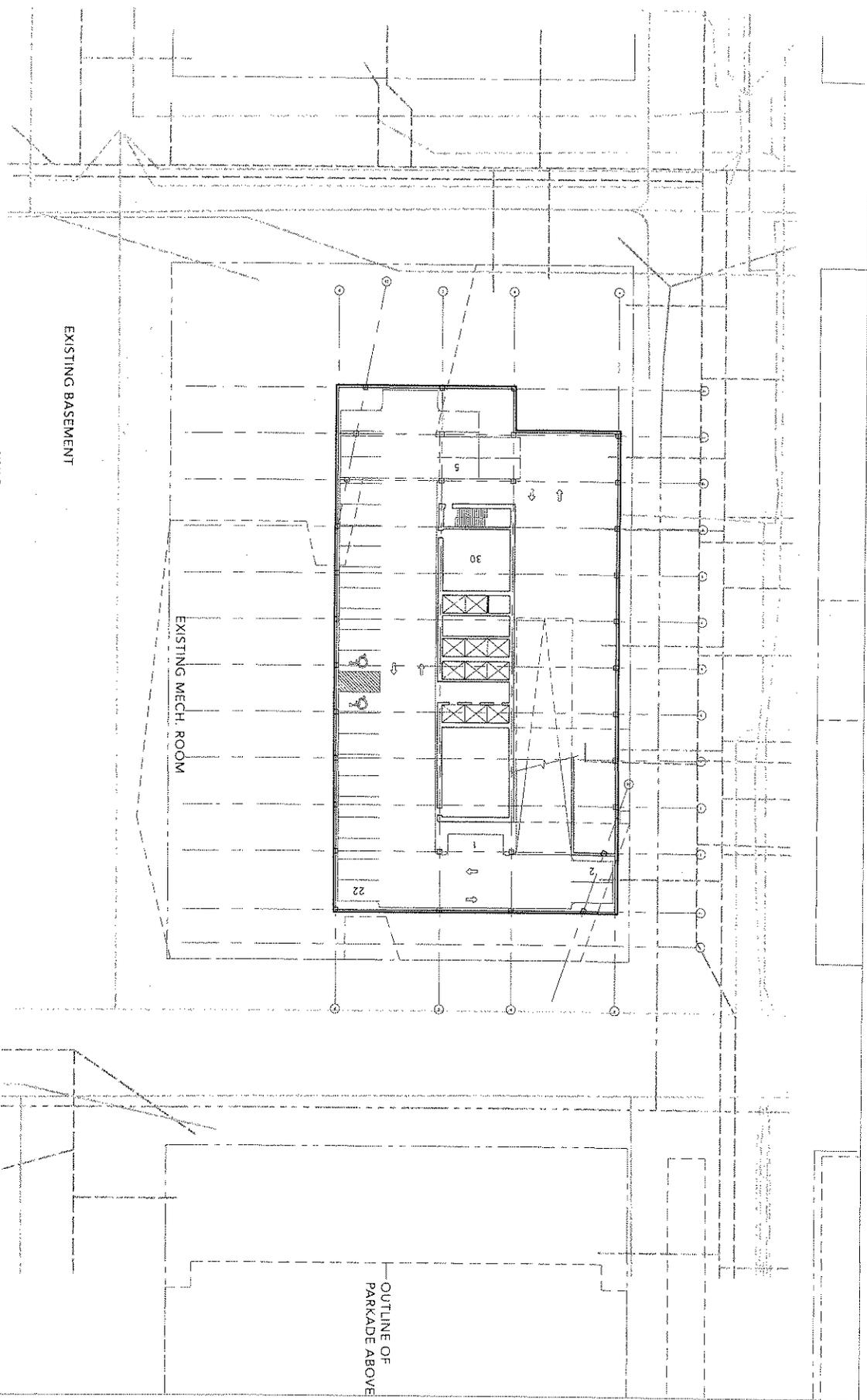
SAN DIEGO CIVIC CENTER COMPLEX

PARKING SCHEME K1

SCHEME K1 - LEVEL P1

SQUARE FOOTAGE	PARKING STALLS	EFFICIENCY
P1 - 27,124sf	P1 - 30 (28 SINGLE, 4 TANDERS)	P1 - 904sf/space

GAS LINE	SANITARY SEWER
STORM SEWER	TELEPHONE
UNDERGROUND ELEC.	DOMESTIC WATER



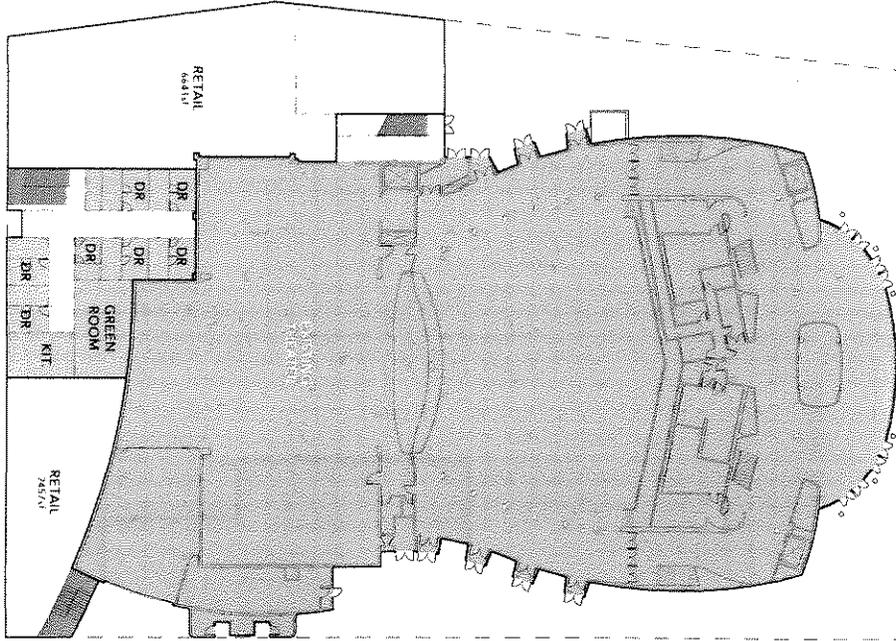
SAN DIEGO CIVIC CENTER COMPLEX

THEATER RENOVATION

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ARCHITECTS
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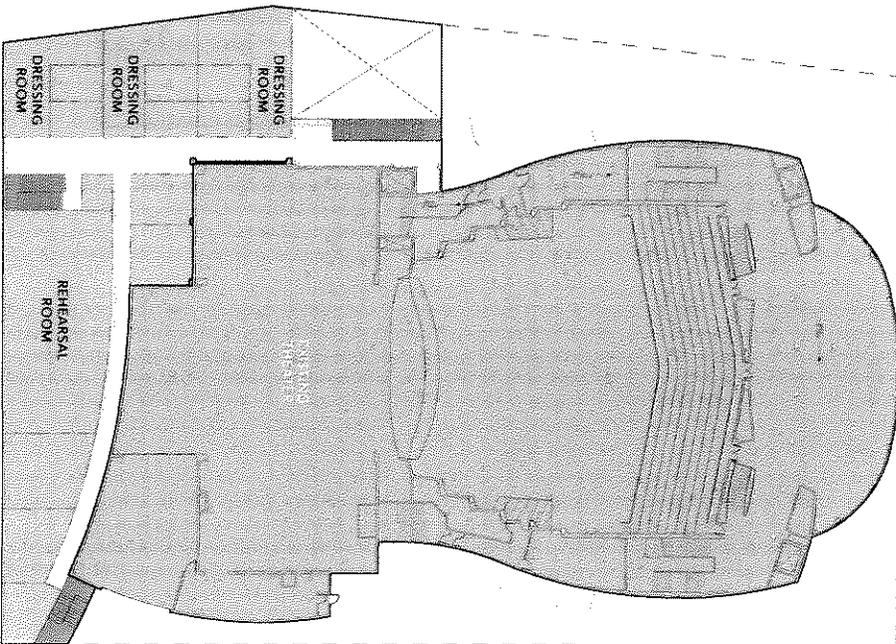
FIRST FLOOR PLAN
 Retail
 Theater Expansion

9098sf
 4223sf



SECOND FLOOR PLAN
 Theater Expansion

11,698sf





THE CITY OF SAN DIEGO

MEMORANDUM

DATE: September 02, 2009
TO: Andrea Tevlin, Independent Budget Analyst
FROM: James F. Barwick, Director, Real Estate Assets Department
SUBJECT: Civic Center Complex: Analysis of rent assumptions

A handwritten signature in black ink, appearing to read "J. Barwick", written over the "FROM:" line of the memorandum.

At the June 10, 2009 meeting of the Council Committee on Rules, Open Government and Intergovernmental Relations, representatives of the Centre City Development Corporation (CCDC) gave a presentation on the SAN DIEGO CIVIC CENTER COMPLEX / CITY DOWNTOWN OCCUPANCY ALTERNATIVES.

Part of the presentation included a financial analysis by Jones Lang LaSalle (JLL) comparing the cost of developing a new Civic Center with the cost of the Hold Steady alternative whereby the City would extend its leases at its current locations for an additional five year term. The JLL analysis included an assumption of the rental rates the City would expect to encounter during the extension period. During the hearing, the text of an e-mail from Irving Hughes Inc. (IHI) was presented disputing the validity of JLL's assumptions for lease rates the City would encounter when renewing its leases when they expire in 2014. Since there was a significant disparity in the rent assumptions presented by JLL and IHI, the Committee requested the City's Director of Real Estate Assets to opine on whose prediction of the City's rent in 2014 was more accurate.

JLL arrived at their estimate of the rent the City would expect to pay for a five year lease extension commencing in 2014 at the buildings it currently occupies by the following method:

- Lease proposals for the extended lease term using a 2014 commencement date were solicited for the three buildings that the City occupies.
- The rental rates contained in the proposals were discounted for the value of the tenant improvements that the City would not require in the Hold Steady alternative.
- The proposals further discounted the quoted rents by five percent to account for negotiating room.
- The rents were combined on a weighted average basis.

The result was a predicted average rent of \$2.17 per square foot.

IHI used a completely different method to arrive at their estimate of the City's projected rent. They had obtained a lease proposal with a commencement date of January 2010 from one of the City's current landlords for an 8,000 square foot tenant that they represented. They took the rental rate quoted in the

Page 2
Andrea Tevlin
September 02, 2009

proposal for the fourth year of the lease term (2014) and discounted it by the value of the tenant improvements. Using only this information, they estimated the rent the City could expect to pay for its space at lease renewal would be \$1.50 per square foot.

It is very difficult for anyone to predict rents five years into the future. This is particularly the case when the current leasing market and the economy are going through periods of turbulence and uncertainty. Everyone agrees that rental rates have declined over the past twelve months. However, determining when and at what level rents will bottom out and how quickly they will recover is an extremely difficult task. This is the problem faced by anyone (including the City's current landlords) when trying to predict what the rental market will be when the City's leases are up for renewal. Therefore, the most appropriate way to analyze the validity of JLL's and IHI's estimates of 2014 market rents is to evaluate the methodologies they used in making their projections.

The basis for JLL's rent projections on lease proposals was obtained from the owners of all three buildings in which the City would extend its occupancy under the Hold Steady scenario. These proposals contained terms that accurately addressed the City's space requirements. Perhaps most importantly, the commencement date of the leases was 2014. The rents in these proposals were adjusted to account for the savings to the landlord of no tenant improvement allowance and further adjusted for negotiating room. This is a logical and professional approach for producing financial projections using the best data available.

The rent estimate provided by IHI was based entirely on a single lease proposal from the lowest quality building the City occupies and for a tenant whose facility requirements have nothing in common with the City's existing or expected needs. There is an abundance of 8,000 square foot spaces available which required the building owner to compete with virtually every building in the downtown marketplace. More importantly, the commencement date of the lease (January 2010) occurs during a difficult economic time for building owners. The City leases will not commence until 2014, by which time the economy and the leasing market may recover. The use of this lease proposal as a benchmark for the City's projected rents would not pass any reasonable criteria of professional standards. In addition, IHI has provided no evidence of any kind to support an opinion of prospective rental rates for the other two buildings the city occupies.

While it is extremely difficult to predict rent levels five years into the future, it is my opinion that the rent projection methodology used by JLL is professionally sound and provides the more accurate prediction of the city's rent in 2014.

James F. Barwick, CCIM
Director, Real Estate Assets Department

cc: Jay Goldstone, Chief Operating Officer, Office of the Mayor
Phil Rath, Policy Advisor, Office of the Mayor
David Jarrell, Deputy Chief of Public Works
Diane Bartko, Asset Manager, Real Estate Assets
Tim Moore, Ballpark Administrator, PETCO Park
Jeff Graham, Vice President - Redevelopment, CCDC

ATTACHMENT I

**City of San Diego - Civic Center Financial Comparison
Proposed Project vs. Hold Steady
50 Year Analysis Period**

Analysis Year		Annual (Savings) vs. Hold Steady	Cumulative (Savings) vs. Hold Steady
1	2010	\$0	\$0
2	2011	(\$7,504,827)	(\$7,504,827)
3	2012	(\$188,591)	(\$7,693,418)
4	2013	(\$363,269)	(\$8,056,687)
5	2014	(\$180,193)	(\$8,236,880)
6	2015	(\$177,501)	(\$8,414,381)
7	2016	(\$416,552)	(\$8,830,933)
8	2017	(\$618,118)	(\$9,449,051)
9	2018	(\$8,099,402)	(\$17,548,453)
10	2019	(\$6,363,304)	(\$23,911,757)
20	2029	(\$3,936,229)	(\$41,334,132)
50	2059	\$0	(\$232,199,304)

City of San Diego - Civic Center Financial Comparison
 Occupancy Cost Summary - Net Costs (Parking Scenario F2)
 Asset Transfer Financing Method
 Portion of Interest Capitalized During Construction Period; 30 Year Amortization

Occupancy Year	GED Alternative 5.25%	Hold Steady 5.25%	GED (Savings) Additional Cost vs. Hold Steady Annual	GED (Savings) Additional Cost vs. Hold Steady Cumulative
1	\$14,056,556	\$14,056,556	\$0	\$0
2	\$17,503,726	\$25,008,553	(\$7,504,827)	(\$7,504,827)
3	\$25,250,169	\$25,446,780	(\$188,591)	(\$7,693,418)
4	\$25,192,353	\$25,555,622	(\$363,269)	(\$8,056,687)
5	\$25,690,536	\$25,690,536	\$0	(\$8,236,880)
6	\$17,173,150	\$17,350,651	(\$177,501)	(\$8,498,479)
7	\$17,231,952	\$17,648,504	(\$21,438)	(\$1,003,330)
8	\$17,295,173	\$17,913,291	(\$26,118)	\$3,288,959
9	\$23,420,871	\$31,520,273	(\$8,109,402)	(\$2,641,924)
10	\$23,443,565	\$29,806,868	(\$6,363,304)	(\$5,834,350)
11	\$23,464,179	\$23,610,933	(\$2,146,754)	(\$3,028,202)
12	\$23,489,909	\$20,142,017	\$3,347,892	\$6,520,226
13	\$23,512,271	\$20,206,015	\$3,306,256	\$10,189,701
14	\$23,532,555	\$23,858,062	(\$325,507)	\$12,848,127
15	\$23,553,568	\$27,485,804	(\$3,932,236)	\$12,273,432
16	\$24,919,222	\$28,652,894	(\$3,733,672)	\$11,515,771
17	\$24,841,178	\$28,775,728	(\$3,934,550)	\$10,755,612
18	\$24,873,846	\$28,808,378	(\$3,934,533)	\$9,996,098
19	\$24,904,585	\$28,838,168	(\$3,933,583)	\$9,234,789
20	\$24,930,971	\$28,867,200	(\$3,936,229)	\$8,470,723
21	\$24,956,152	\$28,893,332	(\$3,931,181)	\$7,710,451
22	\$24,986,417	\$28,917,120	(\$3,930,703)	\$6,954,131
23	\$25,012,052	\$28,942,658	(\$3,930,606)	\$6,194,698
24	\$25,033,880	\$28,967,555	(\$3,933,675)	\$5,433,626
25	\$25,054,999	\$28,988,241	(\$3,933,242)	\$4,672,139
26	\$25,076,940	\$31,897,351	(\$3,932,411)	\$3,897,351
27	\$26,363,097	\$30,314,307	(\$3,931,210)	\$3,014,307
28	\$26,444,590	\$30,378,028	(\$3,933,438)	\$2,078,869
29	\$26,506,352	\$30,441,037	(\$3,934,685)	\$1,132,143
30	\$26,570,535	\$30,501,860	(\$3,931,345)	\$75,665
31	\$26,633,934	\$30,563,377	(\$3,929,443)	\$115,348
32	\$26,693,334	\$30,625,122	(\$3,931,787)	\$647,601
33	\$26,750,371	\$30,682,270	(\$3,931,899)	\$1,409,952
34	\$26,806,045	\$30,735,297	(\$3,929,252)	\$2,520,799
35	\$26,861,617	\$30,789,148	(\$3,927,531)	\$3,582,230
36	\$26,917,177	\$30,843,415	(\$3,926,238)	\$4,585,993
37	\$26,973,728	\$33,794,345	(\$6,820,617)	\$7,638,630
38	\$8,519,985	\$33,952,647	(\$26,432,662)	\$1,031,815
39	\$8,576,572	\$20,682,248	(\$12,003,676)	(\$129,246,577)
40	\$8,633,654	\$0	(\$8,633,654)	(\$141,250,253)
41	\$8,691,933	\$8,691,933	\$0	(\$141,250,253)
42	\$9,152,239	\$9,152,239	\$0	(\$141,250,253)
43	\$9,308,626	\$9,308,626	\$0	(\$141,250,253)
44	\$9,464,274	\$9,464,274	\$0	(\$141,250,253)
45	\$9,619,388	\$9,619,388	\$0	(\$141,250,253)
46	\$18,257,485	\$18,257,485	\$0	(\$141,250,253)
47	\$13,627,826	\$13,627,826	\$0	(\$141,250,253)
48	\$13,955,012	\$13,955,012	\$0	(\$141,250,253)
49	\$14,284,396	\$14,284,396	\$0	(\$141,250,253)
50	\$14,615,758	\$14,615,758	\$0	(\$141,250,253)
50 Yrs. Nominal	\$964,712,931	\$1,195,912,235	(\$232,199,304)	(\$141,250,253)
50 Yrs. Nominal - 15 Yrs.	\$323,819,081	\$345,480,658	\$21,661,577	\$12,273,432
50 Yrs. Nominal - 40 Yrs.	\$206,266,069	\$230,177,826	\$23,911,757	(\$5,834,350)
NPV (2010) - 50 Yrs.	\$372,297,685	\$431,352,517	\$58,554,832	(\$21,400,097)
NPV (2010) - 45 Yrs.	\$218,831,515	\$232,516,634	\$113,685,119	\$4,601,782
NPV (2010) - 40 Yrs.	\$158,239,899	\$173,365,311	\$115,125,412	(\$5,077,796)
Discount Rate:	5.25%	5.25%		

50 Year Totals	15 Year Totals	10 Year Totals
\$964,712,931	\$323,819,081	\$206,266,069
\$1,195,912,235	\$345,480,658	\$230,177,826
\$232,199,304	\$21,661,577	\$5,834,350
\$141,250,253	\$12,273,432	\$18,077,407
\$141,250,253	\$4,601,782	\$4,510,352
\$141,250,253	(\$5,077,796)	\$5,834,350
\$141,250,253	0.32%	0.32%
\$141,250,253	6.37%	6.37%

50 Year Totals	15 Year Totals	10 Year Totals
\$964,712,931	\$323,819,081	\$206,266,069
\$1,195,912,235	\$345,480,658	\$230,177,826
\$232,199,304	\$21,661,577	\$5,834,350
\$141,250,253	\$12,273,432	\$18,077,407
\$141,250,253	\$4,601,782	\$4,510,352
\$141,250,253	(\$5,077,796)	\$5,834,350
\$141,250,253	0.32%	0.32%
\$141,250,253	6.37%	6.37%

**City of San Diego - Civic Center Financial Comparison
 Summary of Bond Financing Alternatives (GED)
 Information From Projections by Debt Management, City of San Diego
 Asset Transfer Method - Lease Revenue Bonds Issue Date: 1/1/12
 Completion of New City Hall: 6/30/14 (30 month construction period)
 Parking Scenario F2**

	Cost	GSF	Cost per GSF
GED Total Project Costs Before Financing (6/8/10)	\$ 293,399,729	576,093	\$ 509.29
GED Cost Provided to City for Projecting Debt Service	\$ 293,399,729	576,093	\$ 509.29

	1. Base Case - 30 Year Amortization		2. Portion of Interest Capitalized During Construction Period (2012-2014) - 5.25%		2. Portion of Interest Capitalized During Construction Period (2012-2014) - 6.25%		Increase in Debt Service - 100 bp Increase (from 5.25% to 6.25%)
	Gross Debt Service	Net of DSRF Earnings	Gross Debt Service	Net of Cap. Int. and DSRF Earnings	Gross Debt Service	Net of Cap. Int. and DSRF Earnings	
Sources of Funds:							
Par Amount	\$ 309,780,000		\$ 320,355,000		\$ 333,485,000		\$ 13,130,000
Net Original Issue Discount							
Total Sources of Funds	\$ 309,780,000		\$ 320,355,000		\$ 333,485,000		\$ 13,130,000
Uses of Funds:							
Construction Fund	\$ 287,371,720		\$ 287,371,720		\$ 287,371,720		\$ -
Debt Service Reserve Fund	\$ 20,035,950		\$ 22,681,644		\$ 26,028,320		\$ 3,346,676
Capitalized Interest Fund			\$ 7,880,987		\$ 17,606,737		\$ 9,725,750
Cost of Issuance	\$ 2,372,331	0.7658%	\$ 2,420,650	0.7556%	\$ 2,478,224	0.7431%	\$ 57,574
Total Uses of Funds	\$ 309,780,000	of par amount	\$ 320,355,000	of par amount	\$ 333,485,000	of par amount	\$ 13,130,000
Approximate Bond Yield:	5.25%		5.25%		6.25%		1.00%
Debt Service Schedule:	First Year Semi-Annual Debt Service Payment: 7/1/12						
1 2012	\$ 7,324,942	\$ 7,024,403	\$ 8,056,402	\$ 8,000,000	\$ 10,102,534	\$ 8,000,000	\$ -
2 2013	\$ 20,034,925	\$ 19,433,847	\$ 16,112,805	\$ 8,500,000	\$ 20,205,068	\$ 8,500,000	\$ -
3 2014	\$ 20,031,830	\$ 19,430,752	\$ 16,112,805	\$ 14,000,000	\$ 20,205,068	\$ 14,000,000	\$ -
4 2015	\$ 20,034,143	\$ 18,990,270	\$ 16,508,905	\$ 15,327,191	\$ 20,599,168	\$ 19,243,093	\$ 3,915,902
5 2016	\$ 20,032,355	\$ 18,988,482	\$ 16,542,123	\$ 15,360,409	\$ 20,628,186	\$ 19,272,111	\$ 3,911,702
6 2017	\$ 20,032,228	\$ 18,988,355	\$ 16,580,215	\$ 15,398,501	\$ 20,661,654	\$ 19,305,578	\$ 3,907,077
7 2018	\$ 20,032,055	\$ 18,988,182	\$ 22,681,303	\$ 21,499,590	\$ 26,027,514	\$ 24,671,439	\$ 3,171,849
8 2019	\$ 20,032,274	\$ 18,988,401	\$ 22,679,973	\$ 21,498,260	\$ 26,025,213	\$ 24,669,138	\$ 3,170,878
9 2020	\$ 20,035,143	\$ 18,991,270	\$ 22,677,761	\$ 21,496,047	\$ 26,026,538	\$ 24,670,463	\$ 3,174,415
10 2021	\$ 20,032,487	\$ 18,988,614	\$ 22,680,317	\$ 21,498,603	\$ 26,027,013	\$ 24,670,938	\$ 3,172,334
11 2022	\$ 20,033,948	\$ 18,990,075	\$ 22,680,859	\$ 21,499,145	\$ 26,024,589	\$ 24,668,513	\$ 3,169,368
12 2023	\$ 20,034,584	\$ 18,990,711	\$ 22,680,221	\$ 21,498,507	\$ 26,028,217	\$ 24,672,141	\$ 3,173,634
13 2024	\$ 20,035,222	\$ 18,991,349	\$ 22,681,299	\$ 21,499,586	\$ 26,023,500	\$ 24,667,425	\$ 3,167,839
14 2025	\$ 20,034,653	\$ 18,990,780	\$ 22,677,768	\$ 21,496,054	\$ 26,028,142	\$ 24,672,066	\$ 3,176,012
15 2026	\$ 20,035,592	\$ 18,991,719	\$ 22,677,093	\$ 21,495,379	\$ 26,025,845	\$ 24,669,770	\$ 3,174,390
16 2027	\$ 20,032,905	\$ 18,989,032	\$ 22,678,944	\$ 21,497,230	\$ 26,028,320	\$ 24,672,244	\$ 3,175,014
17 2028	\$ 20,035,263	\$ 18,991,390	\$ 22,679,835	\$ 21,498,121	\$ 26,026,475	\$ 24,670,400	\$ 3,172,278
18 2029	\$ 20,034,888	\$ 18,991,015	\$ 22,677,450	\$ 21,495,736	\$ 26,023,975	\$ 24,667,900	\$ 3,172,163
19 2030	\$ 20,033,940	\$ 18,990,067	\$ 22,681,048	\$ 21,499,334	\$ 26,026,319	\$ 24,670,243	\$ 3,170,909
20 2031	\$ 20,031,095	\$ 18,987,222	\$ 22,679,038	\$ 21,497,324	\$ 26,027,783	\$ 24,671,707	\$ 3,174,383
21 2032	\$ 20,034,763	\$ 18,990,890	\$ 22,679,830	\$ 21,498,116	\$ 26,025,365	\$ 24,669,290	\$ 3,171,173
22 2033	\$ 20,035,404	\$ 18,991,531	\$ 22,678,383	\$ 21,496,669	\$ 26,025,348	\$ 24,669,272	\$ 3,172,603
23 2034	\$ 20,031,275	\$ 18,987,402	\$ 22,677,533	\$ 21,495,819	\$ 26,024,049	\$ 24,667,973	\$ 3,172,154
24 2035	\$ 20,034,905	\$ 18,991,032	\$ 22,679,480	\$ 21,497,766	\$ 26,027,008	\$ 24,670,932	\$ 3,173,166
25 2036	\$ 20,033,980	\$ 18,990,107	\$ 22,681,620	\$ 21,499,906	\$ 26,025,008	\$ 24,668,932	\$ 3,169,026
26 2037	\$ 20,034,389	\$ 18,990,516	\$ 22,678,673	\$ 21,496,959	\$ 26,027,983	\$ 24,671,907	\$ 3,174,948
27 2038	\$ 20,032,876	\$ 18,989,003	\$ 22,677,038	\$ 21,495,324	\$ 26,026,009	\$ 24,669,933	\$ 3,174,609
28 2039	\$ 20,035,934	\$ 18,992,061	\$ 22,679,019	\$ 21,497,305	\$ 26,028,248	\$ 24,672,172	\$ 3,174,867
29 2040	\$ 20,035,933	\$ 18,992,060	\$ 22,681,570	\$ 21,499,856	\$ 26,025,058	\$ 24,668,983	\$ 3,169,126
30 2041	\$ 20,035,241	\$ 18,991,368	\$ 22,681,644	\$ 21,499,930	\$ 26,024,844	\$ 24,668,769	\$ 3,168,839
31 2042	\$ 20,035,950	\$ 18,992,077	\$ 22,681,054	\$ 21,499,340	\$ 26,024,964	\$ 24,668,888	\$ 3,169,548
32 2043	\$ 20,035,012	\$ (522,874)	\$ 22,681,339	\$ (591,161)	\$ 26,024,040	\$ (682,317)	\$ (91,156)
33 2044							
34 2045							
35 2046							
36 2047							
37 2048							
38 2049							
39 2050							
40 2051							
41 2052							
42 2053							
Total	\$ 628,380,129	\$ 577,091,103	\$ 679,583,342	\$ 613,440,849	\$ 789,079,039	\$ 704,389,899	\$ 90,949,051
Recon. to City Summary	\$ 628,380,129	\$ 577,091,103	\$ 679,583,342	\$ 613,440,849	\$ 789,079,039	\$ 704,389,899	Average Increase
<i>Note: Net Debt Service is equal to gross debt service less interest earnings on the Debt Service Reserve Fund and contributions from the Capitalized Interest Fund. Debt Service in the final year reflects the return of the Debt Service Reserve Fund.</i>							For 2015-2043 (29 years)
Totals Through 2019							\$ 3,136,174
	\$ 147,554,753	\$ 140,832,691	\$ 135,274,530	\$ 119,583,950	\$ 164,454,405	\$ 137,661,358	

City of San Diego
Office of the Clerk
Document No. _____
File No. _____

**CIVIC CENTER
DESIGN AND CONSTRUCTION AGREEMENT
BY AND BETWEEN
CITY OF SAN DIEGO
AND
GEDI CALIFORNIA, INC.,
A CALIFORNIA CORPORATION**

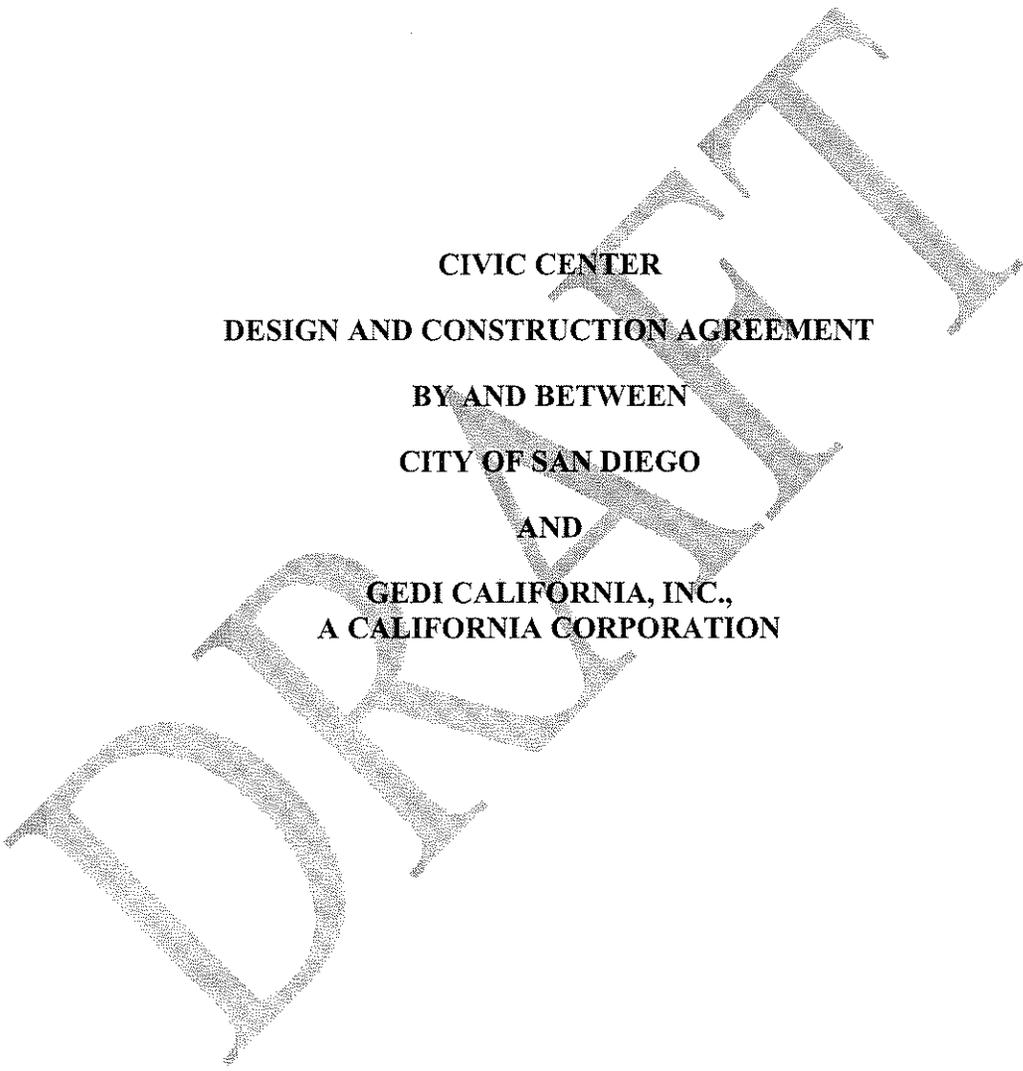


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LIST OF EXHIBITS

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Exhibit C-	City Design Criteria and Requirements
Exhibit D-	Scope of Work
Exhibit E-	Project Schedule
Exhibit F-	Project Schedule Obligations and Components
Exhibit G-	Preconstruction, Progress, & Special Meeting Requirements and Agenda
Exhibit H-	Project Budget
Exhibit I-	Construction Obligations
Exhibit J-	Certification for a Drug-Free Workplace
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Exhibit P-	Insurance Requirements
Exhibit Q-	Equal Opportunity Contracting Program Requirements

DEFINED TERMS

Unless the context otherwise indicates, whenever used in this Agreement, the following terms will have the meanings assigned to them in the section identified.

AAA	Section 19.1	Liquidated Damages	Section 2.8
Administrator	Section 19.3.1	LOC.....	Section 11.1
Agreement	Introduction	Mediator.....	Section 19.2
Application for Payment	Section 9.3	Moral Rights	Section 10.2.4
As-Builts	Section 10.1	Notice of Completion.....	Section 9.19.1
CCDC	Recital B	Notice of Correction	Section 9.15.3
Certificate for Title 24/ADA		Notice of Termination.....	Section 17.1
Compliance	Section 7.2	Party/Parties	Introduction
Changed Conditions.....	Section 8.1	Payment Bond.....	Section 11.1
City Contingency	Section 3.1	Performance Bond	Section 11.2
City Delay	Section 2.5	Predevelopment Costs.....	Section 3.1
City Design Criteria and		Project Budget.....	Section 3.1
Requirements	Section 1.1	Project Cost Cap	Section 3.3
City.....	Introduction	Project Costs	Section 3.1
City Official	Section 5.7	Project Deliverables.....	Section 10.1
City Project Management	Section 3.1	Project Depiction	Section 1.1
City Project Manager	Section 1.4	Project Narrative.....	Section 1.1
Commencement Date.....	Section 1.3	Project	Recital F
Completion Certificate.....	Section 9.15.1	Project Schedule Obligations.....	Section 2.1
Construction Documents.....	Section 20.1	Project Schedule.....	Section 2.1
Construction Obligations	Section 5.2	Proposed Development	Recital B
Critical Path Actions.....	Section 2.1	Punch List	Section 9.13
Defective Work	Section 15.1	Recovery Plan	Section 2.3
Delay Notice	Section 2.3	Request for Mediation.....	Section 19.3
Developer Contingency	Section 3.1	Required Insurance	Section 13.2
Developer Fee	Section 3.1	Retention.....	Section 9.5
Developer.....	Introduction	RFP	Recital B
Developer's Agents.....	Section 2.3	Right to Audit	Section 6.6
Disallowed Costs	Section 3.2	Savings.....	Section 3.7
Disbursement Agreement.....	Section 3.2	Scope of Work	Section 1.2
Effective Date	Section 1.3	Shortfall.....	Section 3.8
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Extra Work.....	Section 4.3	Soft Costs	Section 3.1
Final Completion	Section 9.18	Subcontractor Agreements.....	Section 6.1.4
GMP	Section 5.1	Substantial Completion.....	Section 9.13
Green Book.....	Section 7.6	Third Party Claims of	
Hard Cost Escalation.....	Section 3.1	Infringement.....	Section 10.2.7
Hard Costs.....	Section 3.1	Unavoidable Delay.....	Section 2.4
Hazardous Materials.....	Section 20.16	Warranty Bond.....	Section 11.3
Indemnified Parties	Section 12.1	Work	Section 1.2
Inspection Team.....	Section 9.15.2		

CIVIC CENTER DESIGN AND CONSTRUCTION AGREEMENT

This Design and Construction Agreement ("Agreement") is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation ("City") and GEDI California, Inc., a California corporation ("Developer") (individually, "Party" and collectively, "Parties"), for the design, and construction of the Civic Center in the downtown area of City.

RECITALS

A. City owns approximately 6.07 acres of land located in the downtown area of City which is currently used for the operation of City business, including uses for City Council Chambers, City offices, public service and/or meeting centers, public parking and public plazas; and

B. In response to a Request for Proposals ("RFP") issued by the Centre City Development Corporation ("CCDC") Developer submitted a proposal for a new Civic Center and mixed-use development project ("Proposed Development") at the Site (defined below); and

C. On December 20, 2007, the CCDC Selection Panel approved the selection of Developer and on May 20, 2009, the CCDC Board recommended authorization for City entering into exclusive negotiations with Developer for the purpose of negotiating a Development Agreement and other associated documents pertaining to the Site; and

D. On June 10, 2009, the Rules Committee directed the Mayor to develop an Exclusive Negotiation Agreement ("ENA") for presentation to City Council for review and approval with certain conditions to be included in the ENA; and

E. On October 12, 2009, the Council of City of San Diego authorized the Mayor to enter into an ENA with Developer that is on file in the Office of City Clerk as document no. RR-305312, for the purpose of negotiating an agreement for the Proposed Development; and

F. City and Developer have negotiated a preliminary budget and conceptual design for the development of a new Civic Center building on the land depicted on Exhibit "A" attached hereto ("Site") (the new Civic Center building constructed in accordance with this Agreement is hereinafter called the "Project"); and

G. This Agreement is intended by the Parties to define the method, terms, and conditions of payment of funds to be expended for the designing, permitting, and construction of the Project.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, City and Developer agree as follows:

ARTICLE I SUBJECT AND TERM OF THE AGREEMENT

1.1 Subject. Developer will design and construct a complete and operational Project fully suited to its purpose in accordance with this Agreement and within the timeframe established and for the Project Cost established herein. The Project will be in substantially the same design as that

shown in the Project depiction in Exhibit "B-1" attached hereto ("Project Depiction") and as described in Exhibit "B-2" attached hereto ("Project Narrative"); however, the Parties recognize that the Project Depiction represents a conceptual design only, and agree that some design changes and refinements may be necessary to reach a complete design. Design changes may occur through recommendations and comments received during the design review process or changes incorporated to achieve a cost savings to City in the value engineering process. No design changes may occur that cause the Project to fail to meet City's requirements as set forth in Exhibit "C" ("City Design Criteria and Requirements").

1.2 Scope of Work. Developer will design, construct and complete the Project in accordance with the process and standards set forth in Exhibit "D" ("Scope of Work") and in accordance with this Agreement. The term "Work" will mean performance of the tasks and delivery of plans, specifications, documents and completion of construction, all as described in the Scope of Work including, without limitation, obtaining any and all approvals required by appropriate governmental authorities having jurisdiction over the Project and (i) relating to the construction, operation or initial occupancy of the Project, or any portion thereof or (ii) relating to any zoning, subdivision, environmental, building and construction laws and/or regulations restricting, regulating or otherwise affecting the use, initial occupancy or enjoyment of the Project, as the same may be issued, modified or amended from time to time (hereinafter collectively "Permits" and as to each, "Permit").

1.3 Effective Date. This Agreement will be effective on the date it is executed by the last Party to sign the Agreement ("Effective Date"), and approved by City Attorney in accordance with San Diego Charter Section 40. Developer's commencement of the Work will begin on Developer's receipt of a written notice to proceed with Design Phase Services as described in the Scope of Work (the date of such delivery is herein called the "Commencement Date").

1.4 Role of City Project Manager. Prior to commencement of the Work, the City will designate, and from time to time during the term of this Agreement will re-designate, by written notice to Developer, an individual ("City Project Manager") who will act as the exclusive representative of City with respect to City's rights and obligations under this Agreement and as the sole individual vested with the authority to bind City or act on City's behalf under this Agreement (other than redesignation of City Project Manager which will be vested solely in the Mayor of the City). The Parties understand and acknowledge that the role of City Project Manager is distinct from the role of City as the Building Official responsible for the permitting and inspection of the Project.

ARTICLE II PROJECT SCHEDULE

2.1 Project Schedule. Developer will perform and complete the Work and will achieve Final Completion (defined below), all in accordance with the schedule and by the dates set forth in Exhibit "E" ("Project Schedule"). The Project Schedule has been prepared in accordance with Exhibit "F" ("Project Schedule Obligations"). The timing of Developer's performance of its obligations under this Agreement will conform to the Project Schedule, subject to Unavoidable Delays (defined below), City Delays (defined below) and revisions to the Project Schedule approved in accordance with this Agreement. The Project Schedule contains time periods for Developer to make certain submittals in connection with design and permitting of the Project and estimates of the

time periods to complete construction of the Project. With the exception of the date scheduled for Commencement, Substantial Completion (defined below) and Final Completion (defined below) which are fixed dates subject to Unavoidable Delay and City Delay, the Project Schedule represents the Parties' current best estimate of the schedule for actions required for timely Final Completion of the Project. The "Project Schedule will describe the sequence of all dependant actions required to determine the minimum time necessary to achieve Substantial Completion and Final Completion (such actions are herein called "Critical Path Actions") and actions that may become Critical Path Actions with the passage of time. The Project Schedule will be updated and expanded from time to time during the design and permitting process based on construction schedules provided by the contractors and subcontractors retained by Developer to construct the Project after issuance of the Permits (defined below). The Project Schedule includes the preconstruction, progress, and special meeting requirements and agendas in Exhibit "G".

2.2 Changes in Project Schedule. All changes to the Project Schedule will be approved by City.

2.3 Notification of Delay. If, for any reason, Developer is delayed or prevented, in whole or in part, from timely performing any obligation on its part to be performed pursuant to the Project Schedule and if such obligation constitutes a Critical Path Action, Developer will, within five (5) days after Developer becomes aware of the delay, deliver a written notice ("Delay Notice") to City with (i) a detailed explanation of the cause of the delay, (ii) an estimate of the length of the delay and a proposed revised date for such performance, (iii) any anticipated increased Project Costs (defined below) due to the delay (iv) a written statement by Developer of whether it contends that such delay constitutes an Unavoidable Delay (defined below) or City Delay (defined below) and the justification for such contention, (v) if such delay adversely impacts the date for Substantial Completion (defined below) in accordance with the Project Schedule, a detailed plan ("Recovery Plan") demonstrating with specificity and to the satisfaction of the City, how the impact of such delay can be eliminated and Substantial Completion timely achieved in accordance with the Project Schedule, (vi) a written statement that the requested time adjustment is the entire time adjustment Developer needs as a result of the delay, (vii) such other and further information that may be required by Sections 2.4 and 2.5 depending on whether the delay is an Unavoidable Delay or City Delay and (viii) a request that City approve the proposed revised date for performance and, if applicable, the Recovery Plan. If any of the information described in the preceding sentence is not available on the date delivery of the Delay Notice to the City is required, Developer will provide such information in writing to the City as soon as it is available but in no event later than twenty (20) days following the date of delivery of the Delay Notice. If City approves the contents of the Delay Notice and the Recovery Plan, if applicable, the Project Schedule will be revised in accordance with the Delay Notice and will become the Project Schedule for all purposes under this Agreement and, if such delay affects Project Costs, City will issue a Change Order in accordance with Section 3.4. Notwithstanding the above: (x) absent an Unavoidable Delay or City Delay, Developer will not be entitled to any extension of time, additional costs, or expenses for any delay; and (y) Developer will not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Developer, its consultants, contractors, subcontractors, employees, or other agents (collectively, "Developer's Agents") in breach of this Agreement. Developer will revise and supplement the Delay Notice as necessary as Developer gains additional information regarding the cause of the delay and information that may affect the content of the proposed Recovery Plan. A

change in Project Schedule does not automatically entitle Developer to an increase in Project Costs in accordance with Section 3.4.

2.4 Unavoidable Delay. “Unavoidable Delay“ will mean an event or events that delay or prevent Developer from performing its obligations under this Agreement and which are beyond the reasonable control of and without the fault of Developer. An event of Unavoidable Delay will excuse performance of Developer, provided Developer notifies City of the event of Unavoidable Delay in accordance with Section 2.3 and continually makes all reasonable attempts to mitigate any impacts due to the Unavoidable Delay. On-Site strikes that are not part of labor disputes general to the area are specifically excluded as a basis of an Unavoidable Delay excuse of performance by Developer.

2.4.1 Events that will be considered Unavoidable Delay events under this Agreement include, but are not necessarily limited to: (i) fire and explosion, (ii) strikes which are not on the Site or which are on the Site but part of a labor dispute general to the area, (iii) cyclone, abnormally severe weather (defined as only conditions at the Site that are shown to be conditions which are more severe than any event in the most recent ten (10) year historical profile of U.S. Meteorological Society weather data from the nearest reporting station to the Site), lightning, flood, (iv) earthquake, hurricane, natural disaster, (v) by reason of war, declared or undeclared, revolution, riots, acts of public enemies, blockade or embargo, (vii) by reason of the presence on the Site of any item or condition which is of archeological significance or which is classified as a Hazardous Material(s); (viii) by reason of the presence on the Site of any unauthorized structure; and (ix) an order of court or a governmental body, not caused by Developer, which directs that the Work be stopped, in whole or in part. For the foregoing events to be considered Unavoidable Delays, they must not have been caused or contributed to in any way by the acts or omissions of Developer or Developer’s Agents and the occurrence of such events must be beyond the control of Developer. Unavoidable Delay means any of the above events if such event in fact materially interferes with the performance of the obligations of Developer (except payment of money) pursuant to this Agreement. Developer will at all times make reasonable attempts to remedy the cause or causes constituting the Unavoidable Delay, keeping City reasonably informed; and will comply with all of the requirements of Section 2.4.3 below.

2.4.2 An Unavoidable Delay event will include the failure of one of Developer’s Agents to complete obligations of Developer under this Agreement in a timely manner if such failure is itself due to an Unavoidable Delay event.

2.5 City Delay. City will be responsible for all costs incurred by Developer as a result of City Delay. Developer will notify City in writing of the occurrence of any City Delay in accordance with Section 2.3 and will provide a statement of any damages or costs incurred as a result of City Delay on a timely basis and prior to Substantial Completion. “City Delay“ will mean one or more of the following which effect a Critical Path Event in a manner which is a direct or proximate cause of a delay of the date for Substantial Completion:

2.5.1 City’s failure to timely supply information necessary to complete the Design Documents (or revisions thereto);

2.5.2 City's failure to timely respond to Developer's design submittals in accordance with Section 1.5 of the Scope of Work;

2.5.3 City's request for new work involving work not identified in the approved Construction Documents;

2.5.4 The occurrence of unanticipated and unreasonable delays in the processing of Permits or the scheduling or conduct of inspections required under the terms of such permits or by the Building Official of the City;

2.5.5 City-Initiated Change Orders;

2.5.6 A failure by the City to timely pay for the Work in accordance with this Agreement; and

2.5.7 A City directed suspension of the Work.

City Delay will not include any delay in the completion of the Project caused by the lawful, normal and customary enforcement of building, health and safety codes, ordinances and regulations applicable to the Project.

2.6 Effect of Unavoidable Delay or City Delay. If Developer, because of an Unavoidable Delay or City Delay, is rendered wholly or partly unable to complete any of the milestones described in the Project Schedule (other than an obligation to pay money), Developer will be excused from whatever performance is affected by the Unavoidable Delay or City Delay to the extent so affected. Time extensions will be granted to the extent of the delay actually caused, provided that:

2.6.1 As a condition of Unavoidable Delay or City Delay, Developer must comply with the Delay Notice requirements of Section 2.3. In addition, the Delay Notice for Unavoidable Delays or City Delays will delineate its effect on Developer's performance including its specific effect on critical activities and when (date and time) Developer is anticipating that it will be able to resume performance. In addition: (i) an Unavoidable Delay or City Delay will not entitle Developer to an extension of the date of Substantial Completion unless such delay effects a Critical Path Action so as to delay Developer's achievement of Substantial Completion; (ii) the period of non-performance will be of no greater scope and of no longer duration than is required by the Unavoidable Delay or City Delay; (iii) unless otherwise agreed to by City, in writing, Developer will continue to prosecute the Work in good faith, with due diligence and use all reasonable efforts to limit delays caused by such Unavoidable Delay or City Delay; and (iv) when Developer is able to resume performance of its obligations under this Agreement, Developer will give City written notice to that effect.

2.6.2 As a further condition of Unavoidable Delay, Developer must establish all the elements of Unavoidable Delay or City Delay including (i) specific action taken to work around or mitigate the impact, (ii) specific event dates, durations and logic to support the claim, (iii) specific cause for the claim of Unavoidable Delay or City Delay and (iv) provide written documentation of the element of Unavoidable Delay or City Delay to the reasonably satisfaction of City as soon as reasonably possible. City will have the right to analyze and Developer will, upon City's request provide, such other and further information concerning all changes, events and occurrences giving

rise to the Unavoidable Delay or City Delay. City will not be required to grant or deny a request for Unavoidable Delay or City Delay until such documentation has been supplied.

2.7 Costs of Delay. Within twenty (20) days following City's receipt of documents and other submissions required by Sections 2.3, 2.4 and/or 2.5 with respect to an Unavoidable Delay or City Delay, City will reasonably determine whether such delay is an Unavoidable Delay or City Delay and will notify Developer of such determination in writing. Such notice will be accompanied by a detailed explanation supporting the City's determination. If such notice reflects a City determination that such delay was not an Unavoidable Delay or City Delay, Developer may elect to challenge such determination by delivering to City a written notice of such election within five (5) days following its receipt of City's written determination. In such event, the dispute will be resolved pursuant to the dispute resolution procedures set forth in Article XIX of this Agreement. If Developer does not challenge City's determination in accordance with this section, the City determination will be binding on Developer. The Parties acknowledge that delays may increase the cost of the Project. Unless (i) Developer notifies City of the delay pursuant to Sections 2.3, 2.4 and/or 2.5, (ii) such delay is determined to be an Unavoidable Delay or City Delay in accordance with this section and (iii) the cost increases due to such delay are allowed in accordance with Section 3.4, Developer agrees to absorb such increase in Project Costs.

2.8 Liquidated Damages. The City and Developer acknowledge that in the event that Developer fails to achieve Substantial Completion of the Project by the date established for Substantial Completion in the Project Schedule, as may be adjusted by Change Orders and such failure is not caused by an Unavoidable Delay or City Delay, City will incur substantial damages and the extent of the damages is and will continue to be very difficult to accurately measure. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of damages ("Liquidated Damages") set forth below represents a good faith estimate of the actual potential damages that City would incur as a result of late Substantial Completion of the Project. If Developer achieves Substantial Completion as to only a portion of the Project by the date established in the Project Schedule for Substantial Completion, as may be adjusted by Change Orders, Liquidated Damages will be the product of the applicable amount of Liquidated Damages and a fraction the numerator of which is the total net rentable area of the Project with respect to which Developer has not achieved Substantial Completion and the denominator of which is the total net rentable area of the Project. Net rentable areas referenced in the preceding sentence will be calculated in accordance with the then-current standards published by the Building Owners and Managers Association International. The foregoing amount will be calculated and recalculated as Developer achieves Substantial Completion of additional portions of the Project. Such Liquidated Damages will be the sole and exclusive remedy of City for late Substantial Completion of the Project, and City hereby waives all other remedies available at law or in equity with respect to losses resulting from late Substantial Completion, including, without limitation, consequential damages. If Developer fails to achieve Substantial Completion of the Project on or before the date of Substantial Completion set forth in the Project Schedule, as may be adjusted by Change Orders, for any reason other than an Unavoidable Delay or a City Delay, Developer will pay to City Liquidated Damages of \$33,000 for each day of the first ninety (90) days that Substantial Completion is delayed beyond the date for Substantial Completion set forth in the Project Schedule and \$36,000 for each day thereafter that Substantial Completion is delayed beyond the date for Substantial Completion set forth in the Project Schedule. Payment of Liquidated Damages will be made contemporaneously with City's required payment to Developer at Substantial Completion, and such payments may be offset against each

other. If amounts due to be paid to Developer are insufficient to offset assessed Liquidated Damages, Developer will promptly pay the difference to City. Notwithstanding such offset, Developer reserves the right to challenge its liability for Liquidated Damages pursuant to the dispute resolution procedures as set forth in Article XIX of this Agreement.

ARTICLE III PROJECT COSTS AND CHANGE ORDERS

3.1 Project Costs. "Project Costs" will mean the costs of labor, materials, design, and all other costs necessary for Final Completion of the Project as set forth in the categories and subcategories described therein identified as Predevelopment Costs, Hard Costs, Soft Costs, Hard Cost Escalation, Developer Contingency, Developer Fee, City Contingency, and City Project Management, all as more particularly described in Exhibit "H" as such exhibit may be amended from time-to-time in accordance with this Agreement ("Project Budget"). The Parties understand and acknowledge that (i) the terms "Predevelopment Costs," "Hard Costs," "Soft Costs," "Hard Cost Escalation," "Developer Contingency," "Developer Fee," "City Contingency," and "City Project Management" and will mean and refer to the costs described in such respective categories in the Project Budget. The Parties further understand and acknowledge that the specific line-item costs set forth in the aforementioned cost categories will be further refined as the Project proceeds through predevelopment into construction. Such refinement will include, among other things, receiving one or more GMPs for construction work (defined below) and receiving hard bids and negotiated contracts for specific line-items costs. Once a specific line-item cost or costs become subject to a GMP, hard bid or negotiated contract in accordance with this Agreement, the Project Budget will be revised by deleting the amount of the line-item cost or costs and substituting the amount of the GMP, hard bid or negotiated contract (as the case may be) therefore. Exhibit "H," as revised in accordance with the preceding sentence will then become the Project Budget. Once all specific line-item costs set forth in the Project Budget are subject to a GMP, hard bid or negotiated contract, the aggregate amount of GMPs, hard bids and negotiated contracts will not exceed the Project Cost Cap (defined below) reduced by the amounts allocated to City Project Management and unallocated City Contingency. For the avoidance of doubt, the Parties understand and acknowledge that the Project Cost Cap is an absolute limitation on the aggregate and final cost of the Work.

3.2 Disbursement of Project Costs. Developer may seek disbursement of the Project Costs approved by City under the terms of this Agreement and in accordance with a three-party agreement among City, Developer and a bond trustee (to be named later) to be executed after the Effective Date ("Disbursement Agreement"). The following "Disallowed Costs" will not be disbursed as Project Costs: (1) any cost in excess of the Project Cost Cap (defined below); (2) any cost in excess of the Project Costs not approved in accordance with Section 3.4; (3) any cost identified in this Agreement as a Disallowed Cost; (4) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (5) any cost not approved by City in the manner required by this Agreement or the Charter of City of San Diego and rules, regulations, or laws promulgated thereunder; (6) refundable deposits such as utility deposits unless the right to receive such deposits is assigned to the City; (7) any cost not supported by proper invoicing or other documentation as required by this Agreement or the Disbursement Agreement; and (8) the fair value or portion thereof, as reasonably determined by City, of any Project-related property that is destroyed, lost, stolen, or damaged rendering it

undeliverable, unusable, or inoperable and which is covered by an insurance policy required by this Agreement.

3.3 Project Cost Cap. The "Project Cost Cap" will consist of (i) Predevelopment Costs, (ii) Hard Costs, (iii) Soft Costs, (iv) Hard Cost Escalation, (v) Developer Contingency, (vi) Developer Fee, (vii) City Contingency and (viii) City Project Management as such costs may be allocated and reallocated in accordance with this Agreement. The Project Cost Cap will not exceed Two Hundred Ninety-Three Million Five Hundred Thousand Dollars (\$293,500,000). The following relate to elements of Project Costs.

3.3.1 Developer Fee. Developer Fee will total a flat three percent (3%) of Hard Costs and Soft Costs as determined by one or more GMPs, hard bids or negotiated contracts ("Developer Fee"). Developer Fee will be calculated and fixed at the time that each of the specific line-item costs in the categories of Hard Costs and Soft Costs become subject to one or more GMPs, hard bids or negotiated contracts.

3.3.2 Hard Cost Escalation. Hard Cost Escalation will be allocated to cover any increase in specific line-item cost in the Project Budget.

3.3.3 Developer Contingency. A Developer Contingency fund equal to four and one-half percent (4.5%) of Hard Costs and Soft Costs as determined by one or more GMPs, hard bids or negotiated contracts is included in the Project Cost. Except as provided in Section 3.3.4, Developer Contingency will be available for costs of the Work in excess of the specific line-item costs for such Work set forth in the Project Budget.

3.3.4 City Contingency. A City Contingency fund equal to three percent (3%) of Construction Hard Costs and Soft Costs as determined by one or more GMPs, hard bids or negotiated contract is included in Project Costs and may be directed by City, in its sole discretion, to cover growth in Project Costs during the Project that result from, among other things, City directed changes or unanticipated Site conditions. The foregoing notwithstanding, if actual Project Costs in the following line-item categories titled Civic TI, Council Chambers TI, Soil Remediation, Civic FF&E, Voice & Data Wireless Infrastructure, Public Art and City Project Management exceed the amount for such category in the Project Budget, City Contingency will be reallocated to cover such shortfall.

3.4 Change Orders and Adjustments to Project Cost. Project Costs may be increased or decreased only through properly processed and approved Change Orders in accordance with the Scope of Work. Project Costs may only be increased if Developer provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Developer's control or otherwise not the result of unreasonable conduct by Developer which may, based on actual impact on the Project, include: (i) changes in law or government regulation; (ii) higher standards and specifications of construction subsequently imposed or adopted by City; (iii) concealed conditions encountered in the completion of the Project not otherwise known to Developer or, with respect to which, knowledge of such conditions could not have been reasonably obtained by Developer; (iv) increased costs resulting from Unavoidable Delays or City Delays; or (v) other specific reasons mutually agreed to in writing by City and Developer. Project Costs will not include, and no Change

Order may be approved, for Disallowed Costs. Developer will not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

3.5 Markups for Construction Changes. If the Project Budget requires adjustment due to approval of a Change Order, the amount of such change will equal the direct cost of labor, materials and equipment required to execute such Change Order plus the following maximum amounts for markups payable to the general contractor for overhead and profit:

3.5.1 On labor, ten percent (10%) for overhead and ten percent (10%) for profit.

3.5.2 On materials, ten percent (10%) for overhead and five percent (5%) for profit.

3.5.3 On equipment, ten percent (10%) for overhead and five percent (5%) for profit.

To the sum of the costs and markups provided for in this section, actual costs up to one percent (1%) will be added as compensation for bonding. The markups within the foregoing limitations will constitute full compensation to the general contractor for extended field overhead, home office overhead, non-labor personnel expense, management, coordination, and all other elements of indirect expense not subsumed as labor, materials, equipment, and bonds.

3.6 Notification of Increased Project Costs. If Developer anticipates or has reason to believe Project Cost will exceed the Project Cost Cap, Developer will within ten (10) calendar days of becoming aware of the potential increase notify City in writing. This written notification will include an itemized cost estimate and a list of recommended revisions Developer believes will bring Project Costs to an amount within the Project Cost Cap. If the information described in the preceding sentences is not available on the date delivery of such written notice is required, Developer will provide such information as soon as it is available but in no event later than twenty (20) days following the date such notice is due. In accordance with Section 3.4, City may approve an increase in Project Costs and/or identify a revision to the Project which may be constructed within the Project Cost Cap.

3.7 Project Savings. As specific line-item costs set forth in the Project Budget become subject to GMPs, hard bids or negotiated contracts, if the amounts of such specific line-item costs in the Project Budget exceed the amount of the GMP, hard bid or negotiated contract applicable to such line-item costs, such excess, reduced by the amount paid to the general contractor under any savings provision of the GMP contract (defined below), (herein called "Savings") will be allocated as follows:

3.7.1 Fifty percent (50%) of Savings to City Contingency; and

3.7.2 Fifty percent (50%) of Savings to Developer Contingency.

3.8 Project Shortfalls. As specific line-item costs set forth in the Project Budget become subject to GMPs, hard bids or negotiated contracts, if the amount of the GMP, hard bid or negotiated contract applicable to such line-item costs exceeds the amount of the line-item costs in the Project Budget, such shortfall (herein called "Shortfall") will be made up by reallocating an amount equal to the Shortfall to such line-item costs in accordance with Section 3.3.

3.9 Disposition of Developer Contingency. Upon Final Completion and subject to any claims of offset by City under this Agreement, a portion of any unallocated amount remaining in Developer Contingency, reduced by sixty percent (60%) of the Savings allocated to Developer Contingency pursuant to Section 3.7, and not to exceed one percent (1%) of the aggregate amount expended on Hard Costs and Soft Costs through Final Completion, will be disbursed to Developer, free and clear of the restrictions of this Agreement.

ARTICLE IV CITY'S RIGHTS

4.1 Right to Audit.

4.1.1 City's Right. City retains the right to review and audit, and the reasonable right of access to Developer's and all subcontractor's and subconsultant's premises to review and audit Developer's compliance with the provisions of this Agreement. The City's right includes the right to inspect and photocopy same, and to retain copies, outside of Developer's premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by City in its sole discretion. This information will be kept by City in strictest confidence. Developer will make all records requested by City available either physically or electronically within City/County of San Diego.

4.1.2 Audit. The City's right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that City determines is necessary to discover and verify that Developer is in compliance with all requirements under this Agreement.

4.1.3 Cost Audit. If there is a claim for additional compensation or for changes in Work, City's Right to Audit includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that City determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for changes in the work have been submitted.

4.1.4 Accounting Records. Developer will maintain complete and accurate records in accordance with customary accounting practices in the construction industry. Developer will make available to City for review and audit all Project related accounting records and documents, and any other financial data. Upon City's request, Developer will submit exact duplicates of originals of all requested records to City.

4.1.5 Retention of Records. Developer will maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the Work. Developer further agrees to allow City to inspect, copy, and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Developer agrees to provide City with complete copies of final Project design and construction plans.

4.1.6 Compliance Required Before Mediation and Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article XIX, Mediation, is Developer's full compliance with Section 4.1, within sixty (60) days of the date on which City mails a written request to review and audit compliance.

4.2 Ownership of Documents. Once Developer has received any compensation for the Work performed and to the extent of such compensation, all documents, e.g., original plans, studies, sketches, drawings, computer printouts and files, and specifications prepared in connection with or related to the Work will be the property of City. The City's ownership of these documents includes use of, reproduction or reuse of, and all incidental rights, whether or not the item of Work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for Work performed and includes ownership of any and all Work product completed under this Agreement. This section will apply whether Developer's services are terminated: (a) by the completion of the Project; or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this section or this Agreement, Developer will have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and files, and specifications. The Developer will not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by Developer, provided that the service rendered by Developer was not a proximate cause of the damage.

4.3 City Authority to Order Extra Work. City may at any time prior to Project Completion order additions or modifications to the Work ("Extra Work") provided such Extra Work (i) does not cause Project Costs to exceed the Project Cost Cap, (ii) does not adversely impact Developer's compliance with the Project Schedule and (iii) will be paid for by City Contingency. The sum of all Extra Work ordered will not exceed five percent (5%) of the Project Cost. All requests for Extra Work will be in writing, and will be treated as and are subject to the same requirements as Change Orders. Developer will not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this section.

4.3.1 Bonds. Developer's and its agents' bonds under Article XI will be increased to cover any Extra Work provided that the Extra Work is paid for by the Project Budget.

4.3.2 Payment. Work performed by Developer as Extra Work will be paid for in the same manner described as in Article IX.

4.3.3 Markup and Developer Overhead and Profit. Developer will be paid general contractor markup in accordance with Section 3.5 and Developer and City will negotiate an amount for Developer's overhead and profit for Extra Work. If the Parties are unable to agree on such amount, the issue will be submitted for dispute resolution in accordance with the procedures set forth as set forth in Article XIX of this Agreement.

4.4 Right to Hire Other Consultants and Contractors. City reserves the right to perform work or operations outside the scope of this Agreement related to the Project with City forces, separate consultants or contractors. If work is to be performed by another party, City will give written notice to Developer ten (10) business days prior to the start of any such work and City will ensure the performance of such work does not interfere with Developer's performance of the Work.

If Developer determines that the work being performed by City or others will interfere with, or cause damages to the Work, Developer will notify City in writing within 3 days of City's notice.

4.5 City's Right to Terminate for Default.

4.5.1 Failure to Perform. If Developer fails to adequately perform any obligation required by this Agreement, such failure will constitute a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default, Developer undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement. A delay will not constitute a Default if Developer: (i) has made good faith and reasonable efforts to adhere to the Project Schedule; (ii) has provided Delay Notice in accordance with Section 2.3; and (iii) such delay (x) was caused by an Unavoidable Delay or City Delay or (y) such delay is subject to an approved Recovery Plan.

4.5.2 Right to Assume Contracts. If City terminates the Agreement due to Developer's Default, City will have the option to assume all of the rights of any and all contracts or subcontracts entered into by Developer or Developer's Agents for the construction of the Project. Developer will include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts acknowledging such right to assume, that City is a third-party beneficiary of such contract and that City is entitled to and protected by the indemnities and warranties, whether express or implied, contained therein.

4.5.3 Rights and Remedies. The rights and remedies of City enumerated in this Article IV, are cumulative and will not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

4.6 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors. If Developer files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Developer immediately terminate this Agreement, and terminate all rights of Developer and any person or entity claiming any rights by or through Developer. The rights and remedies of City enumerated in this section are cumulative and will not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

ARTICLE V DEVELOPER'S OBLIGATIONS

5.1 Scope of Work. Services required of Developer include those during design, bidding, construction, and operations/startup of the Project described in the Scope of Work. The Developer will 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”) contract for construction as described in the Scope of Work.

5.2 Compliance with Construction Requirements. Developer will be subject to the obligations described in Exhibit “T” attached hereto (“Construction Obligations”).

5.3 Nondiscrimination Requirements.

5.3.1 Compliance with City’s Equal Opportunity Contracting Program. Developer will comply with City’s Equal Opportunity Contracting Program. Developer will not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer will provide equal opportunity in all employment practices. Developer will ensure its consultants, contractors and their subcontractors comply with City’s Equal Opportunity Contracting Program. Nothing in this Section will be interpreted to hold Developer liable for any discriminatory practice of its consultants, contractors or their subcontractors.

5.3.2 Nondiscrimination Ordinance. Developer will not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer will provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause will be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. The foregoing requirement will be included in contracts between Developer and any consultants, contractors, subcontractors, vendors and suppliers.

5.3.3 Compliance Investigations. Upon City’s request, Developer agrees to provide City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Developer used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Developer for each contract, subcontract or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by City pursuant to City’s Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501-22.3517). Developer understands and agrees that violation of this clause will be considered a material breach of the Agreement and may result in remedies being ordered against Developer up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Developer further understands and agrees the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

5.4 Cooperate in Public Outreach. To assist the public in receiving timely and accurate information pertaining to the Project, City and Developer agree that they will work cooperatively in scheduling and conducting informational gatherings, including but not limited to community meetings, workshops, hearings, etc., for such purpose(s). The Developer will use its reasonable and good faith efforts to accommodate City’s request. The City will endeavor to provide at least two weeks’ advance notice before scheduling such events.

5.5 Drug-Free. Developer agrees to comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Developer will certify to City that it will provide a drug-free workplace by submitting a Certification for a Drug-Free Workplace form, Exhibit "J".

5.5.1 Developer's Notice to Employees. Developer will publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

5.5.2 Drug-Free Awareness Program. Developer will establish a drug free awareness program to inform employees about all of the following: the dangers of drug abuse in the work place; the policy of maintaining a drug free work place; available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations.

5.5.3 Posting the Statement. In addition to Sections 5.5.1 and 5.5.2 above, Developer will post the drug free policy in a prominent place.

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

5.7 Conflict of Interest. The Developer will 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 will not accept gratuities or any other favors from subcontractors or potential subcontractors.

The Developer will be subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, e.g., California Government Code §§1090, et. seq., and 81000, et. seq., and City Ethics Ordinance, codified in City Municipal Code at §§27.3501 to 27.3595. If, in performing the Services and/or Work set forth in this contract, Developer makes, or participates in, a "governmental decision" in accordance with title 2, §18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in the applicable department's conflict of interest code, Developer will be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing Developer's relevant financial interests.

Statements of economic interests will be made on Fair Political Practices Commission Form 700 and filed with City Clerk. The Developer will file a Form 700 (Assuming Office Statement) within 30 days of City's written determination that Developer will be subject to a conflict of interest code. The Developer will file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which Developer was subject to a conflict of interest code.

If City requires Developer to file a statement of economic interests as a result of the Services and/or Work performed, Developer will be considered a "City Official" subject to the provisions of City Ethics Ordinance, including the prohibition against lobbying City for one year following the expiration or termination of this contract.

The Developer will not recommend or specify any product, supplier, or contractor with whom Developer has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If Developer violates any conflict of interest laws or any of these conflict of interest provisions, the violation will be grounds for immediate termination of this Contract. Further, the violation subjects Developer to liability to City for all damages sustained as a result of the violation.

5.8 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by City if Developer or any of its subcontractors or subconsultants knowingly employs an individual, who, within the twelve (12) months immediately preceding such employment did, in the individual's capacity as a City officer or employee, participate, negotiate with, or otherwise have an influence on the recommendation made to City Council in connection with the selection of Developer and its subcontractors and subconsultants.

ARTICLE VI CONSULTANTS AND SUBCONTRACTORS

6.1 Selection of Subcontractors. Other than Developer's contract for Design Phase Services (defined in the Scope of Work) which was executed prior to the Effective Date, Developer will bid and award contracts to complete the Project in accordance with this Agreement and the Charter of City of San Diego and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations. Developer may select subcontractors and suppliers in one of three selection methods as determined by City based on the subject matter of the contract. The three methods are lowest responsible bidder, best value for price and qualifications, or highest qualifications.

6.1.1 City Approval. Developer will obtain approval from City for the selection method used, which will not unreasonably be withheld. Developer will review the subcontractors and suppliers ultimately chosen to verify that they have not been debarred and are in good standing as a licensed contractor in California.

6.1.2 Prequalification. Developer will pre-qualify subcontractors and suppliers, in a manner at least as stringent as City's pre-qualification standards.

6.1.3 Bid Award. All subcontract bids will be opened and provided to City without reservation or redaction. All records relevant to the award and performance of subcontractors and suppliers will be public and provided to City upon request and without redaction.

6.1.4 Procedures. Developer may use its own form of subcontractor agreement to retain subcontractors, subconsultants or suppliers, provided the agreement complies with the

requirements of this Agreement and Exhibit "K." The agreements with subcontractors, subconsultants or suppliers are herein called "Subcontractor Agreements."

6.1.5 Self Performance. Developer will not self perform any Work under the contract unless: (i) City expressly allows such self performance in writing; (ii) the Work proposed to be self performed will first be advertised and bid; and (iii) Developer is the lowest responsible bidder. For Work proposed to be self performed by Developer, City will administer the bid process.

6.2 Bidding Procedures.

6.2.1 Subcontractor Listing. Developer will follow the Subletting and Subcontracting Fair Practices Act (Act), California Public Contracts Code Sections 4100 through 41134. Developer will provide a written list of all proposed Subcontractors and Suppliers who will perform work costing equal to or greater than one-half of one percent of the total GMP that are selected during the bidding process. The list will include subcontractor and supplier names, value of their subcontract and a description of the scope of work they will be performing. Developer will not substitute any other person or subcontractor to perform the scope of work listed for each listed subcontractor or supplier, except as provided by the Act. The City reserves all remedies under the Act for any unlawful subcontractor substitution by Developer.

6.2.2 Equal Opportunity Contracting Program Requirements. Developer will comply with the City's Equal Opportunity Contracting Program Requirements set forth in Exhibit "Q" to this Agreement

6.2.3 Subcontract Requirements. The "Subcontractor Agreement" will provide that each subcontractor, subconsultant and supplier, to the extent of the Work to be performed by such subcontractor and supplier, to owe to City all the obligations and responsibilities owed to Developer under the Subcontractor Agreement and will incorporate the terms of this Agreement and the Construction Documents within any Subcontractor Agreement to the extent applicable to the Work to be performed thereunder. Developer, following City review of the Subcontractor Agreements, will prepare final corrected Subcontractor Agreements to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids. Approval of Subcontractor Agreements will be evidenced by City's issuance of a letter indicating Developer may proceed with competitive bidding.

6.3 Disputes. In any dispute between Developer and a subcontractor or supplier, City will not be made a party to any judicial or administrative proceedings to resolve the dispute unless Developer first complies with claim and dispute resolution process in Article XIX. To the extent set forth and in accordance with Article XII of this Agreement, Developer agrees to defend and indemnify City in any dispute between Developer and any subcontractor or supplier should City be made a party to any judicial or administrative proceedings to resolve a dispute in violation of this provision.

6.4 EEO and Non-Discrimination. The Developer will ensure that its subconsultants and subcontractors comply with City's Equal Opportunity Contracting Program Requirements. Nothing in this section will be interpreted to hold Developer liable for any discriminatory practice of its subconsultants or subcontractors. The City's mandatory non-discrimination language requirements

described in Section 5.3 will be contained in contracts between Developer and any subconsultants, subcontractors, vendors and suppliers.

6.5 Drug-free. The Developer further certifies that each contract for subconsultant and subcontractor services for the Project will contain language that binds the subcontractors and subconsultants to comply with the provisions of Section 5.5 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Developer, subcontractors and subconsultants will be individually responsible for their own drug free work place program.

6.6 Right to Audit. The Developer will include City's right in accordance with Section 4.1. "Right to Audit" in any and all of their subcontracts, and will ensure that City's "Right to Audit" is binding upon all subcontractors, subconsultants and suppliers.

ARTICLE VII DESIGN AND CONSTRUCTION STANDARDS

7.1 Standard of Care. Developer agrees that the professional services provided under this Agreement will be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

7.2 Compliance with all Laws, Design Standards, and Construction Standards. In all aspects of the design and construction of the Project, Developer will comply with all laws and the most current editions of the Greenbook, City's Standard Drawings and Design and Construction Standards, including those listed in Exhibit "L." It is the sole responsibility of Developer to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. The Developer will obtain a certificate of compliance with Title 24/ADA to City in the form and content as set forth on Exhibit "M" "Certificate for Title 24/ADA Compliance." In the event of a conflict among the foregoing requirements, the most restrictive requirement will apply, i.e., that which provides for the greater access.

7.3 Amendments and Updates. Provided City delivers electronic or written copies of such amendments and updates, Developer will be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Developer to the fullest extent allowed by law.

7.4 City Approval. Developer will be required to obtain City approval of design, plans, and specifications in the manner required in the Scope of Work.

7.5 City Approval Not a Waiver of Obligations. Where approval by City is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, regulations, and good consulting, design, or construction practices.

7.6 Product Submittal and Substitution. To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction

(including City of San Diego's standard special provisions) ("Green Book") or the Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Developer will obtain City approval of products and substitution of products in the manner provided in Exhibit "N," Product Submittal and Substitution. City's review of samples in no way relieves Developer of its responsibility for construction of the Project in full compliance with all Construction Documents and this Agreement.

ARTICLE VIII CHANGED CONDITIONS

8.1 Changed Conditions. The term "Changed Conditions" will have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, the Project will not exceed the then-current Project Budget without express approval of such increase in accordance with Section 3.4. Absent such express, Developer will agree to changes in the Scope of Work and will perform such value engineering as is necessary to return the Project to within the Project Cost.

ARTICLE IX PAYMENT FOR WORK

9.1 Payment of Project Costs. The City will pay Developer in current funds for Developer's performance of Work in accordance with the Scope of Work and this Agreement, subject to adjustments as provided in this Agreement. Unless otherwise provided in this Agreement, the Project Cost is deemed to include all taxes, use, consumer and other taxes mandated by applicable Project Cost.

9.2 Schedule of Values for Construction. After establishment of the GMP, Developer will submit for City's review and approval a schedule of values for all of the Work. The schedule of values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work, and (iii) serve as the basis for monthly progress payments made to Developer throughout the Work.

9.3 Applications for Payment. The Developer will deliver to City on the last business day of each month an "Application for Payment" covering the Work performed during such month in a format acceptable to City. Provided an undisputed and properly submitted Application for Payment is received by City, payment will be made by City not later than the thirtieth (30th) day after City receives the Application for Payment. With each Application for Payment, Developer will submit such evidence as may be reasonably necessary to demonstrate costs incurred or estimated to be incurred during such month is consistent with the percentage of completion of each category of Work or is required to assure timely performance of the Work. Any payment request that is disputed or determined to be improper, or for defective, suspended, or terminated Work will be returned to Developer not later than seven (7) days, as set forth in California Public Contract Code section 20104.50, after receipt accompanied by documentation describing the reason(s) why the payment request is not proper.

9.4 Amount of Progress Payments. The City will pay Developer for all Work performed, including payment for off-site stored materials, through the period covered by the Application for

Payment, less Retention as set forth in Section 9.5 below, provided that the payment amount before Retention will not exceed the percentage of completion of the Work, all as set forth in the schedule of values.

9.5 Retention for Construction Work. "Retention" will be determined in accordance with this section.

9.5.1 Bonds and Insurance. With respect to premiums for Bonds and insurance, no Retention will be withheld.

9.5.2 Construction. With respect to construction Work, five percent (5%) Retention will be withheld and retained by City until the final completion and acceptance of the Project. Retention on account of Work will be released thirty-five (35) days after Final Completion or as otherwise required by applicable law, subject to Developer's execution of a release of claims for payment and clearance of stop notices or other proper bases of withholding.

9.6 Early Release of Subcontractor Retention. If a subcontractor has completed its portion of the Work, including all Punch List (defined below) items, pursuant to any given subcontract, Developer may request City to disburse the Retention allocable to such subcontractor, after delivering to City acceptable releases from the subcontractor and consent to such disbursement from such Developer's Surety, in a form reasonably satisfactory to City. The City, at its sole discretion, may determine that the subcontractor's Work has been completed in accordance with the Construction Documents, and may disburse the subcontractor's share of Retention to Developer for distribution to the Subcontractor. Regardless of whether City has disbursed Retention for the benefit of any subcontractor, the warranty periods described in Article XIV with respect to such Work will commence on Substantial Completion.

9.7 Escrow of Retention from Payments. The Developer may elect to receive one hundred percent (100%) of payments due under the Construction Documents from time to time, without Retention of any portion of the payment by City, by depositing securities of equivalent value with City in accordance with the provisions of California Public Contract Code section 22300. Such securities, if deposited by Developer, will be valued by City, whose decision on valuation of the securities will be final. Securities eligible for investment under this provision will be limited to those listed in California Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Developer and City.

9.8 Payment for On-Site and Off-Site Stored Materials. Payment will be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon Developer furnishing evidence to City that (a) title to the materials and equipment will pass to City upon payment therefore; (b) the materials and equipment are adequately insured; and (c) such other matters as City may reasonably request in order to protect its interests.

9.9 Title to Work. The Developer warrants that title to all Work covered by an Application for Payment will pass to City no later than the time of payment. This provision will not

affect Developer's responsibilities for protection and insurance of the Work in place. The Developer further warrants that upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from City will, to the best of Developer's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Developer, subconsultants, subcontractors, material suppliers, or other persons or entities making a Claim by reason of having provided labor, materials and equipment relating to the Work.

9.10 Withholding of Payment. The City may withhold payment on account of an Application for Payment to the extent necessary to protect City from loss because of:

9.10.1 Defective or incomplete Work not remedied;

9.10.2 Third Party claims filed or reasonable evidence indicating probable filing of such claims;

9.10.3 Failure of Developer to make payments of undisputed amounts to subconsultants or subcontractors for labor, materials or equipment;

9.10.4 Damage to City or a separate contractor caused by the fault or neglect of Developer to the extent not covered by insurance; or

9.10.5 Reasonable evidence that the Work will not be Substantially Completed by the applicable date set forth in the Project Schedule due to delays other than Unavoidable Delays and City Delays, and that the unpaid balance of the Project Budget would not be adequate to cover Liquidated Damages for the anticipated or actual unexcused delay.

9.11 Stop Notices, Wage Orders, or Other Withholdings Required by Applicable Law. When all the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. Prior to any withholding pursuant to this Article, City will meet with Developer to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding.

9.12 Failure of Payment; Interest. Interest on untimely payments for Disputed Work will be subject to resolution of that dispute in accordance with applicable law.

9.13 Substantial Completion. "Substantial Completion" will be deemed to have been achieved when City certifies the satisfactory completion of the start-up period, as specified in Exhibit "L," and when the City obtains a Temporary Certificate of Occupancy with respect to the Project or portion thereof. When Developer considers that the Work, or a portion thereof which City agrees to accept separately, is Substantially Complete, Developer will prepare and submit to City a comprehensive list of items requiring correction ("Punch List") applicable to such Work. The Developer will proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of Developer to complete all Work in accordance with the Construction Documents. Within five (5) days following receipt of the Punch List, City will make an inspection to determine whether additional items requiring correction should be added to the Punch List and whether Substantial Completion has occurred. If the City determines that Substantial Completion has occurred, a Certificate of Substantial Completion identifying the

date of Substantial Completion will be executed by City and Developer. Developer's failure to complete or correct items on the Punch List will not affect City's determination of whether Substantial Completion has occurred provided such incomplete or uncorrected items will not materially and adversely affect the City's use and enjoyment of the Project or portion of the Project to which such incomplete and uncorrected Punch List item(s) relates. City will certify that Substantial Completion has occurred with respect to the Project or a portion of the Project: (i) within five (5) days following completion of the inspection required in this section if all Punch List items that will materially and adversely affect the City's use and enjoyment of the Project or portion thereof have been completed or corrected; or (ii) five (5) days following completion or correction of the last Punch List item having a material and adverse effect on the City's use and enjoyment of the Project or portion thereof. If City and Developer cannot agree on the appropriate date of Substantial Completion, such issue will be submitted for dispute resolution in accordance with the procedures set forth in Article XIX of this Agreement. Notwithstanding such disagreement, Developer will diligently proceed with completion or correction of the Punch List items. Warranties required by the Construction Documents will commence on the date of Substantial Completion or designated portion thereof unless otherwise provided in the Construction Documents.

9.14 Partial Occupancy or Use. The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Developer, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided City and Developer have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Construction Documents. Immediately prior to such occupancy, City and Developer will jointly inspect the area to be occupied in order to determine and record the condition of the Work. Unless otherwise agreed, partial occupancy or use of a portion of the Work will not constitute acceptance of Work not complying with the requirements of the Construction Documents, and will not be considered for purposes of Substantial Completion or Liquidated Damages.

9.15 Final Completion and Final Payment.

9.15.1 Final Completion. When Developer determines that the Project is complete, Developer will notify City in writing of the Project's status within seven (7) calendar days of Developer's determination. The notice ("Completion Certificate") will certify to City that the Project has been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, all licenses, all certificates of inspection, use, and occupancy, and ordinances relating to the Project. The Completion Certificate will set forth the date of Final Completion and will be executed by City and Developer. If City and Developer cannot agree as to the appropriate date of Final Completion, such issue will be submitted for dispute resolution in accordance with the procedures set forth in Article XIX of this Agreement.

9.15.2 Walk-Through Inspection. A preliminary Walk-Through Inspection will be conducted by City within fourteen (14) calendar days following Developer's delivery of the Completion Certificate to City. The Walk-Through Inspection will be conducted by a team composed of representatives from (i) City's Engineering and Capital Project Department, (ii) City's

Development Services Department, (iii) Developer's consultant(s), and (iv) Developer's construction superintendent ("Inspection Team"). The Walk-Through will be conducted within thirty (30) calendar days of written notification by Developer to City that Developer has completed or corrected all items identified on the Punch List ("Notice of Correction").

9.15.3 Failure to Identify Items. As to any items not included on the Punch List or later discovered, nothing in this section is intended to limit Developer's obligations under this Agreement and City will maintain all remedies available under this Agreement, at law, or in equity.

9.16 Final Inspection. The Final Inspection for the Project will be scheduled and conducted within thirty (30) calendar days of the Notice of Correction.

9.17 Equipment Demonstration and Cleaning. Prior to Final Inspection, Developer will demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment, and maintenance of equipment and systems, using the operation and maintenance data. Developer will also professionally clean the Project, including, but not limited to, mopping, sanitizing restrooms, polishing floors, dusting, vacuuming, cleaning glass and windows.

9.18 Timing of Final Completion. "Final Completion" of the Project will be deemed to occur on the later of (i) recordation by Developer of the Notice of Completion and delivery of a conformed copy to City; or (ii) submission of all documents required to be supplied by Developer to City pursuant to this Agreement, including As-Built Drawings, warranties, operating and maintenance manuals and other Project Deliverables identified in Article X, Project Deliverables; (iii) the issuance of a final Certificate of Occupancy for the Project; and (iv) satisfaction or waiver of all other conditions precedent to Final Completion in this Agreement. City will promptly evaluate the submitted As-Builts for accuracy and completeness and may return comments. Developer will meet with City until all issues are resolved. Upon issue resolution, Developer will submit a mylar set, a digital copy, and three (3) final blue line sets of As-Builts stamped by the architect/engineer of record as required by law.

9.19 Conditions Precedent to Final Payment. Neither Final Payment nor any final release of Retention will become due until Developer complies with the following:

9.19.1 Developer will execute and file with the San Diego County Recorder documentation indicating that the Project and all work has achieved Final Completion and identifying the date of Project completion ("Notice of Completion"). Developer will provide City with a conformed copy of the recorded Notice of Completion;

9.19.2 Developer will ensure that all contractors and subcontractors provide lien and material releases for the Project and provide copies of such lien and material releases to City. Alternatively, with City's approval, which will not be unreasonably withheld, Developer may ensure that bonds are provided in a form reasonably acceptable to City in lieu of the lien and material releases;

9.19.3 Developer will deliver to City an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which City or City's property might be responsible or encumbered, less amounts withheld by City, have been paid or otherwise satisfied;

9.19.4 Developer will deliver to City a certificate evidencing that insurance required by the Construction Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to City;

9.19.5 Developer will deliver to City a Consent of Surety to Final Payment;

9.19.6 Developer will deliver to City such other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Construction Documents and requested by City. If a subconsultant or subcontractor refuses to furnish a release or waiver required by City, Developer may furnish a bond satisfactory to City to indemnify City against such lien; and

9.19.7 In addition, Developer must have completed all Work, including but not limited to providing required operations manuals, test reports, UL labels, and other similar documentation as required by this Agreement.

9.20 Delay in Final Completion. If after Substantial Completion of the Work, Final Completion is materially delayed through no fault of Developer or by the issuance of additional Change Orders or Work Change Directives by City, City will, upon request of Developer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the Retention, and if Bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed will be submitted by Developer to City, and such payment will be made under the terms and conditions governing Final Payment, except that it will not constitute a waiver of claims by either Developer or City.

9.21 No Waiver. Developer's obligation to perform and complete the Project in accordance with this Agreement and Construction Documents will be absolute. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal will constitute an acceptance of work which is not in accordance with the Construction Documents.

9.22 Assignment of Rights. Upon Final Completion, Developer will non-exclusively assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Developer will be required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights will not relieve Developer of its obligations under this Agreement, and such obligations will be joint and several.

9.23 Waiver of Claims at Final Payment. Acceptance of Final Payment by Developer will constitute a waiver of affirmative claims by Developer, except those previously made in writing and identified as unsettled at the time of Final Payment, which are expressly reserved by Developer from operation of its Release of claims pursuant to PCC7100 or other applicable law.

ARTICLE X
PROJECT DELIVERABLES

10.1 Project Deliverables. Prior to Final Completion, Developer will deliver to City “As-Builts” and related plans and specifications, operating manuals, warranty materials, and all other materials required by City in the format requested. “Project Deliverables” will include those listed in Exhibit “O.”

10.2 Ownership of Project Deliverables.

10.2.1 Work for Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for City pursuant to this Agreement is “work for hire” under the United States Copyright law and will become the sole property of City and will be delivered to City upon request, subject to payment of Project Costs to Developer in accordance with this Agreement. The Developer, including its employees, and independent Subcontractor(s), will not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to City to the Project Deliverables.

10.2.2 Rights in Data. All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Project Deliverables, developed by Developer, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of City. The Developer, including its employees, agents, talent, and independent subcontractor(s), may not use any such product mentioned in this article for purposes unrelated to Developer’s work on behalf of City without prior written consent of City.

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

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

10.2.5 Subcontracting. In the event that Developer utilizes subconsultants or subcontractors for any portion of the Work that is in whole or in part one of the Project Deliverables, the Subcontractor Agreement will include a statement that identifies that the Project Deliverable/Work as a “work-for hire” as defined in the Act and that all intellectual property rights in the Project Deliverable/Work, whether arising in copyright, trademark, service mark or other belongs to and will vest solely with City. Further, the Subcontractor Agreement will require that the subconsultant or subcontractor, if necessary, will grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to said Project Deliverable/Work, including all copyrights and other intellectual property rights. City will have the right to review any Subcontractor Agreement for compliance with this provision.

10.2.6 Publication Design. Developer may not publish or reproduce any Project Deliverables, for purposes unrelated to Developer’s work on behalf of City without prior written consent of City.

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

10.2.8 Enforcement Costs. The Developer agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney’s fees.

ARTICLE XI BONDS AND OTHER ACCEPTABLE SECURITIES

11.1 Payment Bond. Prior to issuance by the City of a Notice to Proceed with Construction, Developer will provide or require its construction contractor to provide City with a payment bond, letter of credit (“LOC”), cash or other acceptable security for material and labor in favor of City for 100% of the proposed construction costs, as determined by competitive bidding (“Payment Bond”).

11.2 Performance Bond. Prior to issuance by the City of a Notice to Proceed with Construction, Developer will provide or require its construction contractor to provide City with a

bond, LOC, cash or other acceptable security guaranteeing performance in favor of City for 100% of the proposed construction costs, as determined by competitive bidding (“Performance Bond”).

11.3 Warranty Bond. Prior to issuance by the City of a Notice to Proceed with Construction, Developer will provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of City (“Warranty Bond”). Developer will provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

11.4 Term. The Payment Bond will remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond will remain in full force and effect until Final Completion of the Project by City. Upon Final Completion, City will release the Performance Bond. The Warranty Bond will remain in full force and effect for the warranty periods provided in this Agreement.

11.5 Certificate of Agency. All bonds signed by an agent must be accompanied by a certified copy of such agent’s authority to act.

11.6 Licensing and Rating. The bonds will be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of “A-” to an amount not to exceed ten percent (10%) of its capital and surplus.

11.7 Insolvency or Bankruptcy. If the surety on any bond furnished by the construction contractor 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, Developer will within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XII
INDEMNITY & DUTY TO DEFEND

12.1 Indemnification and Hold Harmless Agreement. Other than in the performance of design professional services as addressed in Sections 12.2 and 12.3 below, to the fullest extent permitted by law, Developer will defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, agents, departments, officials, and employees (“Indemnified Parties”) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Developer or Developer’s Agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Developer, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer’s duty to defend, indemnify, protect and hold harmless will not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

12.2 Indemnification for Design Professional Services. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Developer will require its design professionals to indemnify, defend and hold harmless City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Developer's design professional or design professional's officers or employees.

12.3 Insurance. The provisions of this Article are not limited by the requirements of Article XIII related to insurance.

12.4 Enforcement Costs. Developer agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.

12.5 Indemnification for Liens and Stop Notices. Developer will keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Developer will defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Developer will be responsible for payment of all persons entitled to assert liens and stop notices.

12.6 Enforcement Costs. Developer agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article, provided that Developer will have the option to select an attorney to represent City for any such enforcement subject to approval by City Attorney, with such approval not to be unreasonably withheld. However, if with City Attorney's consent, Developer selects an outside attorney to represent City, Developer will continue to pay all of City's costs, including without limitation, reasonable attorney's fees and costs, related to cooperating in the defense, and City will retain authority to control the litigation, and make litigation-related decisions, including, but not limited to, settlement or disposition of the matter.

ARTICLE XIII INSURANCE

13.1 General. Developer will not begin work on the Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.

13.2 Type and Amount of Insurance. Developer will obtain the insurance described in Exhibit "P" ("Insurance Requirements") prior to the commencement of construction.

13.3 Written Notice. Except as provided for under California law, any Required Insurance will not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice will be provided.

Where the words “will endeavor” and “but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents, or representatives” are present on a certificate, they will be deleted.

13.4 Rating Requirements. Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement will be carried only by responsible insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

13.5 Non-Admitted Carriers. City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.

13.6 Additional Insurance. Developer may obtain additional insurance not required by this Agreement.

13.7 Obligation to Provide Documents. Prior to performing any work on the Project, Developer will provide copies of documents including but not limited to certificates of insurance and endorsements, and will furnish renewal documentation prior to expiration of insurance. Each required document will be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.

13.8 Deductibles/Self Insured Retentions. All deductibles and self-insurance retentions on any policy will be the responsibility of Developer. Deductibles and self-insurance retentions will be disclosed to City at the time the evidence of insurance is provided.

13.9 Policy Changes. Developer will not modify any policy or endorsement thereto which increases City’s exposure to loss for the duration of this Agreement.

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

13.11 Not a Limitation of Other Obligations. Insurance provisions under this Article will not be construed to limit Developer’s obligations under this Agreement, including indemnity.

13.12 Material Breach. Failure to maintain, renew, or provide evidence of renewal of the required insurance coverage during the term of this Agreement, and the insurance coverage described in Sections 2.2, 2.3, 4.2, 5.1, 5.4 and 5.5 of Exhibit “P” to this Agreement for a period of ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XIV
WARRANTIES

14.1 Warranties Required. Developer will require the construction contractor and its subcontractors and agents provide the warranties listed below. This warranty requirement is not intended to exclude, and will not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties will be enforceable by and inure to the benefit of City.

14.1.1 Materials and Workmanship. All work on the Project will be guaranteed against defective workmanship and all materials furnished by construction contractor or its agents will be guaranteed against defects for a period of ____ () years from the date of the Project's Final Completion. Construction contractor will replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

14.1.2 New Materials and Equipment. Construction contractor will warrant and guarantee, and will require its agents to warrant and guarantee, all materials and equipment incorporated into Project are new unless otherwise specified.

14.1.3 Design, Construction, and Other Defects. Construction contractor will warrant and guarantee, and will require its agents to warrant and guarantee, all work is in accordance with the plans and specifications and is not defective in any way in design, construction or otherwise.

14.2 Form and Content. Except manufacturer's standard printed warranties, all warranties will be on Developer's and Developer's Agents, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties will be submitted in the format specified in this Section.

14.2.1 Durable Binder. Obtain warranties, executed in triplicate by Developer, Developer's Agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.

14.2.2 Table of Contents. All warranties will be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.

14.2.3 Index Tabs. Each warranty will be separated with index tab sheets keyed to the table of contents listing.

14.2.4 Detail. Provide full information, using separate typewritten sheets, as necessary. List Developer's Agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

14.2.5 Warranty Start Date. All warranties required under this Agreement will run from the date of Final Completion.

14.2.6 Signature and Notarization. All warranties will be signed and notarized. Signatures will be required from Developer's construction contractor and where appropriate, the responsible subcontractor.

14.3 Term of Warranties. Unless otherwise specified or provided by this Agreement or applicable law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, will extend for a term of one (1) year from the date of Final Completion.

14.4 Meetings. During the warranty period described in Section 14.1.1, Developer will meet and will require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Engineering and Capital Projects Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting will be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the warranty period.

ARTICLE XV DEFECTIVE WORK

15.1 Correction, Removal, or Replacement. All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents is defective ("Defective Work"). If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Developer will promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

15.2 City's Right to Correct. If circumstances warrant, including an emergency or Developer's failure to adhere to Section 15.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer will not recover costs associated with the Defective Work and will reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

15.3 Defects Constitute Disallowed Costs. All costs incurred by Developer or Developer's Agents to remedy Defective Work are Disallowed Costs. If City has already reimbursed Developer for Defective Work, City is entitled to an appropriate decrease in Project Costs, to withhold a setoff against the amount, or to make a claim against Developer's bond if Developer has been paid in full.

15.4 Extension of Warranty. When Defective Work, or damage there from, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, will be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.

15.5 No Limitation on other Remedies. Exercise of the remedies for Defective Work pursuant to this Article will not limit the remedies City may pursue under this Agreement, at law, or in equity.

15.6 Resolution of Disputes. If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the Work and compensate Developer for

undisputed amounts. Payment of disputed amounts will be as later determined by mediation or as subsequently adjudicated or established in a court of law. Developer will maintain and keep all records relating to disputed work in accordance with Section 4.1.

15.7 Prior to Final Completion and Reimbursement to Developer. Where Defective Work has been identified prior to the Final Completion of the Project, Developer will promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Disallowed Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Project Costs, to withhold a setoff against the amount paid, or make a claim against the construction contractor's bond.

ARTICLE XVI MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

16.1 Maintenance Period. If the construction contractor is required to install or maintain landscaping and/or irrigation, Developer will require the construction contractor provide a maintenance period to begin on the first day after all landscape and irrigation work on the Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and will continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date the Landscaping and Irrigation is accepted, whichever is longer. The maintenance period will be 120 calendar days if turf is seeded.

16.2 Maintenance Area. Developer will require the construction contractor maintain all areas of the Project, including areas impacted or disturbed by the Project.

16.3 Maintenance Required. Developer will require the construction contractor conduct regular planting maintenance operations immediately after each plant is planted. Plants will be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas will be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor will replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days. Maintenance will also include the following: (1) filling and replanting of any low areas that may cause standing water (2) adjusting of sprinkler head height and watering pattern, (3) filling and recompaction of eroded areas, (4) weekly removal of trash, litter, clippings and foreign debris, (5) inspecting plants at least twice per week, and (6) protecting all planting areas against traffic or other potential causes of damage.

16.4 Landscape and Irrigation Inspection. At the conclusion of the maintenance period, City will inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection will be scheduled with two (2) weeks notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when Developer or Developer's contractor notifies City they are ready for the Final Inspection, whichever comes last. The City will notify Developer of all deficiencies revealed by the inspection before acceptance.

16.5 Extension of Maintenance Period. Developer will require the construction contractor extend completion of the maintenance period when in City's opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Developer will require the construction contractor accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Disallowed Costs.

16.6 Replacement. Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, will be replaced within fourteen (14) calendar days of notification by City. Developer will require the construction contractor include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report will indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size. Plants used for replacement will be of the same kind and size as specified and will be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. Developer will require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Disallowed Costs.

ARTICLE XVII TERMINATION BY CITY

17.1 Termination of Developer's Performance of Work. City may, subject to the terms and conditions set forth below, terminate Developer's performance of Work under this Agreement, at any time prior to City's issuance and delivery to Developer of a Notice to Proceed with Construction (as described in Section 4 of Exhibit "D") by delivering to Developer a written notice ("Notice of Termination") in accordance with this article.

17.2 Contents of Notice of Termination. The Notice of Termination will specify the effective date of the termination and will state whether the cause of the termination as one of the following categories:

17.2.1 Termination for Cause. A termination by the City for cause based on a Developer's Default as described in Section 4.5.1.

17.2.2 Termination with Justification. A termination by the City with justification based on:

17.2.2.1 The inability of City, for any reason, to obtain financing for the Project in an amount and at a rate of interest acceptable to the City in its sole, absolute and unfettered discretion.

17.2.2.2 The inability of the Developer to obtain one or more GMP contracts for completion of the Work which, when added to other Project Costs set forth in the Project Budget not included in the GMPs, is less than the Project Cost Cap.

17.2.3 Termination for Convenience. A termination by the City for its convenience and without cause.

17.3 Notice of Termination. After receipt of the Notice of Termination, and except as otherwise directed by City, Developer will:

17.3.1 Stop Work immediately or as specified in the Notice of Termination;

17.3.2 Immediately cease executing further Subcontractor Agreements for materials, services, or facilities, except as necessary to complete any City authorized portion of the Work or requirements of the Contract Documents;

17.3.3 Immediately terminate all Subcontractor Agreements to the extent they relate to the Work terminated;

17.3.4 With approval by the City, settle all outstanding obligations arising from the termination of Subcontractor Agreements;

17.3.5 As directed by City, transfer the title and deliver to City, completed or partially completed drawings, plans, calculations, specifications and any other documents and records that, if the Agreement has been completed, would be required to be furnished to City;

17.3.6 Complete performance of the Work not terminated; and

17.3.7 Take any action that may be necessary, or that City may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Developer and in which City has or may acquire an interest.

17.4 Termination Settlement. After termination, the Developer will submit a final termination settlement proposal to City in the form and with the certification prescribed by City. The Developer will submit the proposal promptly, but not later than six (6) months from the effective date of termination, unless extended by City in writing in its sole discretion. If Developer fails to submit the Proposal within the time allowed, City may, in good faith, determine, on the basis of information available, the fair and reasonable amount, if any, due Developer as a result of the termination and pay Developer the amount so determined. If Developer does not agree that the amount determined by City is fair and reasonable, and if Developer gives notice of such disagreement to City in accordance with this Section within thirty (30) days of receipt of payment, then the amount due will be determined as set forth in Article XIX if City and Developer agree thereto, or as fixed in a court of law.

17.5 Payment for Developer Due to Termination. Subject to Section 17.4, Developer and City may agree upon the whole or any part of the amount of the termination settlement. In no event will the foregoing amount with respect to a termination described in Sections 17.2.1 and 17.2.2 exceed (i) the amount contained in the Project Budget for the Work completed prior to the date of the Notice of Termination, (ii) increased by a reasonable allowance for Developer Fee in accordance with Section 3.3.1 on Work completed and (iii) reduced by the amount of payments previously made for such Work. With respect to a termination described in Section 17.2.3, the amount described in clause (ii) of the preceding sentence will be adjusted to include Developer Fee calculated on the total amount of in the categories of Hard Costs and Soft Costs in the then-current Project Budget.

17.6 Records and Documents Relating to Termination. Unless otherwise provided in the Agreement or by statute, Developer will 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 the Developer's costs and expenses under this Agreement. Developer will make these records and documents available to City, at Developer's office, at all reasonable times, without any direct charge. If approved by City, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE XVIII NOTICES

18.1 Writing. Any demand upon or notice required or permitted to be given by one Party to the other Party will be in writing.

18.2 Effective Date of Notice. Except in relation to Change Orders as provided for in Section 3.3.4 or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party will be effective: (1) on personal delivery, (2) on the second business day after mailing by Certified or Registered U.S. Mail, Return Receipt Requested, (3) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (4) upon documented successful transmission of facsimile.

18.3 Recipients. All demands or notices required or permitted to be given to City or Developer will be delivered to all of the following:

18.3.1 City Project Manager
City of San Diego
_____, M.S. # _____
San Diego, California 92101
Facsimile No: (619) _____ - _____

18.3.2 {Insert Contact Info for Developer}

18.4 Change of Address(es). Notice of change of address will be given in the manner set forth in Section 18.2.

ARTICLE XIX MEDIATION

19.1 Mandatory Mediation. If dispute arises out of, or relates to the Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") or any other neutral organization agreed upon before having recourse in a court of law.

19.2 Mandatory Mediation Costs. The expenses of witnesses for either side will be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator ("Mediator"), and the cost of any proofs or expert advice produced at the direct request of the Mediator, will be borne equally by the Parties, unless they agree otherwise.

19.3 Selection of Mediator. A single Mediator that is acceptable to both Parties will be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party will serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party will concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

19.3.1 If AAA is selected to coordinate the mediation ("Administrator"), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party will file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party will submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party will file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process will continue until both sides have agreed upon a Mediator.

19.3.2 The Administrator will appoint or the Parties will agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

19.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation will be mutually agreed upon.

19.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

19.3.4 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

19.3.5 Any agreements resulting from mediation will be documented in writing. All mediation results and documentation, by themselves, will 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 will not be subject to any subpoena or liability and their actions will not be subject to discovery.

ARTICLE XX
MISCELLANEOUS PROVISIONS

20.1 Construction Documents. The term "Construction Documents" will include, without limitation: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from other agencies, the special provisions, City-approved plans, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract.

20.2 Headings. All article headings are for convenience only and will not affect the interpretation of this Agreement.

20.3 Gender & Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders, and (ii) the singular number includes the plural number.

20.4 Reference to Section. Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.

20.5 Incorporation of Recitals. All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.

20.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of City or Developer will be deemed to be both covenants and conditions.

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

20.8 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement will not render any other provision of this Agreement unenforceable, invalid, or illegal.

20.9 Drafting Ambiguities. The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement will 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.

20.10 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement will control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code will control. Varying degrees of stringency

among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement will control. Each Party will notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

20.11 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.

20.12 Good Faith Performance. The Parties will cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

20.13 Further Assurances. City and Developer each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

20.14 Exhibits. Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.

20.15 Compliance with Controlling Law. Developer will require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by City Council, California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of the Project), including inspection and land surveying work. In addition, Developer will require its consultants, contractors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.

20.16 Hazardous Materials. "Hazardous Materials" are defined as any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). Developer agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

20.17 Jurisdiction, Venue, Choice of Law, and Attorney Fees. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, will be in the County of San Diego, State of California. This Agreement is entered into and will be construed and interpreted in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding will be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

20.18 Municipal Powers. Nothing contained in this Agreement will be construed as a limitation upon the powers of City as a chartered city of the State of California.

20.19 Third-Party Relationships. Nothing in this Agreement will create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third-party services and will be entitled to enforce all of the provisions of this contract as if it were a party thereto. Developer will incorporate this provision into its contracts, supply agreements and purchase orders.

20.20 Non-Assignment. The Developer will not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section will constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event will any putative assignment create a contractual relationship between City and any putative assignee.

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

20.22 Independent Contractors. The Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer will be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, will mean only that Developer will follow the direction of City concerning the end results of the performance.

20.23 Approval by a Party and Approval by City. Where the consent or approval by a Party is required or necessary under this Agreement and no standard is specified for the grant or denial of such approval is specified, the consent or approval will not be unreasonably withheld; however, nothing in this section will in any way bind or limit any future action of City pertaining to this Agreement or the Project. Whenever under the terms of this Agreement the consent or approval by City is required, such consent or approval will be given by City Project Manager on behalf of City. Unless otherwise specified in this Agreement, such consent or approval will be given or withheld (and if withheld, the specific reasons relating thereto) within fifteen (15) days of Developer's request for such consent or approval. Unless otherwise specified in this Agreement, if City has not withheld such consent or approval in a written notice to Developer within such 15-day period, such consent or approval will have been deemed to have been given.

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

20.25 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been

duly obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

20.26 Remedies. Notwithstanding any other remedies available to City at law or in equity, Developer understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Developer complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

20.27 Performance of Work by Developer. Other than as such obligations relate to management and supervision of the Work, whenever this Agreement directs Developer to perform the Work, or any portion thereof, such direction will mean that Developer will engage and require design professionals, contractors, subcontractors and others to perform such Work, in accordance with this Agreement.

20.28 Attorneys' Fees and Costs. If, following compliance with the dispute resolution procedure described in Article XIX, either Party commences litigation for the interpretation, reformation, enforcement or rescission of this Agreement, the prevailing Party will be entitled to recover from the non-prevailing Party reasonable attorneys' fees and court and other litigation costs incurred, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not, and that such reimbursement will be included in any judgment or final order issued in that proceeding. The "prevailing party" means the Party determined by the or court to most nearly prevail and not necessarily the one in whose favor a judgment is rendered.

20.29 Standards of Approval. Whenever this Agreement or an Exhibit to this Agreement grants a Party a right to approve an action of the other Party, a submission of any kind regarding the subject matter of this Agreement or any other matter, unless otherwise provided in this Agreement, such approval will be granted or denied based on the reasonable discretion of the Party granting or denying the approval.

IN WITNESS WHEREOF, this agreement is executed by City of San Diego, acting by the through its Mayor, pursuant to Ordinance No. OR-_____ and a majority vote by the electorate on November 2, 2010, authorizing such execution, and by Developer.

This Agreement was approved as to form and content by City Attorney this _____ of _____, 2010.

Dated: _____

THE CITY OF SAN DIEGO, a Municipal Corporation

By: _____

Dated: _____

Approved as to form and content:

JAN I. GOLDSMITH, City Attorney

By: _____

Dated: _____

GEDI California, Inc., a California Corporation

By: _____

DRAFT

Exhibit A

Site Map

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Exhibit B-1
Project Depiction

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Exhibit B-2
Project Narrative

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Exhibit C

City Design Criteria and Requirements

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Exhibit D

Scope of Work

This Scope of Work describes the services required of Developer regarding the design, bidding, construction, and operations/startup of the Project. The Developer will 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 one or more Guaranteed Maximum Price ("GMP") contracts for the Work. While the following scope of services is anticipated at this time, the actual scope of services may be refined throughout the development of the Project.

1. Design Phase Services. Beginning on the Commencement Date, Developer will diligently design the Project and apply for all Permits required for the construction of the Project in accordance with the terms of the Agreement, this Scope of Work and all applicable law.

1.1 Developer will develop and implement a Project management plan and procedures which include, at a minimum:

1.1.1 Monthly Project status reports.

1.1.2 Coordination/interface with City, and Design Team (defined below).

1.1.3 Interface and communications with other agencies.

1.1.4 Vendors and subcontractors management.

1.1.5 Document control.

1.1.6 Project Schedule and Project Budget.

1.1.7 Quality assurance and quality control.

1.2 Developer will provide detailed cost estimate based on latest set of Design development documents with design adjustment/value engineering suggestions as necessary to further reduce the cost estimate.

1.3 Developer will provide cost analysis of all design options to be considered during completion of design with special emphasis on specialty items including the curtain wall, concrete details and interior finishes.

1.4 Developer will review City Design Criteria and Requirements to ascertain Project requirements and review such requirements with City. Design and construction must be in accordance with City Design Criteria Requirements unless specifically approved in writing by City.

1.5 Approval of Design, Plans and Specifications. Based on City Design Criteria and Requirements, Developer will commence and complete designs, plans and specifications for the

development of the Project (collectively, "Design Documents") in substantial accordance with the Project Schedule and in accordance with this section.

1.5.1 Requested Review by City. Developer will deliver to City copies of the Design Documents and draft plans and specifications for the Project contemporaneously with their production during each phase of development of the Design Documents. Developer will inform City of the time and place of all meetings involving Developer, the Project architect and consulting engineers ("Design Team") or the proposed or selected General Contractor(s) at which the design and construction of the Project is to be reviewed, and City may attend any such meetings. At the time Developer seeks approval of City of the plans and specifications at the end of each phase of design development identified below, Developer will identify in writing the Design Documents to be approved by City and include a written notification to City that Developer is seeking City's approval of the Design Documents.

1.5.2 Approval by City. City approval of Developer design submissions at each stage of the design process will be reflected in a written approval issued by City and referencing the approved documents. If the City fails to respond within the period provided at each stage of the design process, Developer's submission during that stage of the design process will be deemed approved.

1.5.3 Review and Approval of Design Documents. The review periods for the review and approval of the Design Documents by City are established based upon the assumption that Developer has made available to City the opportunity to participate in the on-going and iterative design process occurring during each phase of Design Development. Developer will obtain City approval of the design, in writing, at Schematic Design, Early Design (50% DDs), 100% Design Drawings and 50% Construction Documents. Design Documents will be drafted, revised and approved in phases as set forth below:

1.5.3.1 Schematic Design. During Schematic Design, the schematic design of the Project will be prepared, and the Project will be submitted to City for approval of the fundamental architectural elements of the design and location of improvements within the Site. Developer will submit to Development Services Department the concept plans for a preliminary assessment to confirm compliance of the Project with zoning regulations and codes affecting the Work. Site will be completed as part of such preliminary assessment. Schematic Design will determine the general scope, preliminary design, scale and relationships among the components of the Project. The Design Documents will evidence a clearly defined design with a comprehensive scope, budget and schedule. The Design Documents at the conclusion of Schematic Design will show a level of complete detail for the Project (exclusive of mechanical and electrical elements) consistent with City of San Diego requirements for submittal of an application for Centre City Development Permit for the Project. All Design Documents completed during Schematic Design will be generally consistent with Exhibits B-1 and B-2 of the Agreement. Schematic Design will be reviewed and approved by City within two weeks of receipt and prior to the Centre City Development Permit application for the Project. If modifications are requested, Developer will promptly modify and resubmit the Schematic Design for City approval and City will approve or request further modifications within one week of its receipt of such resubmission. City approval of the Schematic Design Documents is a condition precedent to authorization to proceed with subsequent work on the Project.

1.5.3.2 Early Design Development (50% DD). During Early Design Development, the scope of work previously approved in the Schematic Design phase will be refined and the Project will be further developed to a level of detail necessary to complete a basic, coordinated description of all aspects of the Project. The Design Documents at the completion of the Early Design Development will consist of drawings and specifications showing floor plans, elevations, and sections that show all building elements including staircases, windows, elevators and doors at an approximate fifty (50) percent level of completion (or other level of detail mutually approved by City and Developer and representing a logical early design review point) (the “Early Design Development” phase). Major elements including equipment, fire protection, mechanical, electrical, structural, plumbing, construction materials and landscaping systems will be included in the Design Documents at the completion of Early Design Development. All Design Documents completed during Early Design Development will be generally consistent with the Schematic Design previously approved by City. The City will review and comment on the Early Design Development within three weeks of receipt. If modifications are requested, Developer will promptly modify and resubmit the Early Design Development Design Documents for City approval and City will approve or request further modifications within one week of its receipt of such resubmission.

1.5.3.3 Advanced Design Development (100% DDs). Following Early Design Development, drawings and specifications will be prepared that incorporate a complete level of design and coordination of the Project including equipment, fire protection, mechanical, electrical, structural, telecommunications, plumbing and landscaping systems through enlarged scale drawings, detailed elevations and plans, and design mock-ups as required, to achieve an approximate one hundred (100) percent level of completion (or other level of detail mutually approved by City and Developer and representing a logical late design review point) (the “Advanced Design Development” phase). Drawings establishing all major elements and outline specifications will be prepared during the Advanced Design Development phase. All designs and scope of work of the Project completed during Advanced Design Development will be generally consistent with the Early Design Development Documents previously approved by City. City will notify Developer in writing within four weeks after receipt of Design Documents at the Advanced Design Development phase of approval, or of a request for modifications. If modifications are requested, Developer will modify and resubmit Design Documents for City approval and City will approve or request further modifications within one week of its receipt of such resubmission.

1.5.3.4 Construction Documents (50% CDs). Following Advanced Design Development, detailed floor plans, elevations, sections, and drawings of specific areas (such as window, door, staircase and elevator details), detailed engineering plans (structural, mechanical, plumbing, electrical, electronic), and detailed written specifications will be prepared generally consistent with the Advanced Design Development Documents previously approved by City to achieve an approximate a fifty (50) percent level of completion (or other level of detail mutually approved by City and Developer and representing a logical late design review point) (the “Fifty Percent Construction Design Development” phase). The Fifty Percent Construction Design Development Documents will be incorporated into the Construction Documents where appropriate to provide a fully coordinated set of construction documents and specifications consistent with industry standards for this level of detail. City will notify Developer in writing within three weeks after receipt of the Design Documents of approval, or of a request for modifications. If modifications are requested, Developer will modify and resubmit Design Documents for City approval and City will approve or request further modifications within one week of its receipt of such resubmission.

1.5.3.5 City Review of 100% Construction Documents. Upon completion of Construction Documents reflecting one hundred (100) percent completion, Developer will deliver a full set to City for its review. The submission will include City's standard drawings and specifications as described in Exhibit L.

1.5.4 Design of Tenant Improvements. Upon receipt of City's written notice to proceed with design of tenant improvements for the Project (the "TIs"), Developer will cause the Design Team to commence space planning of interior spaces and the preparation of plans, specifications, drawings for the Projects TIs. Developer will submit the TI Design Documents for its review and approval at the thirty (30) percent, sixty (60) percent and one hundred (100) percent levels of completion. City will notify Developer in writing within two weeks after receipt of each such submission of approval, or of a request for modifications. If modifications are requested, Developer will modify and resubmit Design Documents for City approval and City will approve or request further modifications within one week of its receipt of such resubmission.

1.5.5 Compliance with Public Art Requirement. Developer will comply with the requirements of Council Policy 900-11 *Inclusion of Public Art in Selected Capital Improvement Program and Redevelopment Agency Projects* (the "Public Art Requirement") by including in the Design Team a qualified, professional art conservator, a qualified, professional art appraiser, and a qualified, professional art consultant and by following the procedures set forth in this section. The Public Art Requirement may also be used, in part, to purchase artwork or to survey the two artworks by Malcolm Leland currently located at the project site. The two artworks by Malcolm Leland are *Bow Wave* [fountain] and *Untitled* (cast concrete frieze). As required by San Diego Municipal Code section 26.0701 et seq., Developer will seek the approval of the City, through the City of San Diego Commission for Arts and Culture (Commission), for any proposal related to artwork within the project, and will implement only those proposals which are approved by the City, through the Commission.

1.5.5.1 Using funds contained in the line-item titled "Public Art Program, Civic" in the Project Budget, Developer will cause Design Team to contract with a qualified, professional art conservator, a qualified, professional art appraiser, and a qualified, professional art consultant to advise and assist in the development and implementation of a comprehensive, site-specific art plan. The Developer may expend up to \$500,000 for these consultant fees. The City, through the Commission, will be given the opportunity to provide the Developer with recommendations for each consultant's scope of work and recommendations for consultant evaluation criteria. The City, through the Commission, will also be given the opportunity to review the competitive proposals from each consultant under consideration and to provide feedback on the competitors to the Developer. After receiving feedback from the Commission, the Developer will make the final decision on which consultants should receive contract awards.

1.5.5.2 Developer will propose a comprehensive, site-specific art plan for selecting artists and commissioning new artwork. The art plan will be an element within the Design Documents. The art plan will include a conservation survey assessment report and conservation treatment recommendations with a cost estimate for the two Malcolm Leland artworks. The art plan will also contain an appraisal of the two Malcolm Leland artworks. The art plan may also include proposals for the purchase of new artwork, the relocation of the existing artworks by Malcolm Leland, or the deinstallation and disposal of the existing artworks by Malcolm Leland.

Developer will present all proposals related to artwork within the project to the City, through the Commission, for review and approval. The Commission will review the proposals and recommend revisions as conditions for approval if necessary, but will not unreasonably withhold approval.

1.5.5.3 Developer will cause the City-approved art plan to be implemented.

1.5.5.4 Developer will involve the Commission in artist selection processes such as including representatives appointed by the Commission in artist selection panels.

1.5.5.5 Developer will hold and manage contracts with artists. The artist contracts must include terms and conditions approved by the City.

1.5.5.6 In accordance with the City-approved art plan, Developer will cause the artists to develop artwork designs for placement within the Project and incorporation in Project components. Developer will present artwork designs to the City, through the Commission, for review and approval. The Commission will review the artwork designs and recommend revisions as conditions for approval if necessary, but will not unreasonably withhold approval.

1.5.5.7 Developer will cause the titles for each artwork to be transferred to the City. Developer will ensure that the City is given all the required licenses to the artwork. Developer will give the City maintenance instructions for each commissioned or purchased artwork. Developer will give the City the conservation survey assessment report, the conservation treatment recommendations with the cost estimate, and the appraisal report for the two Malcolm Leland artworks.

1.5.6 Resubmittals. If requests for modifications or comments are timely submitted by City in writing in accordance with Sections 1.5.3 and 1.5.4, Developer will respond to such requests for modifications or comments, including making changes in the plans, drawings and/or specifications consistent with requests for modifications objections or comments made by City. Developer will resubmit the same for further review by City. The process of resubmittal and review will continue until City and Developer have approved the documents prepared in conjunction with the Schematic Design, Early Design Development, Advanced Design Development phases and the Construction Documents. The Construction Documents, as approved by City and Developer pursuant to Section 1.5.3.4 are referred to as the "Approved Construction Documents."

1.5.7 Final Approval and Permit Review. City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project.

1.5.8 Basis for Disapproval. If City disapproves of the proposed design, the notice will specify City's reason for disapproval with particularity. City may only disapprove proposed designs which (1) fail to comply with any applicable law, (2) fail to materially comply with the most recent set of Design Documents formally approved by City, (3) propose material changes in the size, quality, appearance, layout or configuration of the Project from that previously approved by City during the prior design phase, (4) materially and adversely impact the Project Schedule or (5) if the construction cost estimate determined in Section 1.5.9 exceeds the Project Cost Cap. The parties acknowledge that adjustments to the Project will occur at each level of design as the Design

Documents become more detailed, and as value engineering opportunities become available, and that adjustments to designs for such reasons will not be a basis for City to disapprove such designs unless such adjustments fall within the standards for City disapproval set forth in this section.

1.5.9 Construction Estimates and Project Redesign. At each phase of the design process, Developer will provide to City an estimate of the costs to construct the Project (“Developer Cost Estimate”). The City will also be entitled to obtain at City’s cost its own estimate of the costs to construct the Project (“City Cost Estimate”). If Developer Cost Estimate and City Cost Estimate differ and Developer and City cannot agree on the cost estimate to use for purposes of this section, the cost estimators for Developer and City will meet and discuss their respective cost estimates and the basis pursuant to which they were prepared, and then each estimator (exercising good faith) will prepare a revised estimate. The cost estimate to be used for purposes of this section will be (a) Developer Cost Estimate if City does not prepare a City Cost Estimate, (b) the cost estimate jointly approved by Developer and City if Developer and City both prepare a cost estimate and then mutually approved an estimate, or (c) the higher of the revised estimate prepared by Developer cost estimator or City cost estimator if Developer and City both prepare a cost estimate and cannot thereafter agree on an estimate.

In the event that at each phase of the design process and again immediately prior to commencement of construction, the Cost Estimate exceeds the aggregate cost of the Work described in the category titled “Hard Costs” and “Soft Costs” in the then-current Project Budget, Developer and City, working together and in good faith, will cause the Project to be redesigned and/or value-engineered and/or Project features changed or revised so that such excess costs are eliminated and the aggregate amount of all line-item costs are less than the Project Cost Cap. The process of redesign may be undertaken as part of the design process for the next phase of Design Development, but with the understanding that the commitment of City and Developer is to implement design changes as may be necessary to provide reasonable assurance to both Developer and City that the construction costs for the Project will not exceed the Project Cost Cap.

Notwithstanding the foregoing, for any reason other than an Unavoidable Delay or City Delay, Developer will not have the right (unless expressly approved by City) to seek to redesign the Project in the event the estimated costs to construct the Project exceeds the Project Cost Cap, and Developer will be responsible for the costs to construct the Project in excess of the Project Cost Cap, based upon the then-existing Approved Construction Documents.

1.5.10 Alternatives. In connection with the design of the Project and the permitting relating thereto, Developer may propose project features, elements and finishes for the Project which are in addition or alternative to those approved by City (“Alternatives”). In the budgeting and cost estimating process for the Project, the costs of the Alternatives will be separately determined and will not be included within the Developer Cost Estimate. During the design approval process, approvals granted by City may, in City’s reasonable discretion, also include approval for such Alternatives and such Alternative will be added to the Project.

1.5.11 Permits: Costs: Compliance with Applicable Law. Developer, on or before the date provided for same in the Project Schedule, make its initial Centre City Development Permit application for the authorization of the construction of the Project, and thereafter diligently pursue the issuance of any and all Permits required for the Project. Developer will cause all work on

the Property to be performed in accordance with this Agreement and applicable law. Nothing in the Agreement or this Scope of Work will be construed as an approval by City, in the exercise of its governmental authority and police power, to review and approve development applications of any Permit, and City will review all Permit applications in accordance with applicable law.

1.6 Developer will:

1.6.1 During the phase of Design Development described in Section 1.5.3.4, prepare Construction Documents suitable for obtaining competitive construction contractor bids for all Work not approved by City for self performance. The Project may be divided into several construction contracts. Preparation of technical materials and equipment specifications for pre-purchase will be the responsibility of Developer. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Developer may proceed with competitive bidding.

1.6.2 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.

1.6.3 When authorized by City, engage services of a design/build contractor to provide design/build criteria, design documents, peer review, and estimate of probable component GMP for: fire sprinkler system; HVAC delivery system (portions including control system); high density storage shelving; plumbing system; low voltage systems; lease space tenant interiors; remediation of underground tanks and contamination.

1.6.4 Provide design review and value engineering phase services, described herein, in a proactive manner and consistent of the most current Drawings or Specifications. Developer will promptly notify City in writing whenever Developer determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the Scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or the Contract Time for the Work, to the extent such are established.

1.6.5 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, Cal-OSHA and City Fire Department. The Developer will develop a air pollution control plan, a noise abatement plan and a Hazardous Materials management plan.

1.6.6 Submit the application for Storm Water Pollution Prevention Plan to the appropriate authority. If required, incorporate appropriate facilities in the design.

1.6.7 Develop water, wastewater, and sewer construction drawings and obtain necessary permits. Incorporate into bid documents

1.6.8 Develop construction phase material delivery, inventory, and assembly, and waste disposal plans to apply to all subcontractors to allow City to receive maximum LEED points.

1.6.9 Establish and direct design review meetings with Design Team and City with a frequency of between weekly and monthly. Prepare and distribute all minutes of the meetings, make and coordinate completion of those assignments.

1.6.10 Determine and establish the sequence of construction, and if appropriate, identify separate bid packages to accomplish construction of the Project in compliance with the Project Schedule.

1.6.11 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 will conform with the dates of Substantial Completion and Final Completion of the Project.

1.6.12 Provide continuous value engineering ("VE") studies during the design phase. Review VE recommendations and furnish recommendation to City regarding acceptance or rejection of VE recommendations. Incorporate accepted VE recommendations.

1.6.13 Conduct a constructability review for each construction package prior to bidding. Incorporate results of this review into the design.

1.6.14 Identify all permit requirements and prepare applications and support documents necessary for obtaining all permits. Permit fees will be paid by City as a Project Cost.

1.6.15 Review the Construction Documents with the governmental authorities having jurisdiction over the Project whenever required or appropriate.

1.6.16 Notify City within five (5) working days in writing whenever Developer reasonably believes that the cost of the Project is likely to exceed the Project Cost Cap and include in said notice: (i) an itemized cost breakdown estimate; (ii) develop recommended revisions to Project scope, design criteria, and/or Construction Schedule and provide cost estimates for changes which Developer believes will bring Project within the Project Cost Cap; and (iii) assist City in reviewing the itemized cost breakdown and recommend revisions so that City can revise the scope of the Project so that the Project Cost Cap is not exceeded; City and Developer may mutually agree in writing that Developer 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, Developer will not proceed with any Construction Phase services until City issues a written Notice to Proceed with Construction Phase.

1.6.17 Prior to Commencement of the Work, (i) provide a master accounting system and matrix on Excel or equivalent software that will be updated, expanded and provided to City monthly as the Project develops; (ii) obtain and pay for all necessary permits, including, but not limited to, environmental, grading, building, mechanical, electrical, and plumbing; (iii) cause the appropriate professionals to stamp and sign as required the original Construction Documents or parts thereof and coordinate the design with utility companies; and (iv) prepare a detailed description of all necessary procedures and methods, including a detailed description of the quality control program, to be utilized by Developer in performing its services under the Construction Phase of this

1.7 Throughout the Design Phase, Developer will provide scheduling and cost control reports.

1.8 Develop a site mobilization and logistics plan for the construction phase including a worker parking management plan, lay-down yard and hoisting plan.

1.9 Design Dispute Resolution Process. City and Developer agree to follow the dispute resolution process set forth in this Section 1.9 to resolve disputes regarding preparation and approval of the Schematic Designs, Design Documents, Construction Documents and changes to approved Construction Documents in an economic and time efficient manner so that the documents conform to the requirements of the Agreement and the Project Schedule is not adversely impacted.

1.9.1 Disputes Resolution Arbitrator. In the event that during the design phase of the Project a dispute arises between City and Developer regarding: (i) the adequacy of, or the City's right to comment upon or disapprove, any Design Document; (ii) the responsibility for any cost of any addition or change; or (iii) whether the Construction Documents are consistent with the design approved during the prior phases of the preparation of the Design Documents; the Parties first will proceed in good faith to resolve such dispute as expeditiously as possible and will cooperate so that the progress of the design and construction of the Project is not delayed. This process will include at least one (1) meeting to be held within two (2) business days after a request for a meeting has been delivered by either Party to the other, at which meeting there will be in attendance individuals from Developer and from the City, each of whom have the authority to resolve the dispute on behalf of their respective Party. During the meeting, the consultants and various advisors to both Parties will present a succinct summary of the issues requiring resolution and the respective positions of the Parties. If the Parties are unable to resolve the dispute, either Party may, by delivering written notice (the "Arbitration Notice") to the other, refer the matter to the arbitrator named below (the "Design Arbitrator").

1.9.2 Arbitration Process. The City or Developer, by delivering the Arbitration Notice to the other, will refer any dispute described above to a single individual who is a reputable, experienced architect mutually approved by Developer and the City, to act as Design Arbitrator to resolve such dispute. If the City and Developer cannot so agree on a single Design Arbitrator within five (5) business days of an Arbitration Notice, either Party may seek the appointment of such Design Arbitrator by the Presiding Judge of the San Diego County Superior Court.

1.9.3 Consideration of Disputes or Claims. Within five (5) business days following selection of a Design Arbitrator, the Design Arbitrator will convene a hearing to review and consider the dispute. Within two (2) business days following the selection of the Design Arbitrator, both the City and Developer will deliver to the Design Arbitrator and one another a written statement of their respective position with respect to the issue subject to arbitration and

exhibits, calculations, and other pertinent material upon which each Party relies in support of its position. All material provided to the Design Arbitrator will be given in the same form and content to the other Party to this Agreement prior to the hearing.

1.9.4 Procedures. Upon the first referral to the Design Arbitrator of a dispute hereunder, the Design Arbitrator will establish procedures for the conduct of any hearings for consideration of disputes and claims consistent with this Agreement; provided, however, the procedures will be designed so that the hearing will not last more than one (1) day. It is expressly understood that the Design Arbitrator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by Developer and City, and that the Design Arbitrator's decision concerning any such dispute will be conclusive and binding upon the Parties.

1.11.4.1 The Design Arbitrator will be restricted to considering only the alternative resolutions proposed by the City and Developer, and the Design Arbitrator will select the result proposed by either the City or Developer that in the opinion of the Design Arbitrator is the result that is most consistent with the pertinent Agreement provisions, the facts and circumstances involved in the dispute and Applicable Law. The Design Arbitrator may also recommend other solutions to the Parties, which the Parties agree to consider in good faith, but absent mutual agreement of Developer and the City to a solution proposed by the Design Arbitrator, the result proposed by either Developer or the City and selected by the Design Arbitrator will apply.

1.11.4.2 The Design Arbitrator's decision may be made orally upon the conclusion of the hearing, and a written decision must be provided not later than two (2) business days following the conclusion of the hearing.

1.11.4.3 The Design Arbitrator's decision will be incorporated into the Design Documents for the next phase of the decision process and will be included within the Developer Cost Estimate for the next phase of Design Documents.

1.9.5 Payment. The fees charged by the Design Arbitrator will be paid in equal amounts from City Contingency and Developer Contingency. Payments will be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary for the Design Arbitrator to serve. Payment for services rendered by the Design Arbitrator and for the Design Arbitrator's expenses will be at the rate or rates established by the Design Arbitrator, which in any event will not exceed the usual and customary rate or rates prevailing in San Diego County, California, for arbitration services of the sort described herein.

1.9.6 Resolution. The time periods set forth in this Section 1.31 are not jurisdictional, and may be revised by the Design Arbitrator for good cause. However the intention of the Parties in mutually agreeing to the provisions of this Section 1.31 is to provide for a quick and efficient dispute resolution process so as to maintain orderly progress of the Project.

1.9.7 Termination. The foregoing arbitration provisions will terminate upon final approval or deemed approval of the 100% Plans and Specifications and will not apply to disputes or claims arising thereafter.

2. GMP Phase Services. Upon receipt of City's Notice to Proceed with GMP Phase Services, Developer will commence GMP Phase Services as described in this section. Developer understands and acknowledges that City reserves the right to deliver its Notice to Proceed with GMP Phase Services at any time after completion of 50% Construction Drawings. Upon receipt of City's Notice to Proceed with GMP Phase Services, Developer will:

2.1 Prepare all necessary documents for bidding Work not approved by City for self-performance or negotiated prior to establishing the GMP. For the purposes of this Agreement, GMP means the sum of the maximum cost of the construction Work; the construction fee; general conditions costs, allowances, taxes, and City and Developer Contingency amounts. The GMP contract will, at a minimum, include instructions to bidders; general and special conditions; form of bid; form of bonds; and an updated/revised Project Schedule. The amount of the GMP will include:

2.1.1 The Cost of the Work is the actual cost and is a not-to-exceed amount.

2.1.2 The General Conditions Costs are a firm-fixed lump sum amount which will include bonds and insurance premiums based on the full contract price for construction

2.1.3 The Construction Fee is a firm fixed lump sum.

2.1.4 Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were included, whether or not yet effective or merely scheduled to go into effect.

2.1.5 Allowances for construction costs on an at cost basis for items approved by City.

2.2 Prepare and submit to City for review separate bid packages as Developer determines appropriate to enable the construction of the Project to proceed in an efficient and cost effective manner in compliance with Exhibit Q.

2.3 Solicit sealed bids for the construction of Project. Such solicitation may be by publication in a local newspaper of choice, but must include notice in the San Diego Daily Transcript for a minimum of one day. Developer will notify City of the time and place of each bid opening for the construction of Project and will provide City with copies of all bids received.

2.4 Develop and administer a subcontractor pre-qualification procedure acceptable to City to pre-qualify prospective bidders for those bid packages for which Developer and City agree a pre-qualification procedure is required. Develop subcontractor and supplier interest, submit the names of a minimum of three qualified subcontractors or suppliers for each trade in the Project for approval by City and solicit bids for the various Work categories. The Developer will identify the MBE/WBE or SBE subcontractors and suppliers and during the bidding process keep City informed on the progress of meeting the desired MBE/WBE or SBE goals. If there are not three qualified subcontractors or suppliers available for a specific trade or there are extenuating circumstances warranting such, Developer may request approval by City to submit less than three names. Without prior written approval by City, no change in the recommended subcontractors or suppliers will be allowed.

2.5 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 will be issued as written addenda and provided to all prospective bidders.

2.6 Respond to all questions during the GMP Phase. Prepare addenda and prepare written responses to bidders' questions.

2.7 Open sealed bids in the presence of City's authorized representative(s). The bidding contractors may be present at the bid opening. City's representative(s) will be provided with a copy of the tabulation of bid results. Contract(s) for the construction of Project will be awarded by Developer to the qualified contractor(s) submitting the lowest responsible and responsive bid(s), as mutually determined by Developer and City's authorized representative(s).

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

2.9 Present City the proposed GMP for the entire Work (or portions thereof) in a form acceptable to City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by Developer will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based. Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

3. GMP Proposal(s) Review and Approval.

3.1 The Developer will meet with City and Design Team to review the GMP Proposal(s) and the written statement of its basis. In the event City or Design Team discovers inconsistencies or inaccuracies in the information presented, Developer will make adjustments as necessary to the GMP Proposal, its basis or both.

3.2 The City, upon receipt of any GMP proposal from Developer, may submit the GMP Plans and Specifications to an independent third party for review and verification. The third-party will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP proposals. The City will approve, comment on or request modifications to the GMP proposal within two weeks from its receipt and will approve, comment on or request modifications to further submissions and resubmissions of the GMP proposal within one week or receipt.

3.3 If Developer's GMP Proposal is greater than the independent third-party estimate for the Cost of Work, Developer may present a report within seven days of a written request by City identifying, explaining, and substantiating the differences, or may, at its own discretion, submit a report substantiating the differences. The Developer may be requested to, or may, at its own discretion, submit a revised GMP Proposal for consideration by City. At that time City may do one of the following:

3.3.1 Accept Developer original or revised GMP Proposal, if within the Project Cost Cap, without comment; or

3.3.2 Reject Developer's original or revised GMP proposal because it exceeds the Project Cost Cap, and terminate the Agreement subject to Article XVII of the Agreement.

4. Construction Phase Services. After City formally approves Construction Documents, Construction Schedule, GMP and the Construction Management Program, City will issue to Developer a written Notice to Proceed with the Construction Phase. Developer's Services in Construction Phase will include but are not limited to construction management and administrative Services. The Developer will 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:

4.1 Perform all obligations set forth in Developer's Construction Management Program;

4.2 Provide administration and coordination of the Services provided in Construction Phase;

4.3 Record the location by dimension, and the depth, by elevation, of all underground lines, valves, plugged tees, capped ends, etc. and record, by dimension and/or scale drawings, all wiring, conduits, and pull boxes as actually installed.

4.4 Be responsible for and coordinate all construction means, methods, techniques, sequences and procedures;

4.5 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 City on actual performance compared to the Project Schedule;

4.6 Give all notices and comply with laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project;

4.7 Provide input for timely review 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 by Developer;

4.8 Provide input for responses to Requests for Information, substitution requests, and Change Order requests. Conduct weekly review meetings with City to discuss these items;

4.9 The Developer will develop, implement and manage a Construction Phase Construction Quality Assurance/Quality Control Plan ("QA/QC") submitted to and approved by City. The Plan will include but not be limited to;

4.9.1 a statement and definition of QA/QC goals;

- 4.9.2 an identification of QA/QC criteria and elements;
- 4.9.3 development of the Project QA/QC implementation plan;
- 4.9.4 development of the QA/QC materials, components, equipment and system testing plans;
- 4.9.5 enforcement of the plans and specifications; and
- 4.9.6 cause an independent testing agency to perform all required inspections.
- 4.10 Direct, schedule, and coordinate all required Special Inspections in such a manner that the progress of construction is not affected or impacted;
- 4.11 Correct any Work which does not conform to the Construction Documents;
- 4.12 Keep City informed of the progress, quality, and cost of the construction of the Project; provide monthly partnering meetings, and respond to all City requests for cost reports, schedules and progress reports;
- 4.13 Pay royalties and license fees. Developer will defend suits or claims for infringement of patent rights and will defend and hold City harmless from loss on account thereof, except that City will be responsible for such loss when a particular design, process or product of a particular manufacturer is required by City. However, if Developer knows the use of a required design, process or product is an infringement of a patent, Developer will be responsible for such loss unless such information is promptly given to City in writing;
- 4.14 Ensure Project is maintained in a clean, neat, sanitary and safe condition free from accumulation of waste materials or rubbish. Prior to Final Completion, Developer will cause to be removed from and about the Project all tools, construction equipment, machinery, surplus materials, waste materials and rubbish. Developer will establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site;
- 4.15 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;
- 4.16 Establish and monitor procedures to control on-site noise, dust and pollution during construction;
- 4.17 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 to any impact on critical path items;

4.18 Conduct and prepare minutes for weekly Project team meetings with City and appropriate design and construction team representatives;

4.19 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;

4.20 Assemble and deliver to City upon Final Completion all records, documents, warranties, bonds, guarantees, maintenance service contracts, and maintenance and operating manuals; and

4.21 Unless Developer receives City's prior approval to substitute equal or better quality materials, Developer 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.

5. Cost Tracking, Control and Reporting. Developer will:

5.1 Manage all construction activity costs;

5.2 Report construction costs to City in a manner consistent with City-wide reporting system;

5.3 Develop a Project-specific plan for defining, tracking and reporting cash flow activity requirements and submit such plan to City for review and approval prior to implementation; and

5.4 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. Construction Site Services. The following services are included in General Conditions: provide all security as needed at the construction site; provide all project safety services; provide all project sanitary services; provide all project trash collection services; provide general site clean up; provide hoisting (to be determined); provide temporary utilities; provide other site services as requested by City as a reimbursable cost.

7. Construction Records Management/Document Control. The Developer will take the following steps to assure construction records are maintained properly:

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

7.2 Claims and Mitigation Management:

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

7.2.2 The CDM Plan will include a claims mitigation plan which will be updated at regular intervals to incorporate changing conditions; and

7.2.3 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 City in a manner consistent with City-wide reporting system.

8. Environmental Mitigation, Monitoring, and Reporting. Developer will:

8.1 Develop, administer, and enforce an Environmental Mitigation Monitoring and Reporting Plan as may be required by City;

8.2 Report environmental issues to City in a manner consistent with City-wide reporting system;

8.3 Upon City approval, remove, transport, or otherwise mitigate and properly dispose of soil and subsurface materials determined or believed to be a Hazardous Material or contaminated in accordance with the Mitigation Monitoring and Reporting Plan;

8.4 Other materials encountered during the demolition of buildings (including basements) which are determined to be Hazardous Materials will 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 Materials which is not a fixture or real property;

8.5 Log the source location of all Hazardous Materials removed the Site 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; and

8.6 Maintain documentation by parcel of quantity of materials removed and hours of work and invoice separately by parcel.

9. Surveying Services. Developer will be responsible for procuring all surveying services, as may be required for construction. All construction surveying services will 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.

10. Operations/Start-up Phase Services.

10.1 The Developer will prepare, submit for City written approval, and implement a Project Startup and Testing Plan for the Project:

10.2 In association with a Commissioning Consultant engaged by Developer, prepare a Building Commissioning Plan to be approved by City and coordinate this plan;

10.3 The Developer will supervise, manage, and coordinate all Project startup and testing activities in accordance with the provisions of the Construction Documents;

10.4 The Developer will report progress of Project startup and testing to City in a manner consistent with City-wide reporting system;

10.5 Provide on-site operative training for all building systems;

10.6 The Developer will report to City all guarantee/warranty disputes. The Developer will proceed to resolve such disputes after having submitted to City for review and approval Developer's approach for obtaining resolution for the dispute;

10.7 The Developer will remove all materials and equipment from the Site as soon as they are no longer necessary. Upon completion of the Work and before final inspection, the entire Site will be cleared of equipment, unused materials and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs will be included in the GMP;

10.8 The Developer will remove excess excavated material not requiring remediation will be removed from the Site. Sufficient material may remain for use as backfill if required and permitted by City. Forms and form lumber will be removed from the Site as soon as practicable after stripping. All excess excavation material, demolition material or other spoil that is removed from the Site, is to be disposed of in an approved City or County sanitary fill unless otherwise approved by City. As a condition of final payment, Developer will 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 such refuse will be included in the GMP; and

10.9 Complete paperwork and submit data required to secure a minimum of LEED® Silver certification.

11. Project Procedures. Developer will:

11.1 Establish and maintain project specific management reporting procedures including monthly reports, schedule of values, cost loaded schedule, critical path schedule, electronic management of RFP, and change order review and processing, monthly draw meetings and schedule and budget updates;

11.2 Insurance Program. Develop, solicit proposals, evaluate, recommend, and engage all insurance as required by this Agreement and in accordance with all deductible limitations, pay for all deductibles and engage qualified staff to administer the insurance program. All costs for implementation of the program (but not execution) to be included in the General Conditions; and

11.3 Safety Program. Establish, staff, and maintain a project specific site safety program in accordance with all requirements included in the Agreement and in accordance with requirements of the CCIP Safety Procedure provided.

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EXHIBIT E
PROJECT SCHEDULE

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EXHIBIT F

Project Schedule Obligations and Components

1. Developer's Obligation. To the extent required by City, Developer will provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

A. Project Initiation. During Project initiation and design phases, Developer will submit an updated Project Schedule on a quarterly basis to City for approval.

B. Construction Phase. During Construction, Developer will submit an updated Project Schedule monthly to City and will include:

i. Forecast Data with the intended plan for the remainder of the contract duration.

ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)

iii. Logic changes or other changes required to maintain the Project Schedule

2. Detail and Format. Unless otherwise directed by City, the Project Schedule will include all phases of the Project. It will be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and will include:

A. Identification of design and construction activities and their sequence:

i. Work will be divided into a minimum of 5 activities.

ii. Activities will not exceed 21 calendar days in duration or \$50,000 in value, except long lead procurement and submittal activities or those accepted by City.

iii. Each Activity will be assigned a budget value in accordance with Agreement requirements and activity descriptions.

a. The sum of all budget values assigned will equal Project Cost.

b. Each construction activity will indicate the estimated labor days and materials quantities required.

iv. Incorporate specific activity and time requirements.

v. Include 10 weather/delay days, commonly known as "rain days." The late finish date will be the fully elapsed Contract Time.

B. Float Time. Show activities on their early dates with corresponding Total Float Time noted beside them.

i. Project Schedule will not include more than 40 calendar days of Float Time absent City approval.

C. Milestones. Show Milestones with beginning and ending dates.

i. Milestones will include schematic plans, 60% design, 90% design, 100% design; bid opening;

Notice to Proceed; start construction; end construction; and Final Completion.

D. Relationships. Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate Milestone.

E. Procurement. Show the procurement of major equipment and materials.

F. Submittals. Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.

3. Submittal. Project Schedule will be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

EXHIBIT G

Preconstruction, Progress, & Special Meeting Requirements and Agenda

1. Preconstruction Meeting. Developer will conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.

A. Attendance. Developer will ensure that its construction contractor and major subcontractors, the Project Superintendent, and City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Developer or City attend the preconstruction meeting.

B. Minutes. Developer will take corresponding meeting minutes and distribute copies to all attendees.

C. Agenda. The issues below should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

1.1 Permits and Utility Issues, including telephone, cable, gas, and electric. Developer will determine if franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.

1.2 Establish parking areas for construction employees and possibly patrons/others.

1.3 Developer's payment procedure and forms.

1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.

1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).

1.6 Distribution and discussion of the construction schedule.

1.7 Procedure for maintaining the Project record documents.

1.8 Distribution of the Second Opinion Option Form.

1.9 Designation of persons authorized to represent and sign documents for City and Developer and the respective communication procedures between parties.

1.10 Safety and first aid procedures including designation of Developer's safety officer.

1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
1.12 Testing laboratory or agency and testing procedures.
1.13 Establish schedule for progress meetings.
1.14 Procedure for changes in work requested by City, notice to Developer, timing,
etc.

1.15 Procedure for changes in work requested by City.
1.16 Public safety.
1.17 Housekeeping procedures and Project site maintenance.
1.18 Protection and restoration of existing improvements.
1.19 Sanitation, temporary lighting, power, water, etc.
1.20 Procedure for encountering Hazardous Materials.
1.21 Any items requested by attendees of preconstruction meeting/open discussion.

2. Progress Meetings. Developer will conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting.

A. Attendance. The following necessary parties will attend: Developer's Construction Superintendent, Developer's Project Manager, Developer's Design Consultant and City representatives designated by City Project Manager.

B. As-Builts. Developer will bring updated As-Builts and verify that the latest changes have been made.

C. Agenda. The issues below should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

2.1 Review progress of construction since the previous meeting.

2.2 Discuss field observations, problems, conflicts, opportunities, etc.

2.3 Discuss pre-planning opportunities.

2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.

2.5 Discuss Developer's plan for progress during the next construction period and the corresponding inspections necessary.

- 2.6 Discuss submittal status.
- 2.7 Discuss request for information (RFI) status.
- 2.8 Progress of schedule.
- 2.9 Disputed items.
- 2.10 Non-conformance/non-compliance items.
- 2.11 New business of importance from any member of the meeting.
- 2.12 Deferred approvals and their coordination.
- 2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

3.1 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, Developer will call a roof mini-preconstruction meeting. The superintendent, Developer's appropriate contractors, Developer, any City representative deemed appropriate by Developer, the roof suppliers manufacturer's representative, and any appropriate consultants will attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.

3.2 Landscaping. Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., Developer will call a landscaping mini-preconstruction meeting. The superintendent, Developer's appropriate contractors, Developer, any City representative deemed appropriate by Developer, and any appropriate consultants will attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.

3.3 Mini-Preconstruction Meeting. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, Developer will call a mini-preconstruction meeting. The superintendent, Developer's appropriate contractors, Developer, any City representative deemed appropriate by Developer, and any appropriate consultants will attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.

3.4 Other. Upon appropriate notice to other parties, Developer may call special meetings at times agreed to by all parties involved.

4. Rescheduling. Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Developer has given no less than seven calendar days prior written notice of the rescheduled meeting.

EXHIBIT H

Project Budget

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EXHIBIT I

Construction Obligations

1. Site Safety, Security, and Compliance. Developer will be responsible for site safety, security, and compliance with all related laws and regulations.

A. Persons. Developer will be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Developer to access the Project site.

B. Other. Developer is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been Accepted by City pursuant to Article I.

C. Environment. Other than remediation of Hazardous Materials, Developer will be responsible for the environmental consequences of the Project construction and will comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, Developer will prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by Developer during Project construction. Where applicable, the SWPPP will comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

2. Access to Project Site.

A. Site Access. City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Developer and City must comply with general contractor's requirements for such entry.

B. Site Tours. Site tours may be necessary throughout completion of the Project. Developer will allow City to conduct site tours from time to time as City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time will be set. Developer is not obligated to conduct tours or allow access for tours when City failed to give prior notice.

3. Surveying and Testing. Developer will coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:

A. Existing Conditions. Developer will obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant will prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.

B. Utilities. Developer will provide all required information for the construction or relocation of Public or private utility facilities that must be constructed or relocated as a result of this Project. Developer will file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.

C. Geotechnical Information. Developer will obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) will prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. Public Right of Way. All work, including, materials testing, special testing, and surveying to be conducted in the Public right of way will be coordinated with City.

A. Materials Testing. Developer will coordinate with City to have all material tests within the public right of way and any asphalt paving completed by City's Material Testing Laboratory.

B. Surveying. Developer coordinate with City's Survey Section all surveying required within the public right of way.

C. Follow all Laws, Rules, and Regulations. Developer agrees to follow all City standards and regulations while working in the public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.

5. Traffic Control. Developer will address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.

6. Inspections. Developer will coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Construction Documents.

A. Reports. Developer will provide City all special inspection reports within seven (7) calendar days of inspection. Developer will report all failures of special inspections to City.

B. Remedies. Remedies for compliance will be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.

C. Concealing Work. Prior to concealing work, Developer will obtain approval of the Work as required by all State Building Codes, as stipulated in this Agreement and as required in the Permits. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer will fulfill all requirements of each of these three agencies.

7. Maintenance. Developer will maintain and be responsible for the Project site until Final Completion of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Final Completion of the Project, City will be responsible for all maintenance of Project site.

EXHIBIT J

Certification for a Drug-Free Workplace

PROJECT TITLE: _____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

GEDI California, Inc.

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains or will contain language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

EXHIBIT K

Consultant Provisions

1. Third Party Beneficiary. The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Developer, City will become the owner of the Project design and work products, and City will be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.

2. Competitive Bidding. Consultant will ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant will design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and will not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by City of San Diego. Consultant will submit this written justification to City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation will include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

3. Professional Services Indemnification. Other than in the performance of design professional services which will be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant will defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, agents, departments, officials, and employees ("Indemnified Parties") from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless will not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation will apply for the entire time that any third party can make a claim against, or sue City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

4. Indemnification for Design Professional Services. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the

performance of design professional services, Design Professional will indemnify and hold harmless City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

5. Enforcement Costs. Consultant agrees to pay any and all reasonable costs City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.

6. Professional Liability Insurance. For all of Consultant's employees who are subject to this Agreement, Consultant will keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant will ensure both that (1) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases City of San Diego's exposure to loss.

7. Commercial General Liability [CGL] Insurance. Consultant will keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability will include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

8. Insurance Policy Requirements. Except for professional liability insurance and Workers Compensation, City of San Diego and its respective elected officials, officers, employees, agents, and representatives will be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which will be submitted to City of San Diego. Further, all insurance required by express provision of this agreement will be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to City of San Diego by certified mail, as reflected on an endorsement that will be submitted to City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant will provide City of San Diego with all Certificates of Insurance accompanied with all endorsements.

9. Workers Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant will keep in full force and effect, a Workers Compensation policy. That policy will provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant will provide an endorsement

that the insurer waives the right of subrogation against City of San Diego and its respective elected officials, officers, employees, agents and representatives.

10. Compliance Provision. Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 (“ADA”) and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code (“Title 24”). Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.

11. Maintenance of Records. Consultant will maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

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EXHIBIT L

Design and Construction Standards

1. Laws. Developer will comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:

A. Permits. Development Services Department permits, Hazardous Material permits.

B. Building Codes. 2009 International Building Code.

C. The Americans with Disabilities Act (“ADA”) and Title 24 of the California Building Code (“Title 24”). It is Developer’s sole responsibility to comply with all ADA and Title 24 regulations. See Developer Certification attached as Exhibit M.

D. Environmental. Developer will complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.

E. Air, Water, and Discharge. Developer will comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).

F. ESBSSA. Developer will comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.

G. City Directives. Developer will comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

2. Standard Specifications. Developer will comply with the most current editions of the following reference specifications when designing and constructing the Project, including:

A. Greenbook. Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.

B. DOT. California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

3. City Standards. Developer’s professional services will be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:

A. City of San Diego’s Drainage Design Manual.

B. City of San Diego's Landscape Technical Manual produced by the Planning Department.

C. City of San Diego's Street Design Manual.

D. City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.

E. City of San Diego's Technical Guidelines for Geotechnical Reports.

F. City of San Diego Standard Drawings including all Regional Standard Drawings.

G. City of San Diego Data Standards for Improvement Plans.

H. City of San Diego Sustainable Buildings. The project design and construction will comply with Council Policy 900-14 "Sustainable Building Policy", except that Developer will submit and obtain LEED platinum rating certification from the United States Green Building Council.

{INSERT IF APPLICABLE:

I. The City of San Diego Water Department Guidelines and Standards

{INSERT IF APPLICABLE:

4. Energy Conservation Standards: {Insert standards}

5. Materials Standards: {Insert standards}

6. Architectural Compatibility. Developer will design the Project in a fashion which is architecturally compatible with the Project's surrounding area, subject to City's discretion.

7. Equivalent Project. The Project will be equivalent to {Insert similar project} in quality and durability of materials and workmanship.

EXHIBIT M

Certification for Title 24/ADA Compliance

Civic Center Project

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for Civic Center Project by _____ will meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and will be in compliance with the Americans with Disabilities Act of 1990.

Dated: _____

By: _____

Print Name and Title

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EXHIBIT N

Product Submittal and Substitution

1. Product Submittal. Prior to the bidding process, Developer will submit for City approval a list of products intended for use in the Project. Upon Developer's completion of plans and specifications, City will review and approve products specified therein. Developer will provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Developer's receipt of submittal. Approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.

2. Substitutions. Developer will submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitution only when a product becomes unavailable due to no fault of Developer's contractor. City will review substitution requests within thirty (30) Calendar Days of submission of such requests. Developer agrees that City requires Consultant's input and as such Developer will coordinate a seven (7) calendar review by its Consultant.

A. Substantiate Request. Developer will include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Construction Documents.

B. Developer Representations. By submitting a substitution request, Developer is representing to City all of the following: (a) Developer has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Developer is providing the same warranty for the proposed product as was available for the specified product; (c) Developer will coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Developer will waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.

C. Separate Written Request. City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.

3. Samples

A. Postage. Samples will be sent to Developer's office, postage prepaid.

B. Review. Developer will furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.

i. Where applicable, all samples will be 8" x 10" in size and will be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full-size item will be submitted.

ii. Developer will assign a submittal number. Developer will include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.

iii. All materials, finishes, and workmanship in the complete building will be equal in every respect to that of the reviewed sample.

iv. City will return one submitted sample upon completion of City review.

v. Developer's or Developer's Agents' field samples will be prepared at the site. Affected finish work will not commence until Developer or its agents have been given a written review of the field samples.

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EXHIBIT O

Project Deliverables

1. Master Construction Documents.

A. Working Drawings. Developer will prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.

i. Quality. Developer will make Working Drawings by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail will be suitable for half size reduction.

ii. Font and Contents. Specifications will be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Greenbook standards as needed.

B. Surveys. Developer will provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.

C. Schematic Design Documents. Developer will consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.

i. Schematic Design Documents will include, but not be limited to the following:

a. Sketches with sufficient detail to illustrate the scale and location of Project components.

b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.

c. Analysis of parameters affecting design and construction for each alternate considered.

d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.

e. Probable construction costs for the base Project and all additive alternates considered.

f. Summary of Project requirements and a recommendation.

g. Artistic renderings of the Project.

ii. Form. Developer's Schematics will conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.

D. Design Development Documents. Developer will prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents will contain, at a minimum, the following:

i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.

ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.

iii. Plans, elevations, cross sections, and notes as required to fix and describe the Project components.

iv. Proposed construction schedules.

v. Technical 'Special Provisions' section of the Specifications.

vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.

vii. Probable Project construction costs, for each component of the Project being considered in this phase.

viii. Color board with material samples.

E. Construction Documents. Developer will provide, based on the approved Design Development documents, Working Drawings and Contract Specifications (throughout the Agreement and attached exhibits referred to as Construction Documents) setting forth in detail the requirements for construction of the Project, including the necessary bidding information.

F. Utility Location Requests. Along with initial submission of Construction Documents, Developer will furnish copies of the Service and Meter Location Request and all utility companies verifications.

G. Cost Estimate. Developer will provide a construction cost estimate based on the Construction Documents.

H. H, G, & E Reports. Developer will provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.

I. As-Builts. Developer will provide As-Builts.

i. As-Builts will show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Developer will clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Developer will clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Developer will thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.

ii. Developer will include all of the following on the As-Builts:

- a. Depth of foundation in relation to finished first floor.
- b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
- c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
- d. Field changes of dimensions and details.
- e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
- f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
- g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
- h. Show locations of all utilities on site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
- i. The title "PROJECT RECORD" in 3/8" letters.

iii. Developer will maintain a set of As-Builts at the Project site for reference. Developer will ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes will be made with erasable colored pencil (not ink or indelible pencil), will clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, will indicate the date of entry, will circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

J. Operation and Maintenance Manuals. Developer will submit all Operation and Maintenance manuals prepared in the following manner:

i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three ring size binders with durable plastic covers prior to City's Final Inspection.

ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:

a. Part 1: Directory, listing names, addresses, and telephone numbers of Developer's Agents, suppliers, manufacturers, and installers.

b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system.

For each specification division or system, provide names, addresses and telephone numbers of Developer's Agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

EXHIBIT P

Insurance Requirements

Developer will, at its sole cost and expense, procure insurance against claims for loss including injuries to persons or damage to property, which may arise out of or in connection with the performance of the WORK hereunder by Developer, Developer's Agents, representatives, officers, employees or subcontractors. Developer will maintain this insurance for the duration of this Contract (Agreement) and at all times thereafter when Developer is correcting, removing, or replacing WORK in accordance with this Contract. Developer's liabilities, including but not limited to Developer's indemnity obligations, under this Contract will not be deemed limited in any way to the insurance coverage required herein.

1. Contractor Controlled Insurance Program. The Developer through its Contractor Controlled Insurance Program (CCIP) will provide at its expense certain insurance coverage for Developer, its SUBCONTRACTORS of every tier who are engaged in the performance of WORK at the PROJECT SITE and who are Eligible Parties. ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will not be permitted by Developer to WORK at the PROJECT SITE until they are enrolled in the CCIP. The coverage provided through the CCIP will include Commercial General Liability Insurance, Workers' Compensation and Employers Liability Insurance and Liability Insurance which is Excess over the primary Commercial General Liability and Employers Liability. The insurance coverage provided by the CCIP will apply to the operations of each insured at the PROJECT SITE as defined in the CCIP insurance policies. The Developer will require that the insurance, indemnity and safety program provision of this Agreement be included in the Contracts with its SUBCONTRACTORS of every tier. The Developer will be reimbursed for the cost of the CCIP at the fixed-price percentage of ___%. The CCIP cost includes the insurance coverage for Workers Compensation, General Liability and Excess Liability and covers all Enrolled Parties. The cost of the CCIP is included in the Guaranteed Maximum Price set forth in this Agreement, therefore, whenever the Guaranteed Maximum Price is to be increased, the increase will include, and Contractor will be reimbursed for, additional insurance costs to be incurred through the CCIP by the fixed-price percentage shown above and incorporated into the change order utilized to increase the Guaranteed Maximum Price.

1.1 General. The CCIP will be subject to review and approval by City prior to its use or a material change in the CCIP. The following defined terms apply to this Exhibit and will be incorporated into a CCIP INSURANCE MANUAL that will be provided by Developer to each CCIP participant.

CCIP: A "CCIP" or Contractor Controlled Insurance Program is a coordinated insurance program providing certain coverages, as described in this Section, for Developer and eligible Enrolled Parties performing WORK at the PROJECT SITE.

CCIP INSURANCE MANUAL: A written description of the CCIP program containing information and instructions to ELIGIBLE PARTIES/ELIGIBLE SUBCONTRACTORS concerning the implementation and operation of the CCIP which will be a contract document incorporated by Developer into SUBCONTRACTS.

CCIP INSURER: The insurance company(ies) named on a policy or CERTIFICATE OF INSURANCE providing coverage for the CCIP.

CERTIFICATE OF INSURANCE: A document providing evidence of existing coverage for a particular insurance policy or policies.

ELIGIBLE PARTIES/ELIGIBLE SUBCONTRACTORS: Parties performing labor or services at the PROJECT SITE who are eligible to enroll in the CCIP unless an Excluded Party.

ENROLLED PARTIES/ENROLLED SUBCONTRACTORS: Those eligible SUBCONTRACTORS who have submitted all necessary enrollment information and have been accepted into the CCIP as evidenced by a Welcome Letter and CERTIFICATE OF INSURANCE.

EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS: At the discretion of Developer, or subject to State regulations, the following parties will be excluded:

- (1) Hazardous Materials remediation, removal and/or transport companies and their consultants;
- (2) Any SUBCONTRACTOR performing Structural Demolition;
- (3) Architects, engineers, and soil testing engineers, and their consultants;
- (4) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the PROJECT SITE;
- (5) SUBCONTRACTORS, and any of their respective Sub-subcontractors, who do not perform any actual labor at the PROJECT SITE;
- (6) Developer's first tier SUBCONTRACTORS with aggregate subcontract values of less than \$25,000.

The Developer may include or exclude any parties or entities not specifically identified in the CCIP INSURANCE MANUAL at its sole discretion, except as provided in Section 1.4, even if otherwise eligible.

PROJECT SITE: Generally defined as the "project location" and more fully identified in the SUBCONTRACT, and adjacent or nearby project site areas where incidental operations are performed excluding permanent locations of any insured party.

SUBCONTRACT: A written agreement between Developer, the Contractor/Sponsor and the SUBCONTRACTOR, including Sub-Subcontractors of any tier.

SUBCONTRACTOR: Includes only those persons, firms, joint venture entities, corporations, or other parties that enter into a Contract with Developer or its SUBCONTRACTORS of any tier to perform WORK at the PROJECT SITE.

WORK: Operations, as fully described in this agreement and in SUBCONTRACTS of any tier, performed at the PROJECT SITE.

1.2 The CCIP is not intended to provide a complete insurance program to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will provide additional coverage as they deem appropriate or as required by this Section at their own expense and through their own efforts.

1.3 The coverage provided by the CCIP will be subject to the terms, conditions and other provisions, including exclusions and limitations, contained in the policies covering the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS.

1.4 CCIP Exclusions. CCIP coverage may exclude the activities or products of Developer, SUBCONTRACTORS, suppliers, material men, vendors, haulers, truckers and "owner/operators" whose employees perform no WORK on the PROJECT SITE and/or are engaged solely in the delivery, loading, unloading, stocking, testing or hauling of equipment, supplies or materials. The CCIP will provide coverage for designated PROJECT SITE employees of ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. ENROLLED PARTIES/ENROLLED SUBCONTRACTORS' employees not normally engaged at the PROJECT SITE and others who occasionally visit the PROJECT SITE and whose compensation is not normally part of the field payroll may be excluded from the CCIP. Coverage for such persons is required as specified in "COVERAGE TO BE PROVIDED BY THE Developer" (Section 3) before access to the PROJECT SITE is allowed.

1.5 Elimination of Duplicate Insurance. The Developer and ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will eliminate from their contract price the cost of any insurance or self-insurance which duplicates insurance provided by the CCIP. The Developer and ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will provide to City all such information or records as may be required or helpful in determining that such cost has not been included in their contract price.

1.6 Exclusion From or Termination of CCIP – The Developer may exclude any of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS from the CCIP with thirty (30) calendar days advance written notice to City and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. Should Developer exclude ENROLLED PARTIES/ENROLLED SUBCONTRACTORS or terminate the CCIP in whole or in part, the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will obtain replacement insurance for such coverages and amounts and subject to such terms as Developer may direct, but such coverage and amounts may not be less than that which is required of EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS. In such event, there will be allowed to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS an equitable adjustment in the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS compensation. The ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will provide to Developer, and if requested, to City, such information or records as may be required or is helpful in determining the increased cost to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS.

1.6.1 The Developer will not voluntarily terminate the CCIP, in whole or in part. If the CCIP is terminated in whole or in part through the initiative of one or more of the CCIP INSURERS, the CCIP INSURERS will provide not less than sixty (60) calendar days advance written notice to City and not less than thirty (30) days advance written notice to the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS.

1.6.2 In the event of termination in whole or in part of the CCIP, Developer will provide equivalent replacement insurance coverage for itself and City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be named as an additional insureds. The Developer will provide to City all such information or records as may be required or helpful in determining the cost differential to Developer between the CCIP and any replacement coverage. Such replacement coverage will be approved by City prior to becoming effective and will not operate to increase the risk to City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives.

1.6.3 Termination of part or all of the CCIP will not relieve Developer or its SUBCONTRACTORS from responsibility for implementation and enforcement of the CCIP safety program.

2. Coverage Provided by the CCIP

2.1 Term of Coverage. Each policy will become effective no later than the effective date of the "Notice to Proceed" issued by City to Developer for the first phase of the contract. CCIP policies will remain in effect until the "Notice of Completion" is issued by City to Developer.

2.2 Commercial General Liability and Contractors Pollution Liability. The CCIP will provide for Developer and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS, primary Commercial General Liability (CGL) insurance on an occurrence form that will be at least equivalent to ISO form CG 00 01 07 98, covering Bodily Injury, Personal Injury and Property Damage Liability in the amount of not less than:

General Annual Aggregate Limit (Other than Products/Completed Operations) Per Project	\$4,000,000
Products/Completed Operations Aggregate Limit per Project	\$4,000,000
Personal Injury Liability	\$2,000,000
Each Occurrence Limit	\$2,000,000

2.2.1 All defense costs will be outside the limits of the policies. Limits will be reinstated annually except for the Products/Completed Operations Liability Aggregate Limit

which will extend the last policy year Completed Operations Aggregate for a period of ten (10) years after final acceptance of the WORK by City.

2.2.2 There will be no endorsement or modification of the CGL limiting the scope of coverage for contractual liability. The CGL policy will provide a Separation of Insureds or a Cross Liability Clause.

2.2.3 The City of San Diego, the Redevelopment Agency of City of San Diego, the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be Named Additional Insured for all claims, including completed operations liability, arising out of Developer's or Developer's SUBCONTRACTORS' performance or non-performance of this agreement.

2.2.4 The CCIP will also provide Contractors Pollution Liability Insurance covering sudden and accidental pollution incidents on an occurrence basis with limits of \$2,000,000 per occurrence. The City of San Diego, the Redevelopment Agency of City of San Diego, the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives will be Named Additional Insured for all claims arising out of Developer's or Developer's SUBCONTRACTORS' performance or non-performance of this agreement and will be primary to any valid and collectable insurance carried by any of the above parties. Such policy will contain a separation of insureds provision.

2.3 Excess Liability. The CCIP will provide Umbrella or Excess Liability policies affording coverage on a follow-form basis with limits in excess of the Commercial General Liability and Employers Liability underlying policies. Limits, when combined with the primary policy limits, will not be less than:

Each Occurrence	\$200,000,000
General Aggregate Limit	\$200,000,000
Products-Completed Operations Aggregate	\$200,000,000

2.3.1 Limits will be reinstated annually except for the Products/Completed Operations Liability Aggregate Limit which will extend the last policy year Completed Operations Aggregate for a period of ten (10) years after final acceptance of the WORK by City.

2.3.2 The City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be Named Additional Insured for all claims, including completed operations liability, arising out of Developer's or Developer's SUBCONTRACTORS' performance or non-performance of this agreement.

2.4 Workers Compensation and Employers Liability Insurance. The Developer and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will be covered under the applicable laws relating to Workers Compensation and Employers Liability insurance, for all of their employees working on the PROJECT SITE. Each CCIP participant will be issued a separate Workers Compensation and Employers Liability policy. Policy limits will not be less than:

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

2.4.1 All CCIP Workers Compensation and Employers Liability policies will contain an endorsement stating that the insurer waives the right of subrogation against City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives.

2.5 Builder's Risk Property Insurance. A policy of "all risk" (Special Form) Builders Risk insurance will be provided by Developer at its expense for the benefit of Developer, its SUBCONTRACTORS and suppliers, whether or not enrolled in the CCIP, and City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation, and such other parties as City may direct, all of whom will be added to the policy as insureds. Developer will be reimbursed for the cost of Builders Risk premiums with funds included within the GMP.

2.5.1 Any deductible that will apply to City of San Diego, the Redevelopment Agency of City of San Diego, or the Centre City Development Corporation will be paid by Developer. Except as described in Section 2.5.2 below, the maximum amount of the deductible that the other SUBCONTRACTORS and suppliers will be required to assume for each and every claim will be determined by the amount, in dollars, of the individual insured's contract as specified below:

<u>Contract Amount</u>	<u>Deductible Amount</u>
\$0 - \$149,999	\$1,000
\$150,000 - \$1,999,999	\$5,000
\$2,000,000 plus	\$10,000
Developer minimum deductible	\$25,000

Any policy deductible amount not paid for by the other insureds will be paid by Developer. If the loss involves more than one insured, and the accumulated deductible of all insureds exceeds the policy deductible, the policy deductible will be pro-rated among the claimants based upon the percentage their loss bears to the entire eligible loss.

2.5.2 Coverage for the perils of terrorism, water damage and land movement will be covered in the Builders Risk Insurance policy(s) with the following sub-limits:

Off Premises Property	\$250,000
Property in Transit	\$250,000
Earthquake and Land Movement	\$25,000,000

The maximum deductible for the perils of earthquake and land movement will be 5% (five percent) of the values at risk at the time of loss subject to a minimum deductible of \$250,000. It will be the responsibility of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS to bear the expense of these deductibles. If the loss involves more than one insured, then the deductible will be pro-rated among the claimants, based upon the percentage their loss bears to the entire eligible loss except for City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Commission which will bear no responsibility for deductible costs.

2.5.3 The City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation will not be liable or responsible for any loss or damage whatsoever to the items excluded in the policies, and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will indemnify and hold harmless City, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation from any claims or causes of action brought by any person or parties as a result of loss or damage to such excluded property.

2.5.4 If City desires to occupy or use a portion or portions of the Work prior to Substantial Completion in accordance with this Agreement, City will notify Contractor and Contractor will immediately notify its Builder's Risk insurer and obtain an endorsement that the policy or policies will not be cancelled or lapse on account of any such partial use or occupancy. Contractor will obtain the endorsement prior to City's occupation and use.

2.6 Cooperation. The Developer and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will cooperate fully with and provide any information or records requested by City, regarding all aspects of the CCIP, including but not limited to claims, audit, payroll, enrollments, insurance, premiums, support services, safety and loss control activities.

3. Coverage to be provided by the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS. Throughout the life of this Agreement ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will pay for and maintain in full force and effect, insurance described in this section.

3.1 Commercial General Liability Insurance for Off-Site Activities. All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will provide Commercial General Liability Insurance evidencing coverage for their operations which are not covered by the CCIP. 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 will be not less than:

	Limits
General Annual Aggregate	\$2,000,000
(Other than Products/Completed Operation)	\$2,000,000
Products/Completed Operations Aggregate Limit	
Personal Injury Limit	\$1,000,000

Each Occurrence Limit

\$1,000,000

3.1.1 The City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be named as Additional Insureds for all claims, including completed operations liability, arising out of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS performance or non-performance of this agreement.

3.2 Automobile Liability Insurance. All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will keep in full force and effect Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1,000,000. The INSURANCE CERTIFICATE will reflect coverage for any automobile (Any Auto).

3.2.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement will not provide any duty of indemnity coverage for the active negligence of City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives will be limited to obligations permitted by California Insurance Code Section 11580.04.

3.3 Workers Compensation and Employers Liability Insurance for Off-Site Employees. All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will provide Workers Compensation Insurance and Employers Liability Insurance covering the employees of the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS who are not normally engaged in WORK at the PROJECT SITE and whose compensation is not part of the field payroll or who are otherwise excluded under the CCIP. The policy will protect the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS against all claims under applicable State Workers Compensation laws. Policy limits will be not less than:

Type of Insurance	Policy Limits
Workers Compensation	Statutory
Employers Liability	
Primary Limits	
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

3.3.1 If Developer's Scope of Services includes services over or alongside any navigable waters, Developer or SUBCONTRACTORS involved in this WORK will provide Workers Compensation coverage which will include coverage under the U.S. Longshoreman 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.

3.3.2 All ENROLLED PARTIES/ENROLLED SUBCONTRACTORS Workers Compensation & Employers Liability, U.S. Longshoreman and Harbor Workers Compensation Act, Jones Act, Maritime Employers Liability and any other policies required in this Section 3.3 will contain an endorsement stating that the insurer waives the right of subrogation against City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives

3.4 Hazardous Transporters Pollution Liability.

3.4.1 If Developer's WORK includes the transportation of Hazardous Materials or toxic chemicals, materials, substances, or any other pollutants, Developer or SUBCONTRACTORS of any tier will provide 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 City. The City will reimburse Developer for this construction related expense.

3.4.2 Claims Made policies will include a five (5) year extended claims discovery period applicable to this Agreement.

3.4.3 The policy for this insurance will include Contractual Liability coverage. Such policy will be endorsed to specifically provide for WORK and services performed under the Agreement, and will extend to all Contractors engaged in Hazardous Materials WORK.

3.4.4 The Developer will furnish to City a policy or CERTIFICATE of Hazardous Transporters Pollution Liability insurance in which City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their elected officials, officers, employees, agents and representatives, are named as Additional Insureds for all claims, including completed operations liability. Except as provided for under California law, the policy and CERTIFICATES, and their renewals, will also provide that thirty (30)

calendar days prior written notice (10 days for cancellation due to non-payment of premium) will be given to City before the insurance policy is canceled, non-renewed or, except for a reduction in the aggregate limit by claims, be materially reduced. The policy or CERTIFICATE must plainly designate the name of the Project. This CERTIFICATE must be furnished to City, evidencing compliance with the outlined requirements, and prior to Developer beginning its WORK on the Project.

4. Additional Coverage to be Provided by Developer for Activities Not Performed at the PROJECT SITE. Throughout the life of this Agreement, Developer will pay for and maintain in full force and effect the insurance described in this section.

4.1 Workers Compensation and Employers Liability Insurance. The Developer and the ENROLLED PARTIES/ENROLLED SUBCONTRACTORS will be covered under the applicable laws relating to Workers Compensation and Employers Liability insurance, for all of their employees working on the PROJECT. Each CCIP participant will be issued a separate Workers Compensation and Employers Liability policy. Policy limits will not be 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

4.1.1 Workers Compensation and Employers Liability policies will contain an endorsement stating that the insurer waives the right of subrogation against City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives.

4.2 Commercial General Liability and Contractors Pollution Liability. The Developer will maintain in full force and effect primary Commercial General Liability (CGL) insurance on an occurrence form that will be at least equivalent to ISO form CG 00 01 07 98, covering Bodily Injury, Personal Injury and Property Damage Liability in the amount of not less than:

	<u>Limits</u>
General Annual Aggregate Limit	
(Other than Products/Completed Operation) Per Project	\$4,000,000
Products/Completed Operations Aggregate Limit Per Project	\$4,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence Limit	\$2,000,000

4.2.1 All defense costs will be outside the limits of the policies. Limits will be reinstated annually except for the Products/Completed Operations Liability Aggregate Limit

which will extend the last policy year Completed Operations Aggregate for a period of five (5) years after final acceptance of the WORK by City.

4.2.2 There will be no endorsement or modification of the CGL insurance limiting the scope of coverage for contractual liability. The CGL policy will provide a Separation of Insureds or a Cross Liability Clause.

4.2.3 The City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be named as Additional Insureds for all claims including completed operations liability, by endorsing the policy with ISO form CG 20 10 10 01 or equivalent

4.3 Automobile Liability Insurance for Activities On and Off the PROJECT SITE. The Developer will keep in full force and effect Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage that is at least as broad. The CERTIFICATE OF INSURANCE will reflect coverage for any automobile (Any Auto) for bodily injury and property damage with a combined single limit of not less than \$1,000,000.

4.3.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement will not provide any duty of indemnity coverage for the active negligence of City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to City of San Diego, the Redevelopment Agency of City of San Diego, and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives will be limited to obligations permitted by California Insurance Code Section 11580.04.

4.4 Contractors Professional Liability for Work On and Off the PROJECT SITE. In addition to the coverages outlined above, Developer will, at its sole expense, be insured for Contractors Professional Liability with a limit dedicated to this project of not less than \$10,000,000

per claim. A project specific limit dedicated to this project would be an additional \$1M minimum (approximately). It is not included within the GMP.

4.5 Excess Liability. The Developer will provide Umbrella or Excess Liability policies affording coverage on a follow-form basis for claims not covered by the CCIP with limits in excess of the Commercial General Liability, Automobile Liability and Employers Liability underlying policies. Limits, when combined with the primary policy limits, will not be less than:

Each Occurrence	\$100,000,000
General Aggregate Limit	\$100,000,000
Products-Completed Operations Aggregate	\$100,000,000

4.5.1 Limits will be reinstated annually.

4.5.2 The City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be added as Additional Insureds for all claims including completed operations liability.

5. Coverage to be provided by the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS. Throughout the life of this Agreement, the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS will pay for and maintain in full force and effect the insurance described in this Section.

5.1 Commercial General Liability Insurance. EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS will maintain in full force and effect, Commercial General Liability (CGL) Insurance coverage for their operations written on an ISO occurrence form CG 00 01 07 98 or an equivalent form providing coverage that is at least as broad which will cover liability arising from bodily injury, personal injury and property damage. The City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives will be named as Additional Insureds by endorsing the policy with ISO form CG 20 10 10 01 or equivalent.

5.1.1 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the CGL policy or policies is primary to any insurance or self-insurance of City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, and their elected officials, officers, employees, agents and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives will be in excess of the SUBCONTRACTORS insurance and will not contribute to it. The limit of such coverage will be not less than:

General Annual Aggregate	
Other than Products/Completed Operation)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

Personal Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

5.2 Automobile Liability Insurance. EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS will 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. CERTIFICATES OF INSURANCE will reflect coverage for any automobile (Any Auto).

5.2.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement will not provide any duty of indemnity coverage for the active negligence of City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, , and their respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents, and representatives will be limited to obligations permitted by California Insurance Code Section 11580.04.

5.3 Workers Compensation and Employers Liability Insurance for EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS. All EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS will provide Workers Compensation Insurance and Employers Liability Insurance covering their employees. The policy will protect the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS against all claims under applicable State Workers Compensation laws.

5.3.1 Policy limits will be not less than:

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

5.3.2 If the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS Scope of Services includes services over or alongside any navigable waters, the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS or Contractors involved in this WORK will provide Workers Compensation coverage which will include coverage under the U.S. Longshoreman 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.

5.3.3 All EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS Workers Compensation and Employers Liability policies will contain an endorsement stating that the insurer waives the right of subrogation against City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives

5.4 Contractors Hazardous Transporters Pollution Liability Insurance.

5.4.1 Unless the CONTRACTOR provides a MCS 90 endorsement with its Business Automobile Liability policy, the following coverage and all related endorsements must be provided by the CONTRACTOR. If the CONTRACTOR subcontracts the transport of Hazardous Materials, the SUBCONTRACTOR performing this scope of work will be required to provide the MCS 90 endorsement to City or comply with the following requirements. CONTRACTOR will provide at its expense or cause its subcontractor to provide Contractors Hazardous Transporter Pollution Liability Insurance including contractual liability coverage to cover liability arising out of transportation of Hazardous Materials or toxic materials, substances, or any other pollutants by the CONTRACTOR or any SUBCONTRACTOR in an amount not less than \$2,000,000 per occurrence and in the aggregate for bodily injury and property damage. All cost of defense will be outside the limits of the policy. The deductible will not exceed \$25,000 per occurrence. Any such insurance provided by a SUBCONTRACTOR must be approved separately in writing by City. Approval of the substitution of a SUBCONTRACTOR's insurance will require a certification by the CONTRACTOR that all activities for which Contractors Hazardous Transporters Pollution Liability Insurance will provide coverage will be performed exclusively by the SUBCONTRACTOR providing the insurance. There will be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies will be procured before the Work commences and will be maintained for the duration of this Contract.

5.4.2 Claims Made polices will be procured before the Work commences will be maintained for the duration of this Contract and will include a 12 month extended Claims Discovery period applicable to this contract or the existing policy or policies must continue to be maintained for 12 moths after completion of the Work under this Contract without advancing the retroactive date.

5.4.3 Contractual liability will include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization.

5.4.4 The Developer and (or) the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS will furnish to City a policy or CERTIFICATE of Hazardous Transporters Pollution Liability insurance in which City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives, are named as Additional Insureds for all claims including completed operations liability. The policy or CERTIFICATE must plainly designate the name of the Project. This certificate must be furnished to City, evidencing compliance with the outlined requirements, and prior to the EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS beginning their WORK on the Project.

5.4.5 Except as provided under California law, the policy or policies must provide that City is entitled to thirty days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

5.5 Contractors Pollution Liability Insurance. Contractor will procure and maintain at its expense or cause its SUBCONTRACTOR to procure and maintain Contractors Pollution Liability Insurance including contractual liability coverage to cover liability arising out of cleanup, removal, storage, or handling of Hazardous Materials or toxic chemicals, materials, substances or any other pollutants by the Contractor or any SUBCONTRACTORS in an amount not less than a \$2,000,000 limit for bodily injury and property damage. All costs of defense will be outside the limits of the policy. Any such insurance provided by the SUBCONTRACTOR must be approved separately in writing by City. Approval of a substitution of a contractor's insurance will require a certification by the Contractor that all activities for which Contractors Pollution Liability Insurance will provide coverage will be performed exclusively by the subcontractor providing the insurance. The deductible will not exceed \$25,000 per claim.

5.5.1 Contractual liability will include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. There will be no endorsement or modification of the coverage limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Occurrence based policies will be procured before the Work commences and will be maintained for the duration of the Contracts.

5.5.2 Claims Made policies will be procured before the Work commences, will be maintained for the duration of their Contract, and will include a 12 month extended Claims Discovery Period applicable to this Contract or the existing policy or policies must continue to be maintained for 12 months after the completion of the Work under the Contract without advancing the retroactive date.

5.5.3 Except as provided for under California law, the policy or policies must provide that City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

6. Acceptability of Insurers.

6.1 CCIP. All CCIP insurance required by express provision of Section 1 and all insurance to be carried by Developer required by express provision of Section 4 will be carried only by responsible insurance companies that are rated "A-" and "X" or better by the A. M. Best Key Rating Guide, that are authorized to do business in the State of California, and that have been approved by City. The City will accept insurance provided by non-admitted, "surplus lines" carriers as described in 6.3.

6.2 General. Except for the State Compensation Insurance Fund, all non-CCIP insurance required by this Agreement of EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS and ENROLLED PARTIES/ENROLLED SUBCONTRACTORS as described herein or in other Contract Documents will be carried only by responsible insurance companies with a rating of, or equivalent to, at least "A-, V" by A.M. Best Key Rating Guide, and that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

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

7. Material Breach. Maintenance of specified insurance coverage is a material element of this contract and Developer's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by City.

8. Specific Provisions Required. Except as noted below, each policy required by this Exhibit will expressly provide, and an endorsement will be submitted to City, that:

8.1 The required policies are primary and non-contributing to any insurance that may be carried by City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation and their respective elected officials, officers, employees, agents and representatives, as reflected in an endorsement, which will be submitted to City. Any insurance maintained by City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, and their elected officials, officers, employees, agents and representatives will be in excess of and will not contribute to the insurance provided by Developer and its SUBCONTRACTORS.

8.2 The Developer waives all rights and will require its SUBCONTRACTORS to waive their rights, against City of San Diego, the Redevelopment Agency of City of San Diego and the Centre City Development Corporation, and their respective elected officials, officers, employees, agents and representatives for the recovery of damages to the extent these damages are covered by any insurance or self-insurance provided by or to Developer or its SUBCONTRACTORS.

9. Developer Notice to City.

9.1 Except as provided for under California law, all policies of insurance required hereunder must provide that City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium is acceptable) of cancellation or non-renewal of the policy or policies. CERTIFICATES OF INSURANCE provided as evidence of coverage to City will not contain the qualifying words "will endeavor" and "but failure to mail such notice will impose no such obligation or liability of any kind upon the Company, its agents or representatives" in the cancellation provisions.

9.2 The Developer will be the First Named Insured under commercial property and casualty insurance policies Developer has placed insuring Developer, its SUBCONTRACTORS, City and others relative to its work under this agreement. Within the terms of these policies, Developer is a party entitled to receive notice from its insurance companies of cancellation or non-renewal or material adverse change to these policies. If, after the exercise of due diligence by Developer, its insurance carriers are not willing to comply with all of the provisions of section 9.1, Developer agrees that within five (5) calendar days after receipt by Developer of any written notice from any of its insurance companies, of the cancellation, non-renewal or material adverse change to any policy, Developer will forward copies of any such notice by U.S. Certified Mail (RRR) and by facsimile transmission to:

City of San Diego and
Attn: Darren Greenhalgh
Engineering & Capital Projects
Executive Complex, 14th Floor
1010 Second Avenue
San Diego, CA 92101
(619) 533-3107 (fax)

City of San Diego
Attn: Claudia Castillo del Muro
Civic Center Plaza, 10th Floor
MS 51 B
1200 Third Avenue
San Diego, CA 92101
(619) 236 -6106 (fax)

9.2.1 The Developer agrees that its notice obligations as set forth in this section will exist notwithstanding that the insurance company may send notices directly to City of San Diego, the Redevelopment Agency of City of San Diego, and/or the Centre City Development Corporation.

9.2.2 The Developer agrees that its notice obligations as set forth in this section will apply to any policies of insurance that replace the current policies and/or provide substantially the same coverage for City of San Diego, Redevelopment Agency of City of San Diego, Centre City Development Corporation with respect to WORK performed under this Agreement.

10. Adjustments to Insurance Coverage or Limits. The City may request a proposal from Developer for adjusting insurance coverage and/or limits.

11. Reservation of Rights. At any time prior to the issuance by City of the Notice to Proceed for phase 1 of construction, City reserves the right to replace the CCIP with an Owner Controlled Insurance Program (OCIP) of like kind and quality providing substantially the same coverage. The contract price will be reduced by ___% to reflect the savings to Developer provided

by the OICP insurance policies and services. The City also reserves the right to replace the builders risk policy required in section 2.5 above with a policy providing substantially the same coverage. The City reserves the right, from time to time, to review Developer's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to City. The City may request a proposal from Developer for adjusting insurance coverage and/or limits. The City will reimburse Developer for the cost of the additional premium for any coverage requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.

12. Insurance Compliance.

12.1 The Developer will not begin WORK or services under this Agreement until it has:

- a) obtained all policies required in this Section,
- b) provided CERTIFICATES OF INSURANCE for each such policy to City,
- c) obtained City approval of each insurance company or companies,
- d) confirmed that all policies contain the specific provision required in this

Agreement.

12.1.1 The Developer will not allow any SUBCONTRACTOR of any tier to begin WORK or services until all insurance required in this Section has been obtained by the SUBCONTRACTOR and verified by Developer.

12.2 The Developer will furnish to City documents including but not limited to CERTIFICATES OF INSURANCE with endorsements attached evidencing the insurance required herein, and will furnish renewal documentation prior to expiration of this insurance. Each required document will be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to request, and Developer will submit, certified complete copies of any policy upon reasonable request by City.

12.3 Maintenance of specified insurance coverage is a material element of this Agreement and Developer's failure to maintain or renew coverage or to provide evidence or renewal during the term of this Agreement may be treated as a material breach of contract by City.

12.4 Further, Developer will not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.

13. Deductibles. Any self-insurance and all deductible costs on any policy utilized or provided by Developer, ENROLLED PARTIES/ENROLLED SUBCONTRACTORS and EXCLUDED PARTIES/EXCLUDED SUBCONTRACTORS will be their responsibility.

EXHIBIT Q

City of San Diego Equal Opportunity Contracting Program Construction Contractor Requirements

THIS DOCUMENT SETS FORTH THE REQUIREMENTS FOR THE CITY OF SAN DIEGO'S EQUAL OPPORTUNITY CONTRACTING PROGRAM FOR DEVELOPERS.

THESE REQUIREMENTS SHALL BE INCLUDED AS CONTRACT PROVISIONS FOR ALL SUBCONTRACTS.

- I. City's Equal Opportunity Commitment
- II. Nondiscrimination in Contracting Ordinance
- III. Equal Employment Opportunity Outreach Program
- IV. Subcontracting
- V. List of Subcontractors and Suppliers
- VI. Listed Subcontractors and Suppliers Substitutions
- VII. Prompt Payment
- VIII. Prompt Payment of Funds Withheld To Subcontractors
- IX. Definitions
- X. Certifications
- XI. Contract Records and Reports
- XII. List of Attachments (EOCP forms)

I. City's Equal Opportunity Commitment. The City of San Diego promotes equal employment and subcontracting opportunities. The City is committed to ensuring that taxpayer dollars spent on public contracts are not paid to businesses that practice discrimination in employment or subcontracting. The City encourages all companies seeking to do business with the City to share this commitment.

II. Nondiscrimination in Contracting Ordinance. Developers doing business with the City, and their subcontractors, shall comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.

A. Proposal/Bid Documents to include Disclosure of Discrimination Complaints. Developer shall provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against Developer in a legal or administrative proceeding alleging that Developer discriminated against its employees, subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

B. Contract Language. The following language shall be included in contracts for City projects between the Developer and Subcontractors and Suppliers:

The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. The Developer shall provide equal opportunity for subcontractors to participate in subcontracting

opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, the Developer agrees to provide to the City, within 60 days, a truthful and complete list of the names of all Subcontractors and Suppliers that the Developer has used in the past 5 years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Developer for each subcontract or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code Sections 22.3501 through 22.3517. The Developer understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against the Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Developer further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of the Ordinance.

III. Equal Employment Opportunity Outreach Program. All Developers doing business with the City, and their subcontractors, shall comply with the City's *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.2701 through 22.2707.

- A. Submission of EEO Documents.. Developer shall submit a Work Force Report (form Attachment AA [1 thru 3]) or an Equal Employment Opportunity (EEO) Plan to the City's Equal Opportunity Contracting Program (EOCP) for approval.
- B. Work Force Report. If a Work Force Report is submitted, and EOCP determines there are under-representations when compared to County Labor Force Availability data, the apparent low Developer shall submit an Equal Employment Opportunity Plan.
- C. Equal Employment Opportunity Plan. If the Developer submits an Equal Employment Opportunity Plan, it shall include the following assurances:
1. The Developer will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Developer's employees are assigned to work.
 2. The Developer reviews its EEO Policy, at least annually, with all on-site supervisors involved in employment decisions.
 3. The Developer disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings.
 4. The Developer reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews.
 5. The Developer discusses its EEO Policy Statement with subs with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request.

6. The Developer documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors, contractor associations and other business associations.
7. The Developer disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request.
8. The Developer disseminates its EEO Policy to union and community organizations.
9. The Developer provides immediate written notification to the City when any union referral process has impeded the Developer's efforts to maintain its EEO Policy.
10. The Developer maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses.
11. The Developer maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken.
12. The Developer encourages all present employees, including people of color and women employees, to recruit others.
13. The Developer maintains all employment selection process information with records of all tests and other selection criteria.
14. The Developer develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Developer's employment needs.
15. The Developer conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities.
16. The Developer ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes.

IV. Subcontracting.

The City encourages all eligible business enterprises to participate in City contracts as Developers, subcontractors, joint venture partners with Developer, Subcontractors, or Suppliers. Developers are encouraged to take positive steps to diversify and expand their subcontractor solicitation base and to offer subcontracting opportunities to all eligible business firms including MBEs, WBEs, DBEs, DVBEs, ELBEs, SLBEs and OBEs. (For definitions, see Paragraph VII.)

- A. Subcontractor Participation Level. The funding source and estimated dollar value determine the requirements for inclusion of subcontractors on this project;

This project has an overall aspirational goal of 20-30% for construction which can be achieved by subcontracting with MBE/WBE/DBE/DVBE/ELBE/SLBEs. This goal may be further refined as the scope of work become available.

Any consultant activity will be subject to a 20% aspiration goal which can be achieved by awarding subconsultant contracts to MBE/WBE/DBE/DVBE/ELBE/SLBEs

1. inclusion of subcontractors will be addressed in the Contract Documents.

B. Joint Ventures. Each joint venture partner shall be responsible for a clearly defined scope of work. In addition, an agreement shall be submitted, signed by all parties, identifying the extent to which each joint venture partner shares in ownership, control, management, risk and profits of the joint venture.

V. Lists of Subcontractors and Suppliers.

Developers shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4113, inclusive.

Developers shall list all Subcontractors who will receive more than 0.5% of the total Bid amount or \$10,000, whichever is greater on the form provided in the Contract Documents i.e., a subcontractors list.

The subcontractor list shall include the Subcontractor's name, telephone number including area code, address, scope of work, the dollar amount of the proposed subcontract, Subcontractor's certification status, and name of the certifying agency.

The listed Subcontractor shall be licensed pursuant to the Contractor License Law.

Due to the unique nature of this contract, the Developer shall be required to list all known Subcontractors, including, at a minimum, the 3 largest Subcontractors for the Project.

VI. Listed Subcontractor and Supplier Substitutions.

Listed Subcontractors and Suppliers shall not be substituted without the Express authorization of the City or its duly authorized agent.

A. Subcontractor Substitution.

Requests shall be made in writing to the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101 with a copy to the Engineer.

The request shall include a thorough explanation of the reason(s) for the substitution, including dollar amounts and a letter from each substituted Subcontractor stating that they (the Subcontractors) release all interest in working on the project, written confirmation from the new Subcontractor stating that they agree to work on the project along with the dollar value of the work to be performed.

Written approval of the substitution request shall be received by the Developer, from the City or its authorized officer, prior to any unlisted Subcontractor (over 0.5% of the contract amount or \$10,000, whichever is greater) performing work on a project.

Substitution of Subcontractors without authorization shall subject the Developer to those penalties set forth in Public Contract Code Section 4110.

B. Supplier Substitution.

Requests shall be made in writing at least 10 days prior to the provision of materials, supplies or services by the proposed Supplier, and shall include proof of written notice to the originally listed Supplier of the proposed substitution.

Requests shall be made in writing to the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101 with a copy to the Engineer.

Substitution of Suppliers without authorization shall subject the Developer to those penalties set forth in Public Contracts Code Section 4110.

C. Developer may not:

- (1) Substitute a person as Subcontractor or Supplier in place of the Subcontractor or Supplier originally listed, except that the City, or its duly authorized officer, may consent to the substitution of another person as a Subcontractor or Supplier in any of the following situations:
 - (a) When the Subcontractor or Supplier listed in the Bid after having a reasonable opportunity to do so fails or refuses to execute a written contract with the Contractor, when that written contract, based upon the Contract Documents or the terms of that Subcontractor's or Supplier's written bid is presented to the Subcontractor or Supplier by the Contractor.
 - (b) When the listed Subcontractor or Supplier becomes bankrupt or insolvent.
 - (c) When the listed Subcontractor or Supplier fails to perform its contract.
 - (d) When the listed subcontractor fails or refuses to meet bond requirements as set forth in Public contract Code Section 4108.
 - (e) When the Developer demonstrates to the City or its duly authorized officer, subject to the provisions set forth in Public Contract Code Section 4107.5, that the name of the Subcontractor was listed as the result of an inadvertent clerical error.
 - (f) When the listed Subcontractor is not licensed pursuant to the Contractor's License Law.
 - (g) When the listed Subcontractor is ineligible to work on a public works project pursuant to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
 - (h) When the City or its duly authorized agent determines that the listed Subcontractor is not a responsible contractor.
 - (i) When the City, or its duly authorized officer, determines that the work performed by the listed Subcontractor or that the materials or supplies provided by the listed Supplier are substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the Subcontractor or Supplier is substantially delaying or disrupting the progress of the work.

- (2) Permit a contract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original Subcontractor or Supplier originally listed, or its duly authorized officer.
- (3) Other than in the performance of "Change Orders" causing changes or deviations from the Contract, sublet or subcontract for any portion of the work, or contract for materials or supplies in excess of 0.5% of the Developer's total contract as to which his or her original contract did not designate a Subcontractor or Supplier.

D. Following receipt of notice from the Developer of the proposed substitution of a Subcontractor or Supplier, the listed Subcontractor or Supplier who has been so notified shall have 5 Working Days within which to submit written objections to the substitution to the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101 with a copy to the Engineer. Failure to file these written objections shall constitute the listed Subcontractor or Supplier's consent to the substitution. If written objections are filed, the City shall give notice in writing of at least 5 Working Days to the listed Subcontractor or Supplier of a hearing by the City on the Developer's request for substitution.

VII. Prompt Payment. The Developer or Subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the Developer on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In cases of subcontractor performance deficiencies, the Developer shall make written notice of any withholding to the Subcontractor with a copy to the City Engineer and the Purchasing & Contracting Department, Attention Contracts Division, 1200 Third Avenue, Suite 200, San Diego, CA 92101. Upon correction of the deficiency, the Developer shall pay the Subcontractor the amount previously withheld within fourteen (14) days after payment by the City.

Any violation of California Business and Professions Code, Section 7108.5 concerning prompt payment to Subcontractors shall subject the violating Developer or Subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Developer or Subcontractor in the event of a dispute involving late payment or nonpayment by the Prime Developer, deficient subcontract performance, or noncompliance by a subcontractor.

VIII. Prompt Payment of Funds Withheld To Subcontractors. The City will hold retention from the Developer and will make prompt and regular incremental acceptances of portions, as determined by the Engineer, of the Work, and pay retention to the Developer based on these acceptances. The Developer or Subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for Work satisfactorily completed and accepted including incremental acceptances of portions of the Work by the City. Any violation of this provision shall subject the violating the Developer or Subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Developer or Subcontractor in the event of a dispute involving late payment or nonpayment by the Developer, deficient subcontract performance, or noncompliance by a subcontractor.

IX. Definitions. For purposes of reporting requirements for the *Subcontractors List*, the *Suppliers List*, and State and Federal funded projects, the following definitions apply:

Minority Business Enterprise” (MBE) means a certified business which is at least 51% owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, one or more members of the identified ethnic groups.

“Women Business Enterprise” (WBE) means a certified business which is at least 51% owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, one or more women.

“Disadvantaged Business Enterprise” (DBE) means a certified business which is at least 51% owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least 51% of the stock shall be owned by, and the business operated by, socially and economically disadvantaged individuals.

“Disabled Veteran Business Enterprise” (DVBE) means a certified business which is at least 51% owned and operated by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies) The firm shall be certified by the State of California’s Department of General Services, Office of Small and Minority Business.

Emerging Local Business Enterprise (EBE) means any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; meets the definition of local and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$2.75 million - Construction
- \$1.5million - Specialty Construction
- \$1.5million – Goods/Materials/Services
- \$ 1.0 million – Trucking
- \$ 750,000 – Professional Services and Architect/Engineering

If a business has not existed for 3 years, the gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business. **“Other Business Enterprise” (OBE)** means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

Small Local Business Enterprise (SBE) means any for-profit enterprise that is not a broker, that is independently owned and operated; that is not a subsidiary of another business; meets the definition of local and that is not dominant in its field of operation whose average gross annual receipts in the prior three fiscal years do not exceed:

- \$5.0 million - Construction
- \$3.0 million - Specialty Construction
- \$3.0 million – Goods/Materials/Services
- \$2.0 million – Trucking
- \$1.5 million – Professional Services and Architect/Engineering

California State certified Micro and Disabled Veteran Owned business enterprises shall also

satisfy the requirements to be defined as a Small Business Enterprise, but must demonstrate they are local.

If a business has not existed for 3 years, the employment and gross sales limits described above shall be applied based upon the annual averages over the course of the existence of the business.

Local - Principal Place of Business and Significant Employment Presence in San Diego City or County, California. Must have been in operation for 12 consecutive months and possess a valid business tax certificate.

Principal Place of Business – A location wherein a firm maintains a physical office and through which it obtains no less than fifty percent of its overall customers or sales dollars.

Significant Employee Presence – No less than twenty-five percent of a firm's total number of employees are domiciled in either the City of San Diego and/or San Diego County.

IX. Certification. The City accepts certifications of MBE, WBE, DBE or DVBE by any of the following methods:

- A. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
- B. Current MBE or WBE certification from the California Public Utilities Commission. Additional information may be obtained from <http://www.cpuc.ca.gov/PUC/SupplierDiversity/CertInfo.htm>;
- C. Current MBE certification from the San Diego Regional Minority Supplier Diversity Council. Additional information may be obtained from www.supplierdiversitysd.org;
- D. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business (916) 322-5060 or go to their link at <http://www.pd.dgs.ca.gov/smbus/default.htm>.
- E. Current certification by the City of Los Angeles as DBE, WBE or MBE. For more information go to http://bca.lacity.org/index.cfm?nxt_body=tutorials_c.cfm
- F. Current City of San Diego ELBE/SLBE certification

X. Contract Records and Reports. Developers shall maintain the following records and reports required by the City of San Diego's Equal Opportunity Contracting Program:

- A. **Records.** The Developer shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm.

Project relevant records, regardless of tier, may be periodically reviewed by the City.

- B. **Reports.** The Developer shall submit to the City with its Statement of Qualifications (SOQ) the Listing of the Developer's Subcontractor participation levels achieved on all private and public projects within the past 3 years. Include name of project, type of project, value of project, Subcontractor firm's name, percentage of Subcontractor's

participation, and identification of Subcontractor's ownership as a certified Disadvantaged Business Enterprise on the City provided forms:

1. Subcontractor Past Participation List
2. Suppliers Past Participation List

The Developer shall submit to the City the following reports:

1. *Monthly Employment Report.* The *Monthly Employment Report (Attachment-BB)* shall list each individual employee working on the specific project by full name, social security number, gender, ethnic category, craft and employee source (i.e. union hall, apprenticeship program, other). Each *Monthly Employment Report* shall be submitted by the 5th day of the subsequent month to the Engineer with a copy to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, CA 92101.

The Developer is responsible for collecting and submitting a *Monthly Employment Report* from all Subcontractors, at any level, working at the site.

2. *Monthly Invoicing Report.* The *Monthly Invoicing Report (Attachment -CC)* shall report payments made to all subcontractors and vendors/suppliers. Each *Monthly Invoicing Report* shall be submitted by the 5th day of the subsequent month to the Engineer with a copy to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, CA 92101. Incomplete reports may cause payment delays and/or non-payment of invoice.
3. *Final Summary Report.* The records maintained under Paragraph A described above shall be consolidated into a *Final Summary Report (Attachment -DD)*, certified as correct by an authorized representative of the Developer, and submitted to the Engineer with a copy to the EOC Program Manager at 1200 Third Avenue, Suite 200, San Diego, CA 92101, 30 days prior to completion. A *Notice of Completion and Acceptance* will not be filed by the City until after its review of the *Final Summary Report*.

XI. List of Attachments.

- AA Work Force Report Form
- BB Monthly Employment Report Form
- CC Monthly Invoicing Report Form
- DD Final Summary Report Form
- EE. Subcontractors Past Participation List
- FF. Suppliers Past Participation List
- GG. Contract Activity Report/Form (Post Award)

**END OF CITY GENERAL EQUAL OPPORTUNITY CONTRACTING PROGRAM
REQUIREMENTS CONSTRUCTION DEVELOPER REQUIREMENTS**

WORK FORCE REPORT - Page 2

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

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

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

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

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

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

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

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

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

WORK FORCE REPORT - Page 3

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

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

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Carpenter														
Drywall Installer														
Electrician														
Elevator Installers														
Finishers, Concrete or Terrazzo														
Glaziers														
Helpers, Construction Trade														
Ironworkers, Structural Metal Workers														
Laborers														
Millwrights														
Masons, Bricklayers														
Tilesetters														
Operators														
Painters														
Pipefitter, Plumbers														
Plasterers														
Roofers														
Security, Protective Services														
Sheet Metal, Duct Installers														
Welders, Cutters														
TOTALS EACH COLUMN														
GRAND TOTAL ALL EMPLOYEES														

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

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

MONTHLY EMPLOYMENT REPORT

Contractor: _____ Employer I.D. Number: _____

Project Title: _____ WBS/IO/CC/WO Number: _____

Reporting Period: From: _____ To: _____ Bid Number: _____

Employee List		Last 4 Digits SSN	Employee Address	Male or Female	1 Ethnic Symbol	Craft	2 Employee Source	Number of Hours Worked
	Last Name, First Name, Middle Initial							
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								

1 Ethnic Symbol	
Black, African American	BL
Mexican American, Hispanic, Latino, Puerto Rican	MA
Native American, American Indian, Eskimo	NA
Asian, Pacific Islander	AP
Filipino	FI
Caucasian	CA
Other Ethnicity (not defined above)	OTH

2 Employee Source	
Apprenticeship Program	A
Employment Agency	E
Training Program	T
Union Hiring Hall	U
Other	O

I certify under penalty of perjury that the foregoing information is true and correct:

Authorized Signature

Printed Name / Title

Date Prepared

**SUBCONTRACTOR PAST PARTICIPATION LIST
(ATTACHMENT FF)**

The Design-Builder Shall complete this form for each project listed in response to RFQ. Subcontractor Past Participation List shall include name, address and telephone number (including area code) for each Subcontractor who participated in the referenced project. Additionally, the listing shall include the type of project, percentage of Subcontractor or Subconsultant firm participation, and identification of Subcontractor's ownership as a certified MBE, WBE, DBE, DVBE, or OBE.

NAME OF PROJECT: _____

TYPE OF PROJECT: _____

DOLLAR VALUE OF PROJECT: _____

SUBCONTRACTOR NAME, ADDRESS AND TELEPHONE	TYPE OF WORK PERFORMED	PERCENT OF SUB PARTICIP ATION	① MBE, WBE, DBE, DVBE or OBE	② WHERE CERTIFIED

① *For information only.* Design-Builder shall identify each Subcontractor or Subconsultant as one of the following:

- | | |
|--|------|
| Certified Minority Business Enterprise | MBE |
| Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE |
| Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE |

② For information only. Design-Builder shall indicate if Subcontractor or Subconsultant is certified by:

City of San Diego
State of California Department of Transportation

CITY
CALTRANS

**SUPPLIERS PAST PARTICIPATION LIST
(ATTACHMENT FF)**

The Design-Builder shall complete this form for each project listed in response to RFQ. Suppliers Past Participation List shall include name, address and telephone number (including area code) for each participant in the referenced project. Additionally, the listing shall include the type of project, percentage of Supplier participation, and identification of Supplier's ownership as a certified MBE, WBE, DBE, DVBE, or OBE.

NAME OF PROJECT: _____

TYPE OF PROJECT: _____

DOLLAR VALUE OF PROJECT: _____

COMPLETE Name, Address and Telephone Number of Supplier	Type of Materials or Supplies	Percentag e Value Dollar of Materials or Supplies	① MBE WBE DBE DVBE OBE	② Where Certified

① For information only. The Design-Builder shall identify Supplier as:

- | | |
|--|------|
| Certified Minority Business Enterprise | MBE |
| Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE |
| Certified Disabled Veteran Business Enterprise | DVBE |

Other Business Enterprise

OBE

② *For information only.* The Design-Builder shall indicate if Supplier is certified by:

City of San Diego
State of California Department of Transportation

CITY
CALTRANS

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