



AGENDA
REGULAR CITY COUNCIL /
REDEVELOPMENT AGENCY MEETING
WEDNESDAY, NOVEMBER 10, 2009, 7:00 P. M.
COUNCIL CHAMBERS, 245 E. BONITA AVE.

COUNCIL:

Mayor Curtis W. Morris
Mayor Pro Tem Denis Bertone
Councilmember Emmett Badar
Councilmember John Ebner
Councilmember Jeff Templeman

1. CALL TO ORDER AND FLAG SALUTE

2. RECOGNITIONS

- Mitchell Montenegro, National Junior Olympics 10 and under Gold Medal Champion
- Presentation of banners to military personnel recently discharged from active duty in the Armed Forces.
- County of Los Angeles "Brag About Your Bag" campaign

3. ANNOUNCEMENTS

- Pui-Ching Ho, Library Manager, San Dimas Library

4. ORAL COMMUNICATIONS (Members of the audience are invited to address the City Council on any item not on the agenda. Under the provisions of the Brown Act, the legislative body is prohibited from taking or engaging in discussion on any item not appearing on the posted agenda. However, your concerns may be referred to staff or set for discussion at a later date. If you desire to address the City Council on an item on this agenda, other than a scheduled public hearing item you may do so at this time or asked to be heard when that agenda item is considered. Comments on public hearing items will be considered when that item is scheduled for discussion. The Public Comment period is limited to 30 minutes. Each speaker shall be limited to three (3) minutes.)

- a. Members of the Audience

5. CONSENT CALENDAR

(All items on the Consent Calendar are considered to be routine and will be enacted by one motion unless a member of the City Council requests separate discussion.)

- a. Resolutions read by title, further reading waived, passage and adoption recommended as follows:

- (1) Consider approval of Warrant Register.

RESOLUTION NO. 09-50, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, CALIFORNIA, APPROVING CERTAIN DEMANDS FOR THE MONTHS OF OCTOBER AND NOVEMBER, 2009.

- (2) Establishing Engineering Fees:

RESOLUTION NO. 09-51, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS CALIFORNIA, ESTABLISHING FEES FOR FILING CERTAIN APPLICATIONS OF ENGINEERING FEES AND SIMILAR MATTERS.

- b. Approval of minutes for the regular City Council meeting of October 27, 2009.
- c. Annual approval of amendments to Personnel Rules and Regulations

END OF CONSENT CALENDAR

6. OTHER MATTERS

- a. Request from San Dimas HEROES - City Council direction regarding their proposal to place a Veterans Memorial on the open area along San Dimas Avenue just east of the Park and Ride lot, north of Commercial Street.
- b. Renovation and expansion of the City Hall, Civic Center Plaza, and Stanley Plummer Community Building:
 - 1) Approve a Project Management Agreement with Griffin Structures Inc. to proceed with the process to secure competitive bids for this project. Authorize City Manager to execute said Agreement and issue notice to proceed. The Agreement for professional services is in an amount not to exceed \$775,000 - this expense is included within the proposed Guaranteed Maximum Price established for this project. Council consideration for awarding the bids to complete this project is tentatively scheduled for February 23, 2010.
- c. Approval of the City's Annual Independent Audited Financial Statements.
- d. Approval and appropriation of up to \$20,500 funding for Puente Street/Avenida Monte Vista Landscape Improvements and License Agreement.

7. SAN DIMAS REDEVELOPMENT AGENCY

- a. Oral Communications. *(This is the time set aside for members of the audience to address the Board. Speakers are limited to three minutes.)*
- b. Approval of minutes for October 27, 2009 meeting.
- c. Executive Director
- d. Members of the Agency

8. ORAL COMMUNICATIONS

- a. Members of the Audience *(Speakers are limited to five minutes or as may be determined by the Chair.)*
- b. City Manager
- c. City Attorney
- d. Members of the City Council
 - 1) Councilmembers' report on meetings attended at the expense of the local agency.
 - 2) Individual Members' comments and updates.

9. CLOSED SESSION

Recess to a City Council closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

- a. Property: 186 Village Court, San Dimas
Negotiating Parties:
For City: Blaine Michaelis, City Manager, Ken Duran, Assistant City Manager, and
J. Kenneth Brown, City Attorney.
For Property: Dan Samulski
Under Negotiation: Commercial building to be used for temporary relocation of city hall
during city hall renovation.

10. ADJOURNMENT

Next meeting is on Tuesday, November 24, 2009, at 7:00 a.m.

AGENDA STAFF REPORTS: COPIES OF STAFF REPORTS AND/OR OTHER WRITTEN DOCUMENTATION PERTAINING TO THE ITEMS ON THE AGENDA ARE ON FILE IN THE OFFICE OF THE CITY CLERK AND ARE AVAILABLE FOR PUBLIC INSPECTION DURING THE HOURS OF 8:00 A.M. TO 5:00 P.M. MONDAY THROUGH FRIDAY. INFORMATION MAY BE OBTAINED BY CALLING (909) 394-6216. CITY COUNCIL MINUTES AND AGENDAS ARE ALSO AVAILABLE ON THE CITY'S HOME PAGE ON THE INTERNET:
<http://www.cityofsandimas.com>

SUPPLEMENTAL REPORTS: AGENDA RELATED WRITINGS OR DOCUMENTS PROVIDED TO A MAJORITY OF THE SUBJECT BODY AFTER DISTRIBUTION OF THE AGENDA PACKET SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY CLERK'S OFFICE AT 245 EAST BONITA AVENUE DURING NORMAL BUSINESS HOURS. [PRIVILEGED AND CONFIDENTIAL DOCUMENTS EXEMPTED]

HEARING ASSISTANCE: THE CITY OF SAN DIMAS CITY COUNCIL CHAMBERS IS EQUIPPED WITH A HEARING ASSISTANCE SYSTEM. PLEASE CONTACT THE CITY CLERK (909) 394-6216 TO CHECK OUT A RECEIVER.

POSTING STATEMENT: ON NOVEMBER 6, 2009, A TRUE AND CORRECT COPY OF THIS AGENDA WAS POSTED ON THE BULLETIN BOARDS AT 245 EAST BONITA AVENUE (SAN DIMAS CITY HALL) 145 NORTH WALNUT AVENUE (LOS ANGELES COUNTY PUBLIC LIBRARY, SAN DIMAS BRANCH); AND 300 EAST BONITA AVENUE (UNITED STATES POST OFFICE) AND AS A COURTESY, AT THE VONS SHOPPING CENTER (Puente/Via Verde) AND THE CITY'S WEBSITE AT www.cityofsandimas.com.

W HEREAS, each year, approximately 6 billion single use plastic carryout bags are used in Los Angeles County; and

W HEREAS, less than 5 percent of single use plastic bags are recycled; and

W HEREAS, the indiscriminate littering of single use bags creates significant litter problems for Los Angeles County streets, beaches, and the marine environment; and

W HEREAS, each year, public agencies in California spend over \$375 million every year for litter prevention, clean up and disposal, including littered single use plastic bags; and;

W HEREAS, the City of San Dimas is taking action to reduce the litter impacts of single use carryout bags; and

W HEREAS, reusable bags contribute towards environmental sustainability over single use carryout bags as well as significantly reduce single use bag litter; and

W HEAREAS, Heal the Bay and its community partners, including the County of Los Angeles, have established the third Thursday of December, each year, as "A Day Without a Bag" which urge shoppers to forego single use bags in favor of reusable bags; and

W HEREAS, the County of Los Angeles has invited NBA World Champion basketball star Luke Walton to participate and pledge to take a leadership role in promoting public awareness about the benefits of using reusable bags; and

W HEREAS, the County has extended an invitation to the City of San Dimas and other cities to participate in the Brag About Your Bag® campaign to help coordinate and spread public awareness in a unified effort; and

N OW, THEREFORE, I, Mayor of San Dimas Curtis W. Morris, Mayor Pro Tem Denis Bertone, Councilmembers Emmett Badar, John Ebiner and Jeffrey Templeman proclaim the launching of the Brag About Your Bag® campaign on November 15, 2009 to encourage environmental stewardship in Los Angeles County.

I N WITNESS THEREOF, I, Mayor Curtis W. Morris, have hereunto set my hand and caused the seal of the City of San Dimas to be affixed this 10th day of November, 2009.

RESOLUTION NO. 09-50

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SAN DIMAS, CALIFORNIA, APPROVING
CERTAIN DEMANDS FOR THE MONTHS OF
OCTOBER AND NOVEMBER 2009

WHEREAS, the following listed demands have been audited by the Director of Finance;
and

WHEREAS, the Director of Finance has certified as to the availability of funds for
payment thereto; and

WHEREAS, the register of audited demands have been submitted to the City Council for
approval.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Dimas
does hereby approve Prepaid Warrants: 10/31/09; 20708 through 20782; in the amount of
\$798,125.46; Warrant Register: 11/16/09; 129022 through 129152; in the amount of
\$205,615.00.

PASSED, APPROVED AND ADOPTED THIS 10th DAY OF NOVEMBER, 2009.

Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

Ina Rios, CMC, City Clerk

I HEREBY CERTIFY that the foregoing Resolution was adopted by vote of the City
Council of the City of San Dimas at its regular meeting of November 10, 2009, by the following
vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ina Rios, CMC, City Clerk

5a(1)



***THE WARRANT DISBURSEMENT
JOURNAL IS NOT AVAILABLE TO
VIEW THROUGH LASERFICHE***

***A PAPER COPY IS AVAILABLE IN THE
FINANCE DEPARTMENT***

SORRY FOR ANY INCONVENIENCES.

DOCUMENT IMAGING DEPT.



Agenda Item Staff Report

To: Honorable Mayor and Members of the City Council
For the Meeting of November 10, 2009

From: Krishna Patel, Director of Public Works *KP*

Subject: **Public Works and Engineering Fees**

SUMMARY

Resolution 09-51 is presented for Council review and approval to effectuate the introduction of new fees for Public Works and Engineering Fees for certain services.

BACKGROUND

The fees charged by the Public Works Department, Engineering Division, were last reviewed in 2003. A resolution was adopted in 2003 to reflect needed fee revisions. While we are not recommending any significant increases in the existing fees, we are requesting Council's consideration to revise and introduce the following new fees to be charged by Public Works and its Engineering Division:

- Additional new fees to the existing NPDES fee.
- New Fees for Community Services Program

Pursuant to California Government Code Section 66016 increases to certain fees for city services require adoption by City Council Resolution with the opportunity for public input. Engineering falls within this Government Code Section requirement. These fees are designed to recover the costs of the specific service provided by the City. Under the Government Code, the fees cannot exceed the actual cost of providing the service the fee is designed to cover.

Additional new fees to the existing NPDES fee

While there are plan check and inspection fees for NPDES, Staff requests Council's consideration to add a new fee to supplement the existing fees. The intent of the new fees is to penalize engineering consultants, as the NPDES process is becoming increasingly technically challenging. The consultants seem to be taking advantage of the City plan check process, and submit minimal plans with expectations that City Staff will provide direction and recommendations. The proposal is to impose a fee for plan checks that undergo three or more plan reviews (see Attachment A for proposal). The objective is to recover the "actual cost."

5a(2)

New Court Ordered (Juvenile Work) Community Service Program Fee

The Juvenile Work Program which initially commenced in 1998 was discontinued in 2000. In 2002, the program was resurrected and since then the actual program expenditure in Staff costs has averaged about \$15,000 per year. Due to staffing and supervision issues, our program caters only to adolescent male juveniles (ages 14 through 17). The program accommodates only six (6) youths who work eight (8) hours per week on Sundays only from 7:00AM to 3:30 PM. The program is efficiently managed with strict discipline and requirements per the attached information sheet. Over the years, both the City and the juveniles have benefited from the program. The juveniles primarily clean parks, parking lots and occasionally clean up of trails. Essentially, the list was generated to keep the juveniles out of traffic zones and streets, and into areas that involve no traffic control. Due to restrictions, youth cannot use power tools. Therefore all the work done is by hand or manual labor. In the winter, the adolescents often assist in filling sand bags at the yard.

While the program has been successful, administration of the program has become more and more challenging. Parents fail to accept some of the responsibilities. Our program has been free, with minimal penalty or out-of-pocket expense. Staff believes that the City should recover some of the administrative costs as well as some portion of the normal 12-hour overtime costs paid to the weekend supervisor. The average cost for this day is $\$45 \times 12 = \540 or approximately \$15,000 per year. The administrative tasks associated with this program are:

- a) Program supervisor – processing applications, follow through and confirming attendance for Sunday with parents – see detailed attached list. (Attachment C) The supervisor spends approximately 4-5 hours per week administering the program
- b) Prep work required in loading and unloading the work crew vans – i.e., Friday, load van with equipment. Monday, unloading van of trash and equipment
- c) City Hall clerical staff – time spent on the average of 2 to 4 hours per week assisting callers inquiring about the program, directing them to the City website; assisting youth and parents at the counter, and receiving/processing applications.

Attachment C, for Council review is a summary of fees for court-ordered juvenile community service program charged by various agencies for comparison purposes. Staff reviewed the proposed Fees and determined that they are still below the actual costs of providing the service.

RECOMMENDATIONS

Staff recommends that City Council adopt the attached resolution No-09-51 which reflects the proposed additional fees being added to the current Engineering fee schedule.

Respectfully Submitted,


Krishna Patel
Director of Public Works
kpj11-09-06

Attachment A: Proposed New Fees

Attachment B: List of Routine Works Programs

Attachment C: Program Supervisor Routine Administration Tasks

Attachment D: Court Ordered Juvenile Community Service Fees Charged by other agencies.

Resolution 09-51

ATTACHMENT A

Engineering Division Fee Increase and New Fee Proposal				
Type of Fee	Existing Fee	Proposed Fee	Payment Timing	Purpose of Fee
NPDES SUSMP/SWPP Plan Check and Inspection	\$312.00 minimum or % based on valuation of storm drain or commercial parking lot improvements	After the fourth revised submission, fee is based on Contract City Engineering Cost of \$131.00 per hour	At approval of Grading and SUSMP/SWPP Plans	An additional fee to penalize engineering consultants who are taking advantage of the plan check process and submitting minimal plans with expectation of the City to provide direction and recommendations for the project. The fee for the plan check for three plan reviews will be based and collected in the existing fee program.
Court Ordered Juvenile Community Service	N/A Enrollment	\$32.00 Fee plus sliding fee scale upon Enrollment. Less than 20 hrs=\$25.00 30 or less=\$30.00 30 to 100 hrs= \$65.00 Over 100 hrs= \$85.00	\$32.00 at submission. Fee scale determined upon enrollment and paid prior to start.	Fees will allow Public Works to recover some costs for providing supervision, administration, and clerical support needed to administer the program.

EXHIBIT "A"

ENGINEERING AND RELATED FEES

Section 1: Processing Fees

- A. Plan Check Fee, including inspection based on valuation
 - 1. Up to \$10,000 value7% of Value
 - 2. \$10,000 to \$50,000 value.....6% of Value
 - 3. Over \$50,000 value5% of Value
- B. Drainage/Parking Lot.....*as calculated under item A for Storm Drain or drainage/parking lot improvements*
- C. SUSMP/SWPPP \$312.00 min. *or as calculated under item A for Storm Drain or drainage/parking lot improvements*
 - a) After the third plan check submittal actual costs charged per hour based on engineer's fee\$131.00*
- D. Processing easements/deeds/legals.....\$ 364.00
- E. Traffic Study Review actual costs + initial \$208 deposit
- F. Research (*Items requiring < 30 min. of research time, per 1.2 hr..*) \$42.00
- G. Court Ordered Juvenile Community Service*
 - 1. Initial Application Fee + a, b, or c\$32.00*
 - a) 20 hours or less.....\$50.00*
 - b) Up to 100 hours.....\$65.00*
 - c) Over 100 hours.....\$85.00*

Section 2: Permit Fees (when plan check is not required)

- A. Inspection permits, issuance fee.....\$ 32.00
- B. Per item fees
 - 1. Curb, curb and gutter, or curb drain..... \$ 68.00
 - 2. A.C. or P.C.C. paving\$ 68.00
 - 3. Drive approach (comm./industrial)\$ 68.00
 - 4. Excavation.....\$ 68.00
 - 5. Sidewalk.....\$ 68.00
 - 6. Utility company, repair cut <3'x4'\$ 68.00
 - 7. Utility company, new work\$ 68 + \$2.25/LF *for trenching*
 - 8. Sewer/storm drain laterals..... \$ 68 + \$2.25/LF *for trenching*
 - 9. Miscellaneous items not above\$ 68.00
- C. Blanket Permit (no issuance fee)\$ 68.00

Section 3: General Miscellaneous Fees

- A. Revision of Approved Engineering Plans (per revision)\$158.00
- B. Reinspection Fee (more than 3 visits for same item)\$ 68.00
- C. Penalty Fees (working without a permit) Twice normal fees

*New Fee

Section 4: Special Permits

A. Trash dumpster in city right of way.....\$ 32.00

Section 5: Bonds

A. Faithful performance.....100%
B. Labor and materials.....50%
C. Survey monuments.....\$500 + \$150 per lot

Section 6: Deposits

A. Trench (A.C. or P.C.C.).....\$ 750.00
B. Excavation.....\$ 750.00
C. Barricades.....\$ 200.00
D. Curb.....\$ 200.00
E. Curb and gutter.....\$ 200.00
F. Drive approach.....\$ 200.00
G. Sidewalk.....\$ 200.00
H. Curb drain, 4" core.....\$ 200.00
I. Curb drain, Box culvert.....\$ 200.00

Section 7: Street Signs

A. Street signs (per installation).....\$ 312.00

Section 8: Reproduction Fees

A. Blueprint, per standard size sheet.....\$ 4.00
B. Copy of City's traffic speed survey.....\$ 7.00

Section 9: Emergency Response

A. Emergency Response.....Actual costs

ATTACHMENT B

Weekend Work Program

Service Locations

The following is a list of routine service locations. Service includes trash & debris collection as well as minor trimming of trees & shrubs. Locations 1 to 18 are scheduled for service each workday. If listed, item 19 and beyond are to be done as time allows.

NOTE: - Load blower, trimmer & weed eaters for daily work.

- Do Not empty trash cans in the downtown boardwalk area.

1. 245 E. Bonita Avenue, City Hall plaza and east & west parking lots.
2. Civic Center Park and parking lot.
3. The Municipal parking lot south of Bonita Avenue and west of San Dimas Avenue.
4. The Municipal parking lot north of Bonita Avenue and east of Monte Vista Avenue.
5. The Park & Ride parking lot n/o Commercial Avenue w/o San Dimas Avenue.
6. Marchant Park.
7. Rhoades Park.
8. Pioneer Park.
9. Horsethief Canyon Park.
10. Kiwanis Korner Park.
11. Lonehill Park.
12. Loma Vista Park.
13. Ladera Serra Park.
14. Via Verde Park.
15. Park & Ride parking lot e/o San Dimas Avenue n/o Via Verde Avenue.

16. The Walking trail on San Dimas Avenue s/o Puddingstone Drive to the freeway underpass both sides of the street. (Clean up rocks on walking trail).

17. Puddingstone Drive e/o San Dimas Avenue to city limit, check edge of pavement for debris, north and south sides.

18. Amelia Avenue from 5th. Street north to Gladstone Street remove weeds and clean up trash.

OTHER MAINTENANCE LOCATION CONCERNS ADDED NEXT.

19. _____

20. _____

21. _____

22. _____

23. _____

24. _____

25. _____

ATTACHMENT C

Juvenile Work Program: Estimated Staff expended for Administration

The Details of the Juvenile Work Program:

- Receive phone calls regarding the juvenile work program and direct parents to our public works department for the application and information starting the program. (*1/2 hour per week*)
- Upon receipt of the juvenile application contact parent for a starting date. As well as answering any questions. (*1 to 2 hours per week*)
 - Coordinate the juvenile applications contacting parents by phone for the initial starting date.
 - When placed on our waiting list, keep parents updated as to when their son might start the program. It has taken up to 4 weeks before the juvenile participant starts his community service.
 - Provide letters to parents when court dates occur and their son hasn't started or completed his community service obligation.
- Each week coordinate the program to ensure we meet our requirements for our Sunday program (minimum of 3 participants with a maximum of 6 participants) (*1 hour per week*)
 - Go over Sunday's attendance sheet. Remove the applicants that have completed his required hours.
 - Make phone calls to parents whose son failed to report to work that particular Sunday.
 - Make phone calls to parents filling any vacated positions. Maintaining our maximum number of 6 participants.
- Coordinate the supervisor schedule insuring someone will be available to direct the Sunday program. (*1 hour per week*)
 - Track the community service attendance sheet for each individual, and upon completion of his required hours provide a letter to the participant that he will take back to court.
 - Every week I will FAX our attendance sheet to the San Dimas Sheriff Probation Dept. Keeping them up to date of our program.
 - When the juvenile completes his required hours I will FAX a completion form to the Pomona Juvenile Courts.
- Monitor / field inspect the work projects being performed by the Juvenile Work Crews. Add any additional projects to the work list. (*1 hour per week*)
 - Keep informed of the condition of City Vehicle and equipment used.
- Meet with Supervisors each week and discuss the Sunday work schedule. Advise the supervisor of any special circumstance that might occur that Sunday. (*1/2 hour per week*)
 - Advise the supervisor in charge each week who will be completing the program, go over completion letter provided to the court.
 - Special work projects to be added.
 - Letters explaining upcoming holiday schedules.
 - Past problems with juveniles they need to be aware of.
- Update Public Works Secretaries weekly with a current attendance list of juveniles working the Sunday program. As well as a current waiting list. (*1/2 hour per week*)

ATTACHMENT D

Court-Ordered Juvenile Community Service

Fees Charged By Various Agencies for Their Program

Agency	Fees
Pomona Valley Limited hours:M-Th 9-11:45,1-3:30. Closed for all Court Holidays	All juvenile Programs same fee: \$50.00
La Verne, City of Weekday Hours Only: M-Th 7am – 3:30pm <u>No weekend Work available</u>	All juvenile Programs same fee: \$50.00
Whittier, City of <u>No Court- Ordered Program offered by City</u> Offenders work with Agencies within Whittier, <u>after</u> registering & paying the \$45.00 City of Whittier enrollment fee. Hours/days vary. Additional fees apply- and are changed by and must be paid directly to- the agency selected by the offender.	All juvenile Programs are same fee: \$45.00 for enrollment. Additional fees will apply- and are charged by- and must be paid directly to- the agency selected by the offender.
El Monte Police Dept. <u>Program is offered weekends and School Holidays only.</u> 8 hour days begin @ 6:00 a.m. Offenders work w/Police, PW, Parks. First come, first served.	All juvenile Programs same fee: \$45.00
La Mirada Volunteer Center <u>No Court- Ordered Program offered by City.</u> Offenders work with Agencies within La Mirada, <u>after</u> registering & paying sliding City of La Mirada fee of \$25-\$60.00, depending on Court Ordered Hours. Hours/days vary. Add'l fees will apply- and are charged by and must be paid directly to- the agency by the offender.	Sliding fee scale for <u>enrollment only</u> : 20 hours=\$25.00 30 hours =\$30.00 100 hours=\$60.00 200 hours=\$60.00 Additional fees will apply- and are changed by and must be paid directly to- the agency selected by the offender.
San Gabriel, City of <u>No Court- Ordered Program offered by City.</u> Offenders work with assigned Agencies within San Gabriel, <u>after</u> registering & paying sliding City of San Gabriel fee of \$55-\$85.00, depending on Court- Ordered Hours. Hours/days vary. Additional fees will apply and are charged by- and must be paid directly to- the agency by the offender.	Sliding fee scale for <u>enrollment only</u> : 20 hours=\$55.00 30 hours =\$65.00 100 hours=\$85.00 Additional fees will apply- and are changed by and must be paid directly to- the agency selected by the offender.
Corrective Behavior Inst. - (CBI) Los Angeles Area Various hours & locations.	Sliding fee scale 20 hours=\$55.00 30 hours =\$65.00 100 hours=\$85.00
Baldwin Park Police Dept., Comm. Relations	Free, 8 weeks, <u>Saturday only</u> ; ages 14-17
TORCH-- El Monte Police Dept. <u>(Same as El Monte Police)</u> Weekends and School Holidays only. 8 hour days, beginning @ 6:00 a.m. Offenders work w/Police, PW, Parks. First come, first served.	All juvenile Programs same fee: \$45.00

RESOLUTION NO. 09-51

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SAN DIMAS, CALIFORNIA,
ESTABLISHING FEES FOR FILING CERTAIN APPLICATIONS
OF ENGINEERING FEES AND SIMILAR MATTERS**

WHEREAS, the San Dimas Zoning Ordinance and the San Dimas Municipal Code provides that the City Council shall, from time to time, determine the fees to be paid in connection with the filing of matters relating to planning, zoning, and engineering permits; and

WHEREAS, Government Code Section 66016 allows for a local agency to approve an increase in an existing fee or service charge by ordinance or resolution; and the fees must reflect the reasonable amount required to provide the service; and

WHEREAS, the City Council has determined that the new fees are below the actual cost of providing the various services which are being addressed by the proposed fees;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN DIMAS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Resolution 03-29 hereby repealed in reference to Engineering and Related Fees Exhibit "A".

Section 2. The City of San Dimas hereby adopts the following fee schedule for filing and processing applications in connection with engineering and related matters as shown in the following exhibit:

B. Exhibit "A" Engineering and Related Fees

Section 3. The fees adopted by this resolution may be reduced or waived by the City Manager upon a written finding that application of the fee would result in severe economic hardship or would be detrimental to public health, safety, or welfare.

Section 4. The above fees shall become effective November 30, 2009.

Approved and Adopted on the 10th day of November 2009.

MAYOR OF THE CITY OF SAN DIMAS

ATTEST:

CITY CLERK

I HEREBY CERTIFY that the foregoing Resolution was adopted by vote of the City Council of the City of San Dimas at its regular meeting of November 10, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY CLERK



MINUTES
REGULAR CITY COUNCIL
TUESDAY, OCTOBER 27, 2009, 7:00 P. M.
COUNCIL CHAMBERS, 245 E. BONITA AVE.

PRESENT:

Mayor Curtis W. Morris
Mayor Pro Tem Denis Bertone
Councilmember Emmett Badar
Councilmember Jeff Templeman

City Manager Blaine Michaelis
City Attorney J. Kenneth Brown
City Clerk Ina Rios
Assistant City Manager of Community Development Larry Stevens
Assistant City Manager Ken Duran
Director of Development Services Dan Coleman
Director of Public Works Krishna Patel
Director of Parks and Recreation Theresa Bruns
Recreation Coordinator Tanya Orr

ABSENT:

Councilmember John Ebiner

1. CALL TO ORDER AND FLAG SALUTE

Mayor Morris called the meeting to order at 7:03 p.m. and led the flag salute.

2. INTRODUCTIONS

- John Rossfeld, CEO San Dimas Community Hospital

John Rossfeld introduced himself and said he is the new Chief Executive Officer at San Dimas Community Hospital. He is excited at the opportunity to serve the community and said the hospital is prepared to deal with the H1N1 crisis.

3. ANNOUNCEMENTS

- Halloween Carnival, Costume Contest and Haunted Hall on Saturday, October 31, 2009

Recreation Coordinator Tanya Orr invited everyone to the Halloween Carnival on Saturday, October 31, 2009, in the Civic Center Plaza, from 5:30 p.m. to 8:30 pm. She said there will be a DJ, Haunted Hall, refreshments, game booths, and a costume contest for children to adults. Additional information is available at the Parks and Recreation Department at (909) 394-6230.

- Pui-Ching Ho, Library Manager, San Dimas Library

Pui-Ching Ho, Library Manager, San Dimas Library, encouraged children to participate in a variety of Halloween art projects on Saturday, October 31 and invited students K-12, to enter the Bookmark contest. Other activities include the Book Party on November 2, Teen Advisory Board Meeting on November 7, Flower arrangement lessons on November 14, and reptiles on November 21, 2009. For more information, call the Library at (909) 599-6738 or access their website www.co.la.publib.org.

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4. ORAL COMMUNICATIONS (Members of the audience are invited to address the City Council on any item not on the agenda. Under the provisions of the Brown Act, the legislative body is prohibited from taking or engaging in discussion on any item not appearing on the posted agenda. However, your concerns may be referred to staff or set for discussion at a later date. If you desire to address the City Council on an item on this agenda, other than a scheduled public hearing item you may do so at this time or asked to be heard when that agenda item is considered. Comments on public hearing items will be considered when that item is scheduled for discussion. The Public Comment period is limited to 30 minutes. Each speaker shall be limited to three (3) minutes.)

a. Members of the Audience

1) Ted Powl, President, CEO, Chamber of Commerce, announced that as part of the Halloween Fest, Downtown Merchants invited children to Trick or Treat on Saturday, October 31, at 3:30 p.m. and encouraged them to sign up for a raffle drawing for cash prizes.

2) Mr. Powl said the Chamber is accepting nominations through November 20, 2009 for 2010 Citizen of the Year, open to any resident in San Dimas who has made significant contributions to the community. Nomination forms are available at the Chamber and City Hall.

3) Mr. Powl said the annual Christmas Tree Lighting ceremony will be held at 6:00 p.m. on December 2, 2009. He said Mayor Morris and Lil Miss San Dimas will light the tree and proceeds from the sale of Santa hats will go to Meals on Wheels. He invited children and parents to walk with Santa Claus as he comes down Bonita Avenue toward the Christmas Tree.

4) Bob Scofield felt it was inappropriate for the City to adopt the Recreation Vehicle ordinance and said it is a burden for RV owners to pay storage fees.

5) Art Schlade registered his disapproval for the RV ordinance and said it is unfair to initiate this proposal at this time.

Mayor Morris reminded the public that pursuant to the Brown Act, the City Council is prohibited to respond to anything not on the agenda.

6) Sharon Kelly said her husband is in ill health and they are experiencing financial problems, which makes it difficult to pay for storage for their motorhome. She mentioned that a neighbor commented she's glad that the RV is there because it blocks the view of the Church at Valley Center and Cienega.

7) Paul Calderon said it is a burden to pay the storage fee for his boat.

8) Mark LeRoux said the RV Ordinance is going to impact a lot of people who built up for retirement. He opposes the ordinance.

9) Gary Enderle said to honor San Dimas Veterans, San Dimas HEROES will be hosting a Veterans Appreciation Reception on Saturday, November 14, 2009, from 1:00 to 3:00 p.m., at Atria Rancho Park, 801 Cypress Way. RSVP is due by November 10, 2009. Information will be posted on their website www.sandimasheroes.org. or call (909) 599-7566.

10) Gil Medina said the RV Ordinance is unfair and he is registering his opposition since it will create a hardship for his family to pay parking fees.

5. CONSENT CALENDAR

(All items on the Consent Calendar are considered to be routine and will be enacted by one motion unless a member of the City Council or audience requests separate discussion.)

It was moved by Mayor Pro Tem Bertone, seconded by Councilmember Badar, and carried unanimously by those present, Councilmember Ebner was absent, to accept, approve and act upon the consent calendar, as follows.

- a. Resolutions read by title, further reading waived, passage and adoption recommended as follows:
 - (1) **RESOLUTION NO. 09-47**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, CALIFORNIA, APPROVING CERTAIN DEMANDS FOR THE MONTH OF OCTOBER, 2009.
 - (2) **RESOLUTION NO. 09-48**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, CALIFORNIA, AUTHORIZING LINCOLN FINANCIAL ADVISORS TO CREATE A PLAN DOCUMENT FOR CITY OF SAN DIMAS DEFERRED COMP RETIREMENT PLAN #3121 FOR PART TIME EMPLOYEES.
 - (3) **RESOLUTION NO. 09-49**, A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.
- b. Ordinances read by title, further reading waived, passage and adoption recommended as follows:
 - (1) **ORDINANCE NO. 1191**, AN ORDINANCE OF THE CITY OF SAN DIMAS REGARDING ABATEMENT OF NUISANCE AND AMENDING THE SAN DIMAS MUNICIPAL CODE. **SECOND READING AND ADOPTION**
- c. Approval of minutes for regular City Council meeting of October 13, 2009 and special City Council meeting of October 13, 2009.

END OF CONSENT CALENDAR

6. OTHER MATTERS

- a. Presentation regarding a project to renovate and expand City Hall, the Civic Center Plaza and the Stanley Plummer Community Building. The purpose is to explain the project to the public and respond to questions.

Three presentations were advertised and meeting information was placed on the City's website, on display boards in the city hall lobby, cable television, and a press release to the media. For the record, the following attended the 2:00 p.m. and/or 6:00 p.m. presentation: Mayor Morris, Councilmembers Badar and Templeman.

City Manager Michaelis provided a Powerpoint presentation of the original city hall building which was constructed 40 years ago and said the number of employees has tripled and services to the public have doubled. He said a Space Needs Analysis was conducted to address changing building code requirements, ADA requirements, needed work stations, storage, existing and future needs, utilities and technological advancements in an aging building.

Mr. Michaelis explained the process beginning with the architect who prepared the plans to renovate the city hall, civic center plaza and the Plummer community building and the project manager who will administer and evaluate the bid process and manage the project, controlling costs through design, construction, and final completion. Mr. Michaelis said the guaranteed maximum price for the entire plan is \$13,034,000, excluding architectural services. He provided estimated costs for each of the three independent portions of the project: \$9,251,000 for the city hall renovation and expansion; \$2,634,000 for the Plummer community building expansion, and \$1,149,000 for the Civic Center Plaza. Mr. Michaelis said the City has a stable financial status and a broad array of financial options to draw from. He provided a timetable of the project starting with the City Council's acceptance of the Guaranteed Maximum Price at their November 10, 2009 meeting; bids due January 27, 2010 are to be awarded on February 23, 2009, and construction scheduled to commence in March 2010 and completed in March 2011. He is available for questions.

In response to **David Harbin**, Mr. Michaelis replied that about \$150,000 was received in energy efficiency funds; however, no other sources of funds are available at any other level of government. He added that staff is exploring options to relocate city hall during the renovation. He said an existing storefront building may be available and as a backup plan, the city owns property where temporary facilities can be located if staff is unable to find a suitable site to rent.

In response to **Ted Powl**, Mr. Michaelis said the existing building was retrofitted in the mid-1990's to address earthquake issues.

In response to audience members, Mr. Michaels said staff does not anticipate the loss of parking for senior programs which will continue as scheduled. He said the project also includes the renovation of the parking lot and additional parking will be available on First Street and Bonita Avenue, which will be made ADA accessible. He added that if the city decides to borrow money for a portion of the project, those financing costs would be added to the construction costs. He said the city's reserves are not standard to measure; and the city has 28 funds, some of which have separate reserves to provide a cushion for annual business operations.

Mr. Michaelis further responded that it is prudent to use a portion of the city's cash reserves and finance a portion to pay for the project. It is anticipated that the overall project will take approximately 12 months and the building will be vacated to allow the contractor time to perform the work as efficiently as possible.

In response to **Sid Maksoudian**, Mr. Michaelis stated that uncommitted funds are set aside in anticipation of economic downturns and state budget issues to be able to meet all service obligations. He said the concept is that even if the city reserves are applied, there are other fund sources available to address issues.

Mayor Morris mentioned that the City has substantially more reserves in indebtedness from the Redevelopment Agency and the Redevelopment Agency has a stream of income which could be bonded.

Mr. Michaelis explained that the city is owed \$16 million to be repaid over 20-25 years to the City's general fund. He said the reason the general fund lent the Redevelopment Agency money is 1) the SDRA is a good investment paying 5.5% on funds; 2) the cost to borrow money is higher than 5.5% and the Redevelopment Agency can borrow for a lower rate for redevelopment projects. He said with debt owed there is an overall position of \$32-33 million, plus money set aside in other funds that could be drawn upon. He added that the Senior Citizens/Community Center will be repaid in two years, and those set aside funds will be invested and be available to sustain services, if necessary.

Mr. Michaelis responded that general fund dollars are allocated into other funds dedicated for specific purposes such as street projects.

In response to Mayor Pro Tem Bertone, City Manager Michaelis said the City Council will consider the Guaranteed Maximum Price at their November 10, 2009 meeting. At that point, the project will be prepared for bid by Griffin Structures, Inc. and on February 23, 2010, the City Council will decide whether or not to award the bid.

In response to Ted Powl, Director Bruns replied that staff is exploring partnership opportunities with churches, schools, and mobilehome parks for the Parks and Recreation programs.

City Manager Michaelis said city hall can be contacted for additional information. The number is (909) 394-6210.

7. SAN DIMAS REDEVELOPMENT AGENCY

Mayor Morris recessed the regular meeting at 8:45 p.m. to convene a meeting of the San Dimas Redevelopment Agency Board of Directors. The regular meeting reconvened at 8:46 p.m..

8. ORAL COMMUNICATIONS

- a. Members of the Audience (*Speakers are limited to five (5) minutes or as may be determined by the Chair.*)

- 1) **Art Schlade** expressed a concern with the Municipal Code of 1961. He indicated that at the time it was enacted, there was no terminology of Recreation Vehicles. His house was built in 1954 and does not have sidewalks or sewer, however, it has an RV parking lot with a chain link fence. He inquired how his RV can be grandfathered in.

- 2) **James Martin** said the law has not been enforced in 48 years which basically approves parking trailers and boats in the front yards. He indicated that his trailer is not visible since he lives in a cul de sac. He thought two months was insufficient time to sell his home or his RV and storage costs were absurd.

- b. City Manager

There were no comments.

- c. City Attorney

There were no comments.

- d. Members of the City Council

- 1) Councilmembers' report on meetings attended at the expense of the local agency.

No one attended a meeting at the expense of the City.

- 2) Individual Members' comments and updates.

- 1) Councilmember Templeman thanked City Manager Michaelis for the fantastic presentation on the city hall, civic center, Plummer building project.

- 2) Councilmember Badar said the issue of city hall renovation project has been ongoing for two years and the City Manager has had several public meetings for public input and public outreach.

3) Councilmember Badar said he attended Councilmember Ebiner's mother's funeral today and Councilmember Ebiner appreciated all our prayers.

4) Mayor Pro Tem Bertone said last Sunday he attended Tsu Chi's 20th anniversary celebration. He said the Tsu Chi is a Buddhist organization that took over the Baptist College and it was a privilege to work with them.

5) Mayor Pro Tem Bertone said today, the City hosted an Open Space Summit sponsored by the Council of Governments (COG) and Rivers Mountains Conservancy (RMC). The objective was to inform cities how to get grant funds. The RMC has, over the past ten years, issued over \$100 million in grants and Los Angeles County has over \$250 million to spend for open space.

6) Mayor Pro Tem Bertone said Friday's paper had a confusing article regarding the Gold Line that gave the impression that the Gold Line would be funded or completed by 2017. Mr. Bertone clarified that every type of transportation project has to be approved by the Metropolitan Transportation Authority (MTA) and although the San Gabriel Valley pays taxes, they are not approved for transportation money. As a representative on the Gold Line Joint Powers Authority (JPA), Mr. Bertone asked Habib Balan, CEO of Construction Authority to call a meeting of the JPA with the MTA and Congressman Adam Schiff, and if it is held within the next two weeks, he can report at the next City Council meeting whether or not the project will start or finish in 2017.

9. ADJOURNMENT

Mayor Morris adjourned the meeting at 9:00 p.m. in memory of Paula Henrietta Ebiner. The next meeting is on Monday, November 2, 2009, at 5:00 p.m. for the Fall City Council/Staff Retreat in the City Council Conference Room.

Respectfully submitted,

Ina Rios, CMC, City Clerk



Agenda Item Staff Report

TO: Honorable Mayor and Members of City Council
November 10, 2009

FROM: Blaine Michaelis, City Manager

INITIATED BY: Ken Duran, Assistant City Manager

SUBJECT: Annual update to Personnel Rules and Regulations

SUMMARY

The Amended Personnel Rules and Regulations were approved on November 13, 2008. Annually changes due to law, additions and deletions will be submitted for approval.

BACKGROUND

On November 13, 2008 the amended Personnel Rules and Regulations were approved by consent. It is the intent of Administrative Services to annually submit any changes required by law, additions from management and deletions as necessary. The following are the additions and changes recommended for this year:

Rule X. - Section 4 Resignation – (Page 28 of handbook) Addition necessary regarding reinstatement policy by PERS (highlighted).

Section 4 Resignation: An employee wishing to leave the competitive service in good standing shall file with his Department Head a written resignation stating the effective date and reasons for leaving at least two weeks before leaving the service, unless such time limit is waived by such official. The Department Head shall endorse the written resignation, stating whether or not the resigning employee's performance was satisfactory. Other pertinent information may be included. The written notice or resignation shall then be filed with the City Manager. Failure to give notice as required by this Rule may be cause for denying future employment by the City.

A Department Head or other member of the City Manager's staff who wishes to resign shall be subject to the above procedures, except that such written resignations must be originally filed with the City Manager.

An Employee that has retired with PERS and at a later date wishes to be rehired, without canceling their retirement, can only work up to 960 hours per fiscal year. The City is obligated to keep track of hours worked and if any additional time over 960 hours are worked the City must reinstate the employee into PERS. If a returning employee seeks to be rehired and cancel their retirement with PERS they are immediately reinstated with full benefits with the City (i.e. sick leave, vacation leave, cafeteria, all benefits).

Rule XV. Holidays - Section 1 Holidays Designated – (Page 34 of handbook)
Clarification necessary regarding holiday pay for non-exempt employees and hourly employees (highlighted).

Section 1 Holidays Designated: The holidays to be observed by this City, and for which pay is allowed for eligible City officers and employees, are:

- A. January 1 - New Year's Day
- B. Third Monday in January – Martin Luther King's Birthday
- C. The third Monday in February – President's Day
- D. The last Monday in May - Memorial Day
- E. July 4 - Independence Day
- F. The first Monday in September - Labor Day
- G. November 11 - Veteran's Day
- H. The Thursday in November appointed as Thanksgiving Day
- I. Friday - the day after Thanksgiving
- J. December 24 – Christmas Eve
- K. December 25 – Christmas Day
- L. December 31 – New Year's Eve

Any such other days which are declared holidays by the City Council.

Full-time employees will be paid for the total hours they would have been scheduled to work the day of the holiday.

Regular part-time employees will be paid at the rate of one-half (1/2) the number of hours the employee would have been scheduled to work that day. If an employee is required to work on a holiday, they will receive time and one-half (1-1/2) for hours worked. If the holiday falls on a day when the employee would not have been scheduled to work, no holiday hours will be paid.

When a holiday falls on a Sunday, the following Monday shall be observed; if a holiday falls on a Saturday, the preceding Friday shall be a holiday. Hourly employees and/or non-exempt employees who are required to work on an actual holiday (i.e. Saturday or Sunday) will have their overtime pay calculated on the actual holiday date, not the Friday or Monday City Hall is observing the holiday. Those employees working a 4-10 schedule will have the same consideration when a holiday falls on a Monday or Friday. Those employees working a 9/80 schedule will have the same consideration when a holiday falls on the scheduled Friday off.

No employee shall be required to be on duty on a holiday unless the employee's services are required in the interests of the public health, safety, or general welfare. (Res. No. 78-7, January 24, 1978; Res. No. 76-56, July 13, 1976; Res. No. 82-86, October 26, 1982)

Rule XVIII. Compensation – Section 10 Overtime Compensation - (Page 50 of handbook) Addition necessary to clarify travel and overtime pay (highlighted).

Section 10 Overtime Compensation: It shall be the duty of the City Manager and Department Heads to conduct the City's business with a minimum amount of overtime. Overtime shall not be accrued under normal operating conditions.

The City Manager or appropriate Department Head and/or manager may grant the payment of overtime compensation to employees only under unusual circumstances and only when he deems such payment to be in the best interests of the City.

A non-exempt employee shall have the choice to receive overtime pay at the rate of one and one-half (1-1/2) times his or her regular rate or compensatory time off equal to one and one-half (1-1/2) times the overtime worked for each hour over 40 hours in any work week. Such compensatory time shall be taken at the convenience of the department with the approval of the Department Head. No more than 240 hours of compensatory time off may be accrued unless an employee has worked in a public safety activity, emergency response activity or seasonal activity, in which case no more than 480 hours of compensatory time may be accrued. (Res. No. 76-60, July 27, 1976) (Res. No. 86-26, April 20, 1986)

A non-exempt employee shall have the choice to receive overtime pay at the rate of one and one-half (1-1/2) times his or her regular rate or compensatory time off equal to one and one-half (1-1/2) times for hours worked in excess of normal hours when attending a meeting and/or conference for City business. Travel time before and/or after the employee's normal workday (in excess of their normal workday travel time) will also be eligible for overtime or compensatory time. For example, a non-exempt employee travels on a Sunday for a Monday conference. The travel time only is eligible for overtime or compensatory time. If a meeting or conference is in session on a Sunday, those conference hours would also be eligible for overtime or compensatory time. Travel situations may be different and may be addressed on a case by case basis.

Rule XVIII. Compensation – Section 17 Alternative Retirement Plan - (Page 55 of handbook) Addition regarding change to alternate retirement plan policy for part time employees (highlighted).

Section 17 Alternative Retirement Plan. Effective 7/1/91, the City has implemented an alternate retirement system for part time hourly and seasonal employees in lieu of social security.

Effective on July 1, 1991, the City Manager was authorized to implement mandatory payroll deductions for part-time employees' wages in an amount of 6.2% of earnings. City paid contributions of 1.3% of earnings shall be authorized as an employer contribution to a retirement system for part-time employees. All such payroll deductions and employer contributions shall be

deposited by the City into a deferred compensation retirement plan. (Resolution No. 91-52)

It is mandatory, upon termination, if an employee's accumulated funds on deposit in the program do not exceed \$5,000 those funds must be withdrawn and are taxable at that time.

If an hourly employee is later reclassified to a regular part time employee or full time employee their funds in the alternative retirement plan must be rolled over to a 457 Deferred Compensation Plan.

RECOMMENDATION

It is recommended that the City Council approve by consent the annual update to the Personnel Rules and Regulations Handbook effective November 10, 2009.
Respectfully Submitted,

Amanda Von Kleist – Human Resources Specialist
Barbara Bishop – Finance/IS Manager



Agenda Item Staff Report

TO: Honorable Mayor and Members of City Council
For the Meeting of November 10, 2009

FROM: Blaine Michaelis, City Manager *BM*

SUBJECT: Request from San Dimas HEROES - City Council direction regarding their proposal to place a Veterans Memorial on the open area along San Dimas Avenue just east of the Park and Ride lot, north of Commercial Street.

SUMMARY

The HEROES organization is interested in locating a Veterans Memorial in the open area to the southeast of the Park and Ride lot just north of Commercial Street – see attached aerial.

A critical element of their fundraising efforts is to be able to tell donors where the memorial will be located and what it will look like. They are requesting that the city council give them an initial indication if there is a wiliness to accommodate the memorial at the Park and Ride property with the understanding that the project is still subject to providing all of the details (drawings, elevation, site plan, building materials, walkways, donor recognition program, project description, financing plan, etc.) necessary for the project to ultimately move through the city's review and approval process.

The reason for asking for initial support is that the details and specifics of the project are just not known at this time. They are also proposing to place a maximum time frame of 18 months for them to explore the possibility of formalizing a memorial proposal for this site. In other words if they have not attracted the necessary support to submit all of the details necessary for final consideration, they will withdraw their request. On the other hand if they have obtained sufficient support and interest within 18 months, they will proceed with every detail of the city's review process with no expectation or guarantee of approval.

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RECOMMENDATION

1. Receive brief report from staff.
2. Receive presentation from HEROES
3. Confirm with HEROES the understanding that any city council consent to have a memorial at this site is only an initial consent for an 18 month time period. The project is still subject to the city's review process with no expectation or guarantee of approval.

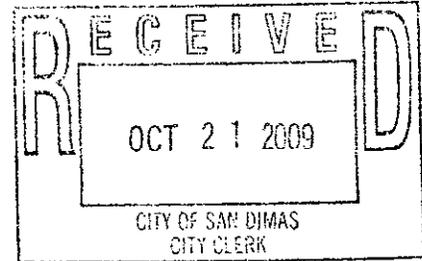
Attachment: Request letter from HEROES
Reference aerial of the requested site

San Dimas HEROES

Helping Establish a Remembrance Of Every Serviceperson
Veterans Memorial Project

October 19, 2009

Blaine Michaelis, City Manager
City of San Dimas
245 East Bonita Avenue
San Dimas, CA 91773



Dear Blaine:

We are in receipt of your letter dated October 2, 2009, and certainly agree that there are very important decisions to be made by the City Council and our Committee regarding the construction of a permanent Veterans memorial.

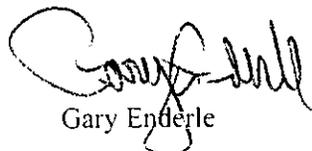
We understand the importance of providing the Council with plans and renderings regarding the monument, however, due to the effort and costs involved in this process, we believe it is imperative that we have a location "locked in" prior to following this path. Having a definite location in mind, we will be able to concentrate our efforts on developing plans that will fit the area and will not have to worry about the necessity of revising the plans if we have to change locations. Once our design is in place, we will be able to determine costs and evaluate our ability to raise the funds required to achieve our goal. We also recognize that the design of the monument, its placement on the property, landscaping, and other items ancillary to the project will be subject to Council approval.

Therefore, we respectfully request that San Dimas HEROES be placed on the agenda for the City Council meeting of Tuesday, November 10, 2009 so that we may formally request the Council to approve the designation of the property at the corner of Commercial and San Dimas Avenues as the site for the San Dimas Veterans Memorial. We would also like to present banners to the military personnel who have been discharged from active duty in the Armed Forces and would appreciate it if that presentation could be made at the beginning of the Council meeting, prior to oral comments from the audience.

As you know, this project is very important to us as a committee and to many San Dimas residents. We look forward to working with you, the Council, San Dimas residents, and businesses throughout our community to achieve our goal.

Sincerely,


Janellen Graef


Gary Enderle

cc: San Dimas City Council



CityGIS

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Agenda Item Staff Report

TO: Honorable Mayor and Members of City Council
For the Meeting of November 10, 2009

FROM: Blaine Michaelis, City Manager *BM*

SUBJECT: Renovation and expansion of the City Hall, Civic Center Plaza, and Stanley Plummer Community Building

Approve a Project Management Agreement with Griffin Structures Inc. to proceed with the process to secure competitive bids for this project. The Agreement for professional services is in an amount not to exceed \$775,000 - this expense is included within the proposed Guaranteed Maximum Price established for this project. Council consideration for awarding the bids to complete this project is tentatively scheduled for February 23, 2010.

SUMMARY

In accordance with a previous service agreement with Griffin Structures Inc., the city has received a Guaranteed Maximum Price for the project as follows:

City Hall - \$9,251,000

Community Building - \$2,634,000

Plaza - \$1,149,000

Total - \$13,034,000

The next step in this process is the administration of the competitive bidding process for the proposed work. Approval of this proposed agreement for professional services authorizes Griffin Structures to complete the competitive bidding process and if the bids are awarded – to perform project management serviced through the completion and final acceptance of the project.

As a reminder to the council – the bidding process will be structured so that the council has the option to just proceed with the city hall portion of the project, or go ahead and complete all of the proposed work. Also, if the competitive bids are lower than what is anticipated in the Guaranteed Maximum Price, the GMP will be proportionally lowered.

The city attorney has reviewed and approved this proposed agreement.

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RECOMMENDATION

1. Receive report from staff, ask questions as desired.
2. Approve the services agreement with Griffin Structures Inc.
3. Confirm that the next milestone decision on this project centers on the award of bid decision – tentatively scheduled for February 23, 2010.

Attachment: Proposed Agreement

PROGRAM MANAGEMENT AGREEMENT
FOR CITY HALL AND COMMUNITY CENTER EXPANSION
AND RENOVATION
AND RELATED SITE IMPROVEMENTS
CITY OF SAN DIMAS

PRELIMINARY INFORMATION

PARTIES:

<u>PM@R</u> Griffin Structures, Inc. 385 Second Street Laguna Beach, CA 92651 Attention: Roger Torriero E-Mail: Rtorriero@griffinholdings.net	<u>City</u> City of San Dimas 245 East Bonita San Dimas, CA 91773 Attention: Blaine Michaelis E-Mail: bmichaelis@ci.san-dimas.ca.us
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PROJECT DESCRIPTION: City Hall and Community Center Expansion and Renovation per **Exhibits A and B**

PROJECT SITE: 245 East Bonita, San Dimas, CA

AMOUNT OF GMP: \$13,006,000

DAILY LIQUIDATED DAMAGES AMOUNT: \$500

ARCHITECT: Nestor+Gaffney Architecture, LLP

CONSTRUCTION MANAGER: Swinerton Builders, Inc.

DESIGNATED CITY REPRESENTATIVE: Blaine Michaelis, City Manager

LAST DAY FOR CITY TO EXECUTE AGREEMENT: November 13, 2009

LAST DAY FOR CITY TO ISSUE NOTICE TO PROCEED: November 13, 2009

LIST OF EXHIBITS:

- Exhibit A: Description of Project**
 - Exhibit B: Breakdown of the GMP**
 - Exhibit C: Schedule of Performance**
 - Exhibit D: Insurance Requirements**
 - Exhibit E: Payment Bond**
 - Exhibit F: Performance Bond**
 - Exhibit G: Non-Collusion Affidavit**
-

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PREAMBLE

This PROGRAM MANAGEMENT AGREEMENT (the "**Agreement**") is entered into this ___ day of November, 2009, by and between THE CITY OF SAN DIMAS, a general law city (the "**City**"), and GRIFFIN STRUCTURES, INC., a California corporation (the "**PM@R**").

RECITALS

City and PM@R enter into this Agreement with reference to the following recited facts:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Municipal Code of City; and

B. PM@R is a California corporation duly organized and validly existing under the laws of the State of California and is currently operating at 385 Second Street, Laguna Beach, California, 92651; and

C. City is planning to implement the planning, design, bidding, and construction of the Project described in the Preliminary Information section above to be constructed on the Project Site (as identified in the Preliminary Information section above), all as described in **Exhibit A**, which is attached hereto and incorporated in full by this reference; and

D. PM@R provided professional services for program management, scheduling, estimating, and constructability reviews for the schematic and design development phases of the design and engineering of the Plans and Specifications (as defined in Section 1.1AA of this Agreement) for the Project (as defined in Section 1.1FF of this Agreement) pursuant to the Professional Services Agreement between City and PM@R entered into on July 22, 2008;

E. City desires that PM@R provide additional services regarding the pre-qualification of certain contractors for the Project, obtaining bids from contractors for the construction and installation of the Project, supervising such construction and installation and providing other related services, all as described in and subject to the terms and conditions of this Agreement, and PM@R desires to provide such services; and

F. As part of PM@R's services, PM@R will engage Construction Manager (as identified in the Preliminary Information section above) to supervise and manage the actual construction of the Project by the Prime Contractors, and Construction Manager will provide these services for a fixed fee and be at risk.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and for valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and PM@R agree as follows:

AGREEMENT

1. DEFINITIONS & GENERAL PROVISIONS.

1.1 Definitions. In addition to the definitions ascribed to certain words, phrases or terms in the Preliminary Information, Preamble, or Recitals of this Agreement, the following words, phrases or terms will have the following definitions:

A. **"Allowance"** means additional resources included in PM@R's estimate to cover the cost of known but undefined requirements for an individual activity, work item, account or sub-account expressly identified as such in the summary breakdown of the GMP attached hereto as **Exhibit B** and incorporated herein by this reference. There are no Allowances except as specifically identified in the GMP. When PM@R is capable of determining the actual cost associated with the Allowance, an appropriate additive or deductive change order shall be issued.

B. **"Architect"** means the architect, identified in the Preliminary Information section, hired by City to design the Project.

C. **"Bid Documents"** means and refers to each solicitation for and contract to be entered into between the Construction Manager and each Prime Contractor for each individual construction trade element of the Project to be performed by such Prime Contractor, the Plans and Specifications applicable to such individual construction trade element of the Project to be performed by such Prime Contractor, and all other conditions and requirements to be satisfied by the particular Prime Contractor and its sub-contractors, if any, regarding such individual construction trade element of the Project, all in compliance with all applicable Laws of City and all other governmental entities including, but not limited to, state, federal, and county. All contractors submitting bids on for the Project shall provide a cashier's check, certified check, cash, or bid bond in an amount equal to at least ten percent (10%) of the total aggregate bid price, which is given as a guarantee that the bidder will enter into a Construction Contract if awarded the work. If the bidder provides security other than a bid bond, the Bid Documents may require the bidder to provide a letter from the bidder's surety indicating that surety will issue the payment and performance bonds if the bidder is awarded the Construction Contract.

D. **"City"** means the city of San Dimas, California.

E. **"City Council"** means the City Council of the city of San Dimas.

F. **"City Attorney"** means the City Attorney for the city of San Dimas.

G. **"Construction Contracts"** means construction and material supply contracts awarded to Prime Contractors in accordance with the requirements of this Agreement.

H. **"Construction Management Agreement"** means the agreement entered into by and between PM@R and its Construction Manager (identified in the Preliminary Information section), to provide for Project construction management services.

I. **"Construction Manager (CM)"** means the construction manager (identified in the Preliminary Information section) hired by PM@R as its construction manager to supervise and manage the actual construction of the Project by the Prime Contractors. The CM is providing its professional services for a fixed fee and will be at risk for any cost overruns in excess of the construction budget agreed to between PM@R and CM.

J. **"Consultant(s)"** means the consultants, if any, hired by PM@R pursuant to this Agreement.

K. **"Consultant(s) Agreements"** means the contracts executed between PM@R and its Consultant(s).

L. **"Contingency"** means an amount applied to any cost for any Scope of Work required or reasonably inferable from the Contract Documents for the Project, as determined by PM@R. PM@R will present to City for review and approval, which approval will not be unreasonably withheld, a zero dollar change order identifying all uses of Contingency. Any unused Contingencies, at the completion of the Project will be considered Savings and will inure solely to City.

M. **"Contractors"** means the construction Prime Contractors, and their subcontractors of all tiers and material and labor suppliers, authorized by City to be awarded construction or material or labor supply contracts by PM@R or Construction Manager for all or any portion of the construction of the Project.

N. **"Day"** means a calendar day unless otherwise specifically designated.

O. **"Defective" or "Defect"** is an adjective referring to work that is faulty or deficient, in that it does not substantially conform to the Plans and Specifications, or does not meet the requirements of any required inspections, reference standard, test, or approval referred to in the Plans and Specifications.

P. **"Designated City Representative"** means the person identified as such in the Preliminary Information section or his/her designee as set forth in writing to PM@R.

Q. **"Differing Site Conditions"** are (1) subsurface or latent physical conditions at the Project Site differing materially from those conditions indicated in the as-built or record drawings for the existing facilities and any reports or other similar documents provided by City to PM@R prior to entering into this Agreement concerning the existing conditions of the existing facilities or (2) unknown or unforeseen physical conditions at the

Project Site of an unusual nature, differing materially from conditions normally encountered and generally recognized as inherent in work of the nature provided for in the Plans and Specifications.

R. **“Final Completion”** is the date when the Contractors have completed all construction activities required by the Contract Documents, excluding executory warranty obligations.

S. **“General Conditions, Contracts and Specifications”** means those documents necessary for the construction of the Project that have been approved by City.

T. **“Guaranteed Maximum Price” and “GMP”** mean and refer, interchangeably, to the fixed amount identified in the Preliminary Information section, which is the total cost of the Scope of Work, as more particularly described in **Exhibit B**, which is attached hereto and incorporated by this reference, which shall include, but not be limited to, the following: (a) the total costs of managing, bidding, and constructing the Project, including the costs of repairing or correcting damaged, Defective, or nonconforming Project Work performed by the Contractors, Consultants, or suppliers, provided that such damaged, Defective, or nonconforming Project Work was not caused by CM's negligence or failure to fulfill a specific responsibility of the CM and only to the extent that the cost of repair or correction is not recoverable by PM@R or the CM from insurance, sureties, Contractors or suppliers; (b) the Professional Services Fixed Fee; (c) the allowable Reimbursable Expenses of PM@R identified in **Exhibit B**; (d) the fees, costs and allowable reimbursables of the CM and Consultants as identified in **Exhibit B**, including the costs and fees for Special Testing and Inspections; (e) the fees, costs and allowable reimbursable expenses of the Contractors, as set forth in the Construction Contracts to be awarded to the Prime Contractors in accordance with this Agreement; (f) cost of insurance required to be obtained by PM@R, Construction Manager and Contractors by this Agreement; (g) cost of bonds required by this Agreement; (h) cost of fulfilling warranty obligations as required by this Agreement; (i) sales, use, gross receipts and similar taxes (including any tax on services, if imposed); (j) late charges as defined in Section 4.2E and (k) PM@R's Contingency as identified in **Exhibit B** and subject to the provisions of Subsection L, above, relating to PM@R's use of Contingency. Any cost (e.g., insurance or bonds of Prime Contractors) that might fall within more than one category of costs described in the previous sentence will only be counted once. PM@R may apply the Savings and Contingency to any cost for any Scope of Work required or reasonably inferable from the Project Documents, as determined by PM@R in its sole and absolute discretion, except that neither Savings nor Contingency may be applied to the Professional Services Fixed Fee and neither Savings nor Contingency will be applied to any cost of the Project Work attributable to a scope change (all such changes in scope will instead adjust the GMP, including an increase to the

Professional Services Fixed Fee, by change order). Unused Savings and Contingency will inure solely to City. Where applicable, the terms "Guaranteed Maximum Price" and "GMP" shall each include adjustments made in accordance with Section 4.1A of this Agreement. The Guaranteed Maximum Price specifically excludes the following costs (all of which are City's responsibility): (1) fees charged by another governmental entity or utility service provider necessary for the construction of the Project (but not including fees for temporary utilities such as electricity and water, which are included in the GMP as a Reimbursable Expense), (2) building and safety inspections provided by City, and (3) all Off-Site-Work designated in the Scope of Work as being the responsibility of City. Additionally, the GMP is subject to the express qualifications, exclusions and Allowances set forth in **Exhibit B**.

U. **"Laws"** means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any governmental or quasi-governmental agencies, bodies, authorities and courts having jurisdiction over the Project Work or any portion thereof.

V. **"Notice of Completion"** means and refers to a Notice of Acceptance/Notice of Completion pursuant to Civil Code §3093.

W. **"Off-Site Work"** means and refers, collectively, to all necessary design, engineering, permitting, demolition, excavation, construction, utilities work, and other work to be performed at any location other than the Project Site (or as expressly set forth as Off-Site Work in the Scope of Work) in connection with the Project; provided, however, that utility connections in the immediate area of the Project Site that are required for the Project Work and are expressly shown on the Plans and Specifications are part of the Project Work and not part of the Off-Site Work.

X. **"Parties"** means and refers, collectively, to City and PM@R.

Y. **"Party"** means and refers, individually, to either City or PM@R, as applicable.

Z. **"Permissible Delay"** means a delay that impacts the Schedule of Performance and that is caused by any of the following: (a) any failure by City to timely approve or disapprove any plans, applications or change orders, to inspect the construction within the time provided in Section 2.1H or to issue any permit for the development of the Project on the Project Site within the time allowed in the Schedule of Performance except to the extent that the delay is caused by the actions or inactions of PM@R, its Construction Manager, Consultants or the Contractors; (b) any Off-Site Work designated in the Scope of Work as being the responsibility of City that is not completed within the time frame set forth in the Schedule of Performance; (c) Differing Site Conditions as described in Section 6.1 of this Agreement; (d) an act or omission of City, by any separate contractor or agent employed by City, or by changes to the Project ordered by the Designated City Representative; (e) delay in the issuance of Plans and

Specifications by City beyond the dates set forth in the Schedule of Performance; (f) delay by Architect or other City consultants in responding to RFI's or submittals beyond five (5) business days for RFI's or ten (10) business days for submittals; and/or (g) force majeure causes that are beyond PM@R's control, and that are not reasonably foreseeable, that prevent or materially impair PM@R from its performance of any terms, conditions, obligations or requirements of this Agreement including, but not limited to, any strikes, acts of God, civil emergencies, inability to obtain labor or materials, inability to obtain governmental permits or approvals, governmental restrictions, work stoppages ordered by City or any governmental agency or court that are beyond the control of PM@R, labor dispute between the Prime Contractor, any Prime Contractor's subcontractor or vendor and their respective employees, fire, act of war, act of terrorism, natural disaster or severe adverse weather condition not reasonably anticipated. A Permissible Delay shall also mean any delay that impacts a critical path item set forth in the Schedule of Performance that is authorized by the Designated City Representative pending settlement of a dispute.

AA. **"Plans and Specifications"** means and refers to all drawings, plans and specifications for soliciting bids from Prime Contractors and construction and installation of the Project on the Project Site, all as prepared by or on behalf of City in its sole and absolute discretion, and approved by the City Council, prior to any bid solicitation or construction. An index of all of the Plans and Specifications as of the date of this Agreement is included in **Exhibit A**.

BB. **"Pre-Qualification Questionnaires"** means and refers to pre-qualification questionnaires for pre-qualifying certain Prime Contractors for the Project developed by PM@R and/or Construction Manager in compliance with all applicable Laws and approved by City, in its sole and absolute discretion, prior to any actual pre-qualification of contractors, bid solicitation or construction.

CC. **"Prime Contractors"** means the construction prime contractors and suppliers authorized by City to be awarded construction or material or labor supply contracts by PM@R or Construction Manager for all or any portion of the construction of the Project.

DD. **"Professional Services Fixed Fee"** means and refers to the fixed amount identified in **Exhibit B** to be paid to PM@R by City for PM@R's services under this Agreement, exclusive of any fees or costs of CM, Consultants, Contractors, laborers, materials, equipment, allowable reimbursable items or other direct or indirect costs incurred by PM@R in constructing and installing the Project pursuant to this Agreement, and which amount is included within the Guaranteed Maximum Price.

EE. **"PM@R"** means PM@R at risk, and is the party identified as PM@R in the Preliminary Information section.

FF. **"Project"** means and refers to the improvements identified in the Preliminary Information section to be constructed on the Project Site (identified in the Preliminary Information section), as described in greater detail in Section 2 of this Agreement (Scope of Work) and in **Exhibits A and B** attached to this Agreement and incorporated herein by this reference.

GG. **"Project Documents"** means this Agreement, the Exhibits attached hereto, any agreements between PM@R and Construction Manager, between the PM@R and the Prime Contractors and/or the Consultants, or between the Construction Manager and the Prime Contractors and/or the Consultants, any amendments to those agreements, together with the General Conditions, Plans and Specifications, soils reports, and shop drawings.

HH. **"Project Site"** means the site location where the Project will be built as identified in the Preliminary Information section and as further described and depicted in **Exhibit A**.

II. **"Project Work"** means and refers, collectively, to all necessary program management, project scheduling, planning, permitting, bidding, demolition, and construction work required to undertake and complete the construction of the Project on the Project Site in accordance with the terms and conditions of this Agreement. The details of the work to be performed are described in greater detail in Section 2 (Scope of Work) of this Agreement and in **Exhibit A** and **Exhibit B**.

JJ. **"Reimbursable Expenses"** mean out-of-pocket expenses incurred by PM@R in performing its obligations under this Agreement, including: (a) reasonable expenses of reproduction as necessary for the rendition of services hereunder; (b) expense of courier and overnight delivery of Plans and Specifications and other Project-related documents; (c) expense of models, renderings, presentation materials, and photographs authorized in writing by City; (d) expenses of special Consultants when authorized in advance in writing by City; (e) reasonable travel expenses for extraordinary travel requests when authorized in writing by City; (f) expenses for PM@R's commercial general liability and professional liability insurance, as provided in Section 8.4; (g) utility expenses for temporary utilities for the Project Site; and (h) such other expenses incurred in connection with the Project when specifically authorized in advance in writing by City. The Reimbursable Expenses are included in, and subject to, the GMP (i.e., they are an above-the-line line item that is included in the GMP).

KK. **"Savings"** means the difference (if a positive number), as of the date of Final Completion, obtained by subtracting (a) the total aggregate sum of allowed costs of the Scope of Work from (b) the GMP upon Final Completion of the Project. PM@R will separately track all Savings (whether inuring from the buy-out process, from cash discounts, or

otherwise). With each application for payment, PM@R will provide City with its accounting of these Savings, if any. PM@R may, in its sole and absolute discretion, allocate Savings between and among its line items for any allowable cost of the Project Work; provided that PM@R advises City in writing of its use, and provided further that PM@R may not, in any event, allocate any Savings to its Professional Services Fixed Fee. Until Final Completion, any Savings are available to PM@R to pay for any allowed costs of the Scope of Work including Contingency costs, but excluding increases in the Professional Services Fixed Fee.

LL. **"Schedule of Performance"** means and refers to the schedule for the performance of this Agreement as described in **Exhibit C**, which is attached hereto and incorporated herein by this reference. The Schedule of Performance is a critical path method project schedule; consequently, PM@R's completion of the Project Work in accordance with the Schedule of Performance is conditioned upon City timely performing all of its obligations under this Agreement, including, without limitation, making progress payments, providing Plans and Specifications, and providing necessary approvals and replies to Bid Documents, submittals and requests for information. All references in this Agreement to the Schedule of Performance mean the Schedule of Performance as it may be adjusted for Permissible Delays.

MM. **"Scope of Work"** means the Scope of Work as set forth in Section 2 and **Exhibits A and B**.

NN. **"Special Testing and Inspections"** means special testing and inspections for structural components such as earthwork compaction, shoring, concrete, reinforcing steel, CMU, welding, and other structural related installed systems, as set forth in **Exhibit A**.

OO. **"Substantial Completion"** means the date on which the Project Work has progressed to the point where, in the opinion of City and Architect, the Project Work is sufficiently complete, in accordance with the Project Documents, so that the Project Work can be occupied and utilized for the purposes for which it is intended. A **"Certificate of Substantial Completion"** signed by the Architect, PM@R, and City shall evidence this date. The terms "substantially complete" and "substantially completed" as applied to the Project Work refer to Substantial Completion thereof. **"Substantial Completion Date"** means the date set forth in the Schedule of Performance (**Exhibit C**) for PM@R to achieve Substantial Completion of the Project Work. The Substantial Completion Date may be adjusted in accordance with the provisions of this Agreement.

1.2 **General Provisions.**

A. **Term.** Except for provisions that expressly survive the termination or expiration of this Agreement (e.g., indemnification, warranty), this Agreement will terminate sixty (60) days after the date of recording of the Notice of Completion.

B. Change Orders After Substantial Completion. If City issues additive change orders after Substantial Completion, then such additive change orders will be considered Additional Services, and the work to be performed under those change orders will not delay the release of retention to PM@R (which will become due without regard to the status of the work that constitutes Additional Services), regardless of whether the Notice of Completion has been recorded. City and PM@R will enter into a new contract for the Additional Services, and the PM@R (or its Construction Manager) shall enter into new contracts with its contractors to perform such Additional Services or shall take other steps necessary to insure that the Additional Services do not extend the date by which Contractors for the original services can file stop notices.

C. Agreement Not To Hire Covered Employees. City acknowledges and agrees that PM@R has invested considerable time and money that would be difficult to quantify in the training and development of its employees. Therefore, without receiving the PM@R's prior written permission, City agrees to not hire, retain or contract with any employee ("covered employee") of PM@R who performs any services for City under this Agreement for a period of two (2) years following the date this Agreement is terminated or for two (2) years following the separation of a covered employee from the PM@R's employment.

D. Independent Contractor. PM@R is an independent contractor and is not an agent or employee of City. Except as expressly set forth in this Agreement, nothing in this Agreement will be deemed to constitute approval for PM@R, CM, Consultants, Contractors, or any of their respective employees or agents, to be the agents or employees of City. PM@R and Construction Manager have the responsibility for and control over the means of performing the Project Work. Anything in this Agreement that may appear to give City the right to direct PM@R as to the details of the performance or to exercise a measure of control over PM@R will mean only that PM@R will follow the desires of City with respect to the results of the services.

E. PM@R Authorized Signatories. Only the Principal Members of PM@R (as defined in Section 14) are authorized to execute documents (e.g., change orders) on behalf of PM@R.

2. SCOPE OF WORK.

2.1 Construction of Project.

A. Project Work. PM@R shall furnish or cause to be furnished all professional services, equipment, facilities, temporary security measures (i.e., security during the course of construction, which will not include cameras or night security), materials and labor necessary to perform in a complete, skillful and professional manner the Project Work as more particularly described in **Exhibits A and B** attached hereto and

incorporated herein by this reference within the time periods set forth in the Schedule of Performance attached hereto as **Exhibit C** and incorporated by this reference, as it may be adjusted pursuant to this Agreement. The Scope of Work is subject to PM@R's qualifications and exclusions set forth in **Exhibit B**.

B. Services. PM@R shall (a) provide general administration of the Project; (b) interpret the requirements of the Project Documents (with the exception of this Agreement); provided, however, that the Architect will interpret the Plans and Specifications (with either Party allowed to dispute the Architect's interpretation pursuant to the dispute resolution procedures set forth in Section 6.5); (c) manage and coordinate the CM and Consultants and the processing of Plans and Specifications for the Project; (d) manage, as City's representative, bidding (with City providing the Plans and Specifications) all components of construction for the Project, including requiring that all competitive bidding requirements applicable to the Project are complied with in accordance with public bidding requirements and any City approved pre-qualification process; (e) enter into a contract with Construction Manager to construct the Project, oversee the Contractors, and to complete the Project Work in accordance with the Project Documents; and (f) manage and coordinate the services provided by its Construction Manager, for the purpose of causing the Project to be completed within the GMP, in accordance with the Project Documents, and within the time periods set forth in the Schedule of Performance.

C. Licenses. PM@R represents that it possesses and will maintain during the term of this Agreement any and all licenses, permits, qualifications, insurance, and approvals of whatsoever nature necessary to discharge its obligations under this Agreement, and shall require that Construction Manager, Prime Contractors and Consultants maintain during the term of this Agreement any and all licenses, permits, qualifications, insurance and other approvals required to discharge their obligations under their contracts or otherwise related to the Project Work.

D. Modifications. Upon approval of this Agreement and receipt of City's written notice to proceed, PM@R shall then commence its services. It is understood and agreed that as work proceeds on the Project, certain clarifications and modifications will have to be made, including adjustments in floor plans, circulation, site work and elevations, as well as detailing of materials, colors and finishes. Modification of the Scope of Work, and any interpretations of the Project Documents having a substantial impact on the Project, must be approved by the Designated City Representative. City will approve the Modifications of the Scope of Work or interpretation (as applicable) so long as they substantially conform to the scope and budget of the Project as set forth in **Exhibits A and B**, as well as later developed Plans and Specifications; provided, however, that except as authorized in writing by City, under no

circumstances will the cost of the Project Work exceed the GMP. Any approvals by the Designated City Representative required under this Section 2.1 must be made timely so as not to impact the Project Work or Schedule of Performance; failure to give timely approval will result in a Permissible Delay.

E. Minor Field Changes. PM@R has the right during the course of construction of the Project to make "minor field changes," without seeking the approval of City, except to the extent that any such changes increase the cost of the GMP to City or individually or cumulatively delay the completion of the Project beyond the Substantial Completion Date. "Minor field changes" are defined as those changes from the approved construction drawings and Plans and Specifications that have no material effect on the Project and are made in order to expedite the work of construction in response to field conditions. Nothing contained in this subsection will be deemed to constitute a waiver of or change in the City's Building Code requirements governing any such "minor field changes" or in any approvals by City otherwise required for any such "minor field changes." "Minor field changes" will be documented, in writing, in daily field logs, record drawings, or equivalent, and will be made available for City inspection. All minor field changes will result in the utilization of systems or materials of equal or greater aesthetic quality, durability and anticipated life cycle to the approved systems or materials.

F. Keep City Informed. PM@R agrees to keep the Designated City Representative informed at all times regarding the status of all phases of the planning, design, and construction of the Project, including, at a minimum, weekly meetings with the Designated City Representative. PM@R will discuss and review all matters relating to policy and Project direction with the Designated City Representative in advance of all critical decision points, as set forth in the Schedule of Performance, in order to ensure the Project proceeds in a manner consistent with City goals and policies. PM@R will obtain the Designated City Representative's prior approval before presenting any drawings, Plans and Specifications to any applicable jurisdictional agency for review and/or approval. PM@R will utilize its best efforts to notify the Designated City Representative not less than two (2) working days prior to any meeting with any applicable jurisdictional agency and/or public or private company and the Designated City Representative may, at his/her option, elect to attend such meetings.

G. Plan Check. PM@R will submit all plans for plan checks and will apply for and obtain all building permit(s), grading permit(s) and construction permit(s) required by City. City will pay all fees in connection therewith, at no cost to PM@R. City will also pay any fees charged by another governmental entity or utility service provider necessary for construction of the Project. City will cooperate with PM@R at all times and expedite all plan check fees for the issuance of all requisite permits in accordance with the Project's requirements and schedules.

H. Inspections. City will provide civil and building/safety inspections in accordance with the issued permits, except for Special Testing and Inspections which are PM@R's responsibility as set forth in Section 2.1I. Inspections will be provided as necessary upon a 24-hour notice at no cost to PM@R, excluding days that the City Hall is closed. If an inspection is requested on a day immediately preceding a day that the City Hall is closed, the inspection will be performed on the next succeeding day that the City Hall is open.

I. Special Testing and Inspections. PM@R is responsible for engaging third-party Consultants to perform the Special Testing and Inspections, and the cost of the Special Testing and Inspections is included in the GMP.

J. Off-Site Work. PM@R is not responsible for any Off-Site Work (if any) unless it is expressly designated in the Scope of Work as being the responsibility of PM@R.

2.2 Competitive Bidding

A. Bidding. PM@R will cause the various construction trade elements of the Project to be competitively and publicly bid in accordance with competitive bidding requirements pursuant to City and state law requirements under separate Bid Documents for each such construction trade to multiple Prime Contractors, all as approved by the Designated City Representative, and in accordance with the optional pre-qualification procedure set forth in Sections 2.2B and C. PM@R and Construction Manager, acting on behalf of City, will administer the public competitive bidding and, where legally authorized, negotiating procedures; provided, however, that City is responsible for awarding all Construction Contracts as required under State Law. If desirable to achieve efficiency or to comply with phased construction (if applicable), PM@R and CM may solicit bids for one or more portions of the Project, with additional bid solicitations to follow; provided, however, that PM@R and Construction Manager will not cause the Project to be constructed through incrementally limited contracts with Contractors so as to avoid the competitive bidding laws applicable to the City. After award of a contract by the City Council, each Prime Contractor will enter into written contracts with Construction Manager for such work of improvement of the Project, with the Construction Contracts to be in accordance with the terms of the applicable Bid Documents. City hereby designates PM@R and Construction Manager as its agents for the purpose of contracting with the various Prime Contractors for the collective work of improvement of the Project solely pursuant to Bid Documents pre-approved by City. Program Manger and Construction Manager do not have the authority to act for or on behalf of City by virtue of this Agreement, except as specifically provided for in this Agreement. No representation, course of performance or other action by PM@R or Construction Manager will bind City to any contract term that is not expressly set forth in this Agreement or City

approved Bid Documents. This subsection sets forth the extent of PM@R's and Construction Manager's authority to bind City. PM@R shall ensure that the requirements of this Section 2.2A are incorporated into the Construction Management Agreement. PM@R and/or Construction Manager shall include the following statement in all Bid Documents to Prime Contractors:

"A copy of the agreement between the City of San Dimas ("City") and Griffin Structures, Inc., authorizing this contract and to which this contract is subject and subordinate will be provided upon request or is available for your review at the offices of the City Clerk located at 245 East Bonita, City of San Dimas, California 91773, during the normal business hours of the City."

B. Pre-Qualification. The Designated City Representative and PM@R may jointly determine to pre-qualify contractors to bid on portions of the Project. If Project Manager and City agree to pre-qualify certain trades, then PM@R and/or Construction Manager will prepare Pre-Qualification Questionnaires for City's approval. Subsequent to City's approval of the Pre-Qualification Questionnaires, and within the time period allowed for in the Schedule of Performance, PM@R or its Construction Manager will publish notices soliciting contractors to pre-qualify to bid on the portions of the Project that City and PM@R determined to pre-qualify, all in accordance with Public Contract Code §20101.

C. Bid Documents. Within the time period allowed for in the Schedule of Performance, PM@R, CM, and the Consultants, with assistance from the Architect and other City consultants, will cause Bid Documents to be prepared for each individual construction trade element of the Project that is to be separately bid and submit all such Bid Documents to City for review and approval in accordance with the time period allowed for in the Schedule of Performance. The Bid Documents will include a provision requiring that any bid bond accompanying a bid must include a rider naming PM@R and Construction Manager as additional obligees; while City will be entitled to the proceeds of the bid bond pursuant to Section 2.2F, PM@R and Construction Manager will have standing to pursue claims against the surety on the bid bond if the successful bidder fails to execute a Construction Contract. Subsequent to City's approval of a set of Bid Documents, PM@R will solicit fixed-price bids for each individual construction trade element of the Project that is to be separately bid, pursuant to the approved Bid Documents, from the contractors in that construction trade, with any such bids to be submitted within the time period allowed for in the Schedule of Performance. Architect, City consultants, PM@R, CM, or the Consultants will answer questions of bidders and generate addenda to the Bid Documents, as necessary and after approval by the Designated City Representative, during the bidding process for each individual construction trade element of the Project that

is to be separately bid. The City Clerk (or their designee as allowed by law) will receive and open bids from contractors. PM@R or its Construction Manager will evaluate all complete bids received.

D. Acceptance of Bids. If one or more complete bids for the individual construction trade element of the Project is/are received from a responsive and responsible bidder, as determined jointly by PM@R and the Designated City Representative or City Council, as required by applicable law, PM@R or Construction Manager will submit the bids and its analysis of the identity of the lowest, responsive/responsible bidder to the Designated City Representative. The Designated City Representative will arrange for such matter to be placed on the next available regular public meeting agenda of the City Council for consideration by the City Council and potential award of a contract for the individual construction trade element of the Project by City, subject to City's right to reject all such bids. If a Construction Contract is awarded by City, Construction Manager will enter into a contract with each Prime Contractor for performance of each individual construction trade element of the Project for the fixed-price on the bid submitted by the Prime Contractor within ten (10) days of the award of the contract to such Prime Contractor by City, which contract shall be subject and subordinate to all of the terms and conditions of this Agreement and shall expressly or by reference incorporate the terms and conditions of this Agreement.

E. Rejection of Bids. If PM@R and/or Construction Manager determine that a particular low bidder is non-responsive, is not responsible, or for any other reason should not be awarded the Construction Contract at issue, they will provide the City with appropriate evidence to support that conclusion within a reasonable period prior to the award of the Construction Contract. City must timely respond to any bid rejection, including placing the item on the next City Council agenda for action; if City fails to timely respond, then PM@R will be entitled to a Permissible Delay.

F. Forfeiture of Bidder's Security. If City awards a Construction Contract, but the successful bidder fails to execute the Construction Contract, then the following will apply:

(1) Subject to subsection (2), the amount of the successful bidder's security shall be forfeited to City and the cash or proceeds shall be deposited in the fund out of which the expenses of preparation and printing of the plans and specifications, estimates of cost, and publication of notice are paid, all in accordance with Public Contract Code §§20172 and 20173.

(2) If City awards the Construction Contract to the second lowest bidder, then the amount of the lowest bidder's security shall be applied by City to the difference between the low bid and second lowest bid, and the surplus, if any, shall be returned to the lowest

bidder if cash or a check is used, or to the surety on the bidder's bond if a bond is used, all in accordance with Public Contract Code §20174.

(3) City will be entitled to retain the amount, determined by subsections (1) and (2), of the lowest bidder's security, but the GMP will be increased by the amount of money City actually recovers from lowest bidder's security.

G. No Avoidance of Bidding Laws. Construction Manager will not divide the Project into smaller contracts so as to avoid the competitive bidding laws applicable to the Project.

H. Labor Agreements. Construction Manager may be signatory to one or more labor agreements with certain trades, which may require all bidders for the particular trade(s) to either: (a) be union contractors or (b) agree to enter into a specific project labor agreement regarding their work on this Project. If so, then relevant Bid Documents for the particular trade(s) will reflect this requirement.

2.3. Prime Contracts.

A. Costs Included. PM@R will require that the agreements executed by its Consultants, Construction Manager and by all Prime Contractors and Contractors will, in the aggregate, satisfactorily provide all labor, materials, tools, and construction equipment necessary for the execution and completion of the Scope of Work, and that all Construction Contracts will incorporate within their contract sums the payment by the Prime Contractors for all sales, use, gross receipts and similar taxes related to the Project.

B. Clean Project Site. PM@R will require all Bid Documents released for competitive public bidding to prospective Prime Contractors, and all contracts subsequently awarded to Prime Contractors, to include a requirement that such Prime Contractors and Contractors keep the Project Site free from accumulation of waste materials, construction debris or rubbish caused by such Prime Contractors' and Contractors' operations.

C. Compliance with Safety Laws. PM@R will comply and will require its CM, Consultants and the Contractors to comply with all Safety Laws (as hereinafter defined) of City that are now in effect and all other governmental entities including, but not limited to, state, federal, and county whether now in force or hereinafter enacted, except to the extent any subsequent Safety Laws are not by law to be applied retroactively. "Safety Laws" are those statutes, ordinances, policies, rules, regulations, and requirements intended to safeguard against accidents or injury to persons on, about or adjacent to the Project Site. The requirement to comply with Safety Laws does not apply, however, with respect to the elimination or abatement of safety hazards created or otherwise resulting from work at the Project Site carried on by persons or firms directly

employed or engaged by City and not a part of the Project. City will coordinate with PM@R, and will cause any persons or firms directly employed or engaged by City and not a part of the Project or its tenants, to abide by and fully adhere to all applicable provisions of federal, state and local Safety Laws and regulations and to comply with the reasonable request by Construction Manager for the elimination and abatement of any such safety hazard. Any City representative(s) present at the Project Site during construction are subject to reasonable rules as may be imposed by PM@R and/or Construction Manager.

D. Minimize Public Inconvenience. PM@R will require its Construction Manager and all Contractors to prosecute the Project Work in a manner to minimize public inconvenience and possible hazard, to restore the streets and other work areas to their original condition and former usefulness as soon as reasonably possible, and to protect public and private property adjacent to the Project.

E. Compliance with Laws. PM@R will, and will require its CM and Consultants and their respective officers, employees and agents to, comply with all applicable federal, state and local laws, statutes, ordinances and regulations and require that the construction documents prepared by PM@R, CM, Contractors, and Consultants, if any, comply with all applicable federal, state and local Laws. PM@R is responsible for any costs arising from PM@R's failure to cause Prime Contractors to comply with Laws.

F. Public Contract Code §7103. PM@R and City acknowledge and agree to comply with, and PM@R will require its CM and the Prime Contractors to comply with, Public Contract Code §7103(b), which states: "(b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."

G. Warranties. PM@R will require that each Construction Contract provides that warranties called for by the Project Documents will commence on the date of Substantial Completion of the Project.

2.4 Records.

A. PM@R to Keep Records. PM@R will keep, and also cause CM to keep, such full and detailed accounts as may be necessary for the proper construction of the Project and financial management required under this

Agreement. The records system will contain PM@R's and CM's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement.

B. City's Right to Audit Records. City has the right to examine and audit all books, estimates, records, contracts, documents, Bid Documents, Construction Contracts, subcontracts, and other data of PM@R (including computations and projections), Construction Manager and the Contractors related to bidding, negotiating, pricing, duties and obligations of the parties, or performing change order modifications, in order to evaluate the accuracy and completeness of the cost or pricing data. The expense of said audit will be at the sole cost of City. PM@R will, and will require that Construction Manager will, retain the materials described in this subsection, for examination, audit, or reproduction, until four (4) years after the Substantial Completion of the Project, unless applicable local, state, or federal regulations, ordinances or policies require the records to be retained for a longer period.

C. Prime Contractors' Records. PM@R will require CM to insert a clause containing the above audit provisions in all agreements with Prime Contractors.

2.5 City to Provide Information and Decisions.

A. Information Regarding Requirements. City will, in a timely manner, provide full information regarding its requirements for the Project.

B. Render Decisions. The Designated City Representative will render in a timely manner all decisions requested by PM@R which may be necessary to perform the Project Work in accordance with the schedule of performance. All decisions rendered by the Designated City Representative are binding upon City.

C. Communications. All City communications to PM@R, CM, or any of the Consultants or their employees must be issued solely by the Designated City Representative and delivered exclusively to PM@R. These restrictions only apply to City in its role as owner of the Project, and not in its role as the jurisdiction having authority for the enforcement of codes. Inspectors and other City officials acting in their official enforcement capacity are not restricted in their ability to communicate with PM@R, CM, Consultants, Contractors or otherwise, as their official roles may require. All communications from PM@R, CM, or any of its Consultants or their employees to City must be issued solely by PM@R and delivered exclusively to the Designated City Representative.

D. Notice of Defects. If City discovers any fault, Defect or nonconformance in the Project or with the Plans or Specifications, City must give prompt written notice to PM@R. The City Council will authorize, in writing, the GMP (including the final Plans and Specifications upon which the GMP is based) prior to issuance of a building permit(s).

E. Proof of Funding. Upon written request of PM@R from time to time, City will provide to PM@R reasonable evidence of the source and amount of funding available for the Project Work. If City fails to provide reasonable evidence of funding of the GMP to PM@R within 10 business days of PM@R's written request, PM@R may suspend performance.

F. Plans and Specifications. City must provide all Plans and Specifications and related documentation and information in accordance with the Schedule of Performance. City's design consultants, including the Architect, must respond to (1) requests for information within five (5) days of receipt and (2) submittals (including, but not limited to, shop drawings) within ten (10) days of receipt; provided, however, that if in the professional judgment of City's design consultants, additional time is necessary to respond to requests for information or submittals due to the complexity of the request for information or submittal, then within five (5) days of receipt City's design consultants may give written notice to PM@R stating the reason that additional time is necessary and the date that City's design consultants will provide their response. Where review or approval of any Project Document by the City (but excluding review or approval by City's design consultants, including Architect) or another public agency is required, an additional five (5) days will be allowed for a response. City will assure that the construction documents prepared by City and/or City's design consultants, including the Architect, comply with all applicable federal, state and local Laws.

2.6 Warranty. PM@R will require that Construction Manager requires each Prime Contractor to warrant to City in writing that all material and equipment furnished under such Prime Contractor's Construction Contract will be of good quality and new unless otherwise required or permitted by the Project Documents, that such Prime Contractor's work will be free from Defects not inherent in the quality required or permitted, and that the Prime Contractor's work will conform with the requirements of the Project Documents for a period of one (1) year from the date of the Certificate of Substantial Completion for the Project. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered Defective. Such warranties may exclude damage or Defects caused by abuse, modifications not performed by the Prime Contractor, improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage or improper or Defective work on other portions of the Project performed by other Prime Contractors. PM@R will be responsible for assuring that all warranty work is performed, and PM@R will be the single source of contact and responsibility for City warranty claims.

3. SCHEDULE

3.1 Execution of Agreement. Following its execution by the authorized representative(s) of PM@R and prompt delivery thereafter to City, this Agreement is subject to the review and approval by the governing body of City, in

its sole and absolute discretion. However, if City has not approved, executed and delivered this Agreement to PM@R by Last Date to Execute Agreement as set forth in the Preliminary Information, then this Agreement will be deemed null and void and no provision of this Agreement will be of any force or effect for any purpose.

3.2 Notice to Proceed. The Designated City Representative must issue a written notice to proceed to PM@R on or before 5:00 p.m. local time on or before the Last Date to Issue Notice to Proceed as set forth in the Preliminary Information. If said notice to proceed is not received by PM@R by the aforementioned time and date, then this Agreement will be deemed immediately rescinded and null and void in all parts unless City and PM@R agree, in their sole and absolute discretion, in writing to equitably adjust the GMP and Schedule of Performance. If the Parties cannot agree to an equitable adjustment, then this Agreement is deemed null and void, and each Party will bear its own costs and waive any claims against the other Party for any damages arising from or relating to the failure to agree to the terms of this Agreement.

3.3 Compliance with Schedule.

A. Time is of the Essence. Time is of the essence in the performance of services under this Agreement.

B. Parties to Comply with Schedule. The Parties are each responsible for complying with their respective obligations set forth in the Schedule of Performance. PM@R shall be responsible for complying with the Schedule of Performance, to cause to be delivered to City in a timely manner all work necessary for the implementation of the Project, to assure that all construction work is bid or negotiated in accordance with the public bidding requirements approved by the City and as provided in the California Public Contract Code and to oversee its CM's supervision of all Prime Contractors as set forth in the Project Documents, as well as the Exhibits attached hereto. While PM@R is responsible for complying with its obligations in the Schedule of Performance, PM@R's completion of the Project in accordance with the Schedule of Performance and GMP is conditioned upon City timely performing all of its obligations under this Agreement, including, without limitation, making progress payments, providing Plans and Specifications, and providing necessary approvals and replies to Bid Documents, submittals and requests for information, all in accordance with the requirements of this Agreement.

C. Substantial Completion Date. PM@R and Construction Manager will ensure that the Project is completed in accordance with the Schedule of Performance. The Schedule of Performance will be revised as a result of Permissible Delays, with the revisions being documented in a change order signed by PM@R and the Designated City Representative. PM@R will ensure that the scheduled date for substantial completion of the construction of the Project in the Construction Management Agreement is

on or before the scheduled Substantial Completion Date provided in this Agreement.

3.4 Completion of Project.

A. PM@R's Notice of Completion. When PM@R considers that the Work is ready for its intended use, PM@R will notify City in writing that the Project Work is substantially complete (except for punchlist items specifically listed by PM@R as incomplete) substantially in accordance with the Plans and Specifications ("PM@R's Notice of Completion"). Promptly thereafter, City, PM@R, Construction Manager and Architect will inspect the Project Work to determine the status of completion. If City or Architect does or do not consider the Project Work substantially complete, then City or Architect will notify PM@R in writing giving the reasons therefore. If Architect considers the Work substantially complete, Architect will prepare and deliver to City a tentative certificate of Substantial Completion. The tentative Certificate of Substantial Completion will include by attachment a tentative list of items to be completed or corrected including the anticipated time frame for completing the punch list items. City will review the tentative certificate and the attached list and notify Architect and PM@R of any objection. Architect will then issue a definitive Certificate of Substantial Completion (with the revised tentative list of items to be completed or corrected) agreed to by the Architect, the PM@R and the City. The Certificate of Substantial Completion will include by attachment the list of items to be completed or corrected including the anticipated time frame for completing the punch list items. City and PM@R will prepare an addendum to the Certificate of Substantial Completion stating their respective responsibilities for security, maintenance, heat, utilities, and changes to the Project Work and insurance.

B. Notice of Completion. Following the completion of each of the items specifically identified in the Certificate of Substantial Completion as incomplete, if any, and upon written request from PM@R for issuance of the Notice of Completion, City will inspect the Project to determine whether or not the Project has been completed in substantial compliance with the Plans and Specifications and with this Agreement. If City determines that the Project is complete and in substantial compliance with this Agreement, then City will issue a Notice of Completion for the Project to PM@R. If City determines that the Project is not in compliance with this Agreement, then City must, within fifteen (15) calendar days of PM@R's written request, provide to PM@R a written statement setting forth all of the reasons for City's failure or refusal to issue a Notice of Completion. The statement must also specify the action(s) PM@R must take to obtain a Notice of Completion from City. If the reason for City's refusal is confined to the immediate unavailability of specific items or materials for construction or landscaping or other minor items, City may, but is not required to, issue its Notice of Completion upon the posting of a bond or

irrevocable standby letter of credit by PM@R in a form reasonably acceptable to City in an amount representing the fair value of the Project Work not yet completed, as reasonably determined by City. After addressing the issues set forth in City's written notice, PM@R will again notify City to request issuance of the Notice of Completion and the Parties will continue to repeat the inspection and notice procedures until City issues the Notice of Completion.

C. Failure to Issue Notice of Completion. If City fails to timely provide either a Notice of Completion or a written statement setting forth the reasons for City's refusal to issue a Notice of Completion, then PM@R will be deemed conclusively and without further action of City to have satisfied the requirements of this Agreement with respect to the Project, as if a Notice of Completion had been issued by City pursuant to this Agreement.

4. COMPENSATION

4.1 General Payment Provisions.

A. Guaranteed Maximum Price. City shall pay PM@R, and PM@R agrees to accept in full payment, for PM@R providing all services, labor, material and equipment for satisfactory completion of all of the Project Work pursuant to this Agreement the lesser of: (a) the Guaranteed Maximum Price ("**GMP**") identified in the Preliminary Information section, plus any adjustments as provided below; or (b) the sum of all direct and indirect costs incurred by PM@R for the satisfactory completion of the Project Work pursuant to this Agreement plus the Professional Services Fixed Fee. The GMP may only be adjusted as a result of the following: (a) Allowances as identified in **Exhibit B**; (b) late charges as set forth in Section 4.2E; (c) Differing Site Conditions as set forth in Section 6.1; (d) Permissible Delays as set forth in Section 6.3A; (e) changes to the Scope of Work as set forth in Sections 4.1B and 6.4; and (f) changes in Laws as set forth in Section 14.1. The Parties agree that: (a) PM@R is responsible for ensuring that the GMP (as adjusted as set forth above) is not exceeded; (b) City is not responsible to expend any amount for the Project Work in excess of the GMP (as adjusted as set forth above); and (c) any amount for the Project Work over the GMP (as adjusted as set forth above) is the sole responsibility of PM@R and PM@R shall proceed with the Project as approved and pay with its own funds all costs in excess of the GMP (as adjusted as set forth above). Without limiting the requirement that the City will be responsible to pay only the lesser of the GMP or the sum of all direct and indirect costs incurred by PM@R for the satisfactory completion of the Project Work pursuant to this Agreement plus the Professional Services Fixed Fee, if the total aggregate amount of the cost to complete the Scope of Work exceeds the remaining unpaid balance of the GMP, then City shall have the right to retain any portion of the Professional Services Fixed Fee reasonably necessary to cover the shortfall. Nothing in this Agreement or its exhibits is intended to create a

line item guaranty (only the GMP is guaranteed), and PM@R may, in its sole and absolute discretion, allocate any Savings from any individual line item or its Contingency, except Allowances, to any costs for any Project Work required or reasonably inferable from the Project Documents for the Project.

B. Plan Check Costs. City acknowledges and hereby will be responsible for any costs associated with changes subsequent to permitted construction drawings generated by field inspections and/or changes mandated by other jurisdictional agencies, and the GMP and Schedule of Performance will be equitably adjusted. Additionally, if the GMP is established before plan check, then any changes required as a result of plan check entitle PM@R to a change order for the costs and time associated with the required changes, unless the required changes were the result of the negligence of PM@R or its Consultants or agents.

C. Professional Services Fixed Fee. Subject to City's right to retain the Professional Services Fixed Fee as set forth in Subsection 4.1A, City will pay to PM@R the Professional Services Fixed Fee compensation, in the amount identified in **Exhibit B**, as follows:

(1) The Professional Services Fixed Fee shall be paid in equal monthly installments, with the number of installments as identified in **Exhibit B**.

(2) PM@R shall submit to City its request for payment at the same time and in the same manner as submission of progress payments in Section 4.2 below. The Designated City Representative shall review PM@R's request for payment and shall inform PM@R of any reasons why such request is not suitable for payment, if any, within five (5) working days of receipt.

D. Reimbursable Expenses. PM@R shall also be entitled to reimbursement of out of pocket costs as they are incurred, which costs are identified in **Exhibit B**. Reimbursable expenses shall be paid at cost and shall not exceed what is shown in **Exhibit B** without prior written approval of City. PM@R's Professional Services Fixed Fee is subject to adjustment as provided in Sections 6.1 and 6.4.

E. Costs to Remedy Contractor Defaults. PM@R may utilize its Savings and Contingency to pay for the costs of retaining replacement Contractors if any Contractor defaults under their Construction Contract and fails to cure the default or if the Contractor is unable or unwilling to complete their work (including due to bankruptcy).

F. Labor Code Certifications. Pursuant to California Labor Code §1861, PM@R gives the following certifications: PM@R is aware of the provisions of California Labor Code §3700, which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and PM@R

will comply with such provisions (to the extent applicable) and require its CM, all Consultants and all Contractors to comply with such provisions before commencing the performance of their respective Project Work.

4.2 Progress Payments. City will make payments to PM@R for disbursement to its CM, Consultants and to Contractors according to the following procedures:

A. Breakdown of the GMP. City shall make progress payments monthly as the Project Work proceeds based on the percentage of Project work completed. PM@R or its Construction Manager will furnish a summary breakdown of the total GMP on the AIA form G702-G703 or in another format reasonably acceptable to City, showing the amount included therein for each principal category of the Project Work, in such detail as reasonably requested, to provide a basis for determining progress payments.

B. Stored Materials. Unless otherwise provided in the Project Documents, the cost of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Project Work shall be included in progress payments. If approved in advance by City, payment may be similarly made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing. Payment to Contractors and suppliers for materials and equipment stored on or off the Project Site will be conditioned upon City's verification of the invoices, compliance with procedures satisfactory to City to establish City's title to such materials and equipment or otherwise protect City's interest, and will include applicable insurance, storage and transportation to the Project Site for such materials and equipment stored off the Project Site. City may reject materials when delivered to the Project Site if materials are not in the same condition as approved in the off-site storage facilities.

C. Pencil Draw. On or before the twenty-fifth (25th) day of the month immediately preceding a month in which PM@R will submit a Payment Request, the Designated City Representative, PM@R and its Construction Manager shall meet to review a preliminary draft of such Payment Request (hereinafter referred to as a "**Pencil Draw**"). PM@R will revise the Pencil Draw in accordance with any objection or recommendation of City that is consistent with the terms of this Agreement. On or before the first (1st) business day of the month immediately following the month in which the Pencil Draw was first submitted to City, PM@R will re-submit the revised Pencil Draw to City as the Payment Request. PM@R will also submit with each Payment Request a written narrative describing the basis for requesting payment for any item set forth in the Payment Request that does not conform to instructions of City in connection with the Pencil Draw. PM@R will submit appropriate waiver and release forms from each party having lien or stop notice rights in the Project with each Progress Payment Request.

D. City's Review of Payment Requests. Upon receipt of a Payment Request, City will:

- (1) Review that request promptly for the purpose of determining if the payment request is a proper payment request; and
- (2) Return any payment request determined not to be a proper request suitable for payment to PM@R as soon as practicable, but not later than five (5) working days after receipt. The returned request for payment shall be accompanied by a document setting forth in writing the specific reasons why the payment request is not proper.

E. Time for Payments. City will pay within twenty (20) days of submission any progress Payment Request that is properly submitted and not timely disputed. If a payment neither paid nor not timely disputed by City, and as a direct result of that failure PM@R is required to pay to its CM, Consultants, vendors or Contractors additional amounts equivalent to statutory penalties, late charges or accrued interest (collectively, "late charges"), then City will pay to PM@R those late charges in addition to the amount unpaid (and such late charges will result in an adjustment of the GMP in an amount equal to the amount of the late charges). Late charges will only be paid upon presentation to City of written evidence that the late charges were in fact owed and paid by PM@R. PM@R shall remit payment to its CM, Consultants, vendors and the Contractors within the statutory time periods.

F. Retention. Unless otherwise provided below, City will retain 10 percent (10%) of progress payments for construction costs until thirty-five (35) days following recordation of a Notice of Completion. Notwithstanding the previous sentence, within twenty (20) days of the issuance of the Certificate of Substantial Completion, City will pay PM@R an amount sufficient to reduce the retention to five percent (5%) of the construction costs for Project Work completed, less one hundred fifty percent (150%) of the estimated cost to complete the items to be completed or corrected as set forth in the punch list attached to the Certificate of Substantial Completion. City will not retain any portion of the progress payments reflecting professional services costs.

G. Withholding. City may withhold payment (in excess of retentions) for the reasons and in the amounts as permitted by Law.

H. Stop Notices. If stop notices or mechanic's liens are filed against the Project or state, federal or other governmental agency claims or liens are filed, then City may withhold the amount required by law from progress payments until such claims and liens shall have been resolved pursuant to applicable law. However, if the cause of the Stop Notice is due to City's unexcused failure to pay PM@R in accordance with the terms of this Agreement, then PM@R is entitled to make a claim for any damages incurred as a result of or arising out of the withholding.

4.3 Final Payment.

A. Conditions for Final Payment. Unless otherwise required by Public Contract Code §7107, City will pay the final payment due for the remaining Project costs (including retention), and PM@R is authorized to disburse same to its Consultants, Construction Manager and Prime Contractors, when all of the following requirements have been met:

(1) The Agreement has been fully performed by PM@R (excluding any executory warranty requirements), including the following:

(a) All punch list items identified in the Certificate of Substantial Completion;

(b) All operation and maintenance manual(s) turned over and accepted by City;

(c) All end user training substantially completed;

(d) All warranty certificates received and filed with the appropriate manufacturer(s);

(e) All as-built drawings received, reviewed and accepted by PM@R and City; and

(f) Issuance by City of the final Certificate of Occupancy.

(2) Request for Final Payment has been made;

(3) Release of all claims, liens and Stop Notices has been accomplished except for claims, liens and Stop Notices resulting from City's unexcused failure to pay PM@R in accordance with the terms of this Agreement;

(4) PM@R has presented to City unconditional releases of all filed stop notice claims against City by PM@R, by its Construction Manager and/or by the Contractors except for stop notice claims resulting from City's unexcused failure to pay PM@R in accordance with the terms of this Agreement; and

(5) PM@R has complied with the conditions precedent set forth in Subsection D below.

B. Bond in Lieu of Release. PM@R or its Construction Manager may, if any Contractor refuses to furnish a release or receipt in full, furnish a bond or letter of credit satisfactory to City, to indemnify against any such lien or claim.

C. Notice of Completion. When the Certificate of Substantial Completion is fully executed and all punch list items completed, the Designated City Representative will issue a Notice of Completion and within ten (10) days after formal acceptance by City Council will record such Notice of Completion. A certified conformed copy of the recorded

Notice of Completion will be sent to PM@R. Following Final Completion, City will place the formal acceptance on the agenda for the earliest upcoming City Council meeting consistent with the City's customary agenda preparation procedures.

D. Final Payment Documents. Notwithstanding the foregoing, neither final payment nor any remaining retained percentage will become due until PM@R submits to City: (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project Work for which City or City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied; (b) a certificate and endorsement(s) evidencing that insurance required by the Project 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 (10 days' notice for cancellation due to non-payment of premium) has been given to City; (c) consent of surety, if any, to final payment; and (d) if required by City, 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 Agreement to the extent and in such form as may reasonably be designated by City. If a Contractor refuses to furnish a release or waiver required by City, then PM@R or its Construction Manager may furnish a bond or letter of credit satisfactory to City to indemnify City against such lien when the cause thereof is not due to City's unexcused failure to pay PM@R in accordance with the terms of this Agreement. If such lien remains unsatisfied after payments are made, PM@R will refund, or cause to be refunded, to City all money that City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

5. WAGE RATES AND LABOR COMPLIANCE.

5.1 Prevailing Wage Determination. In accordance with the California Labor Code §1770 *et seq.*, City will provide PM@R with general prevailing rate of per diem wages in the locality in which the Project Work is to be performed for each craft, classification, or type of workman or mechanic to be used in completing the Project Work, as determined by the Department of Industrial Relations. PM@R will require the CM to insert a provision in the Construction Contracts that require the Contractors to obtain a copy of said determination, post a copy of said determination at the Project Site, pay prevailing wages, and comply with all provisions of the California Labor Code relating to the payment of prevailing wages (§§1770-1798 inclusive). PM@R will obligate its Construction Manager to require that each Prime Contractor and subcontractor under him, pay not less than the said specified prevailing wage rates to all laborers, workmen, and mechanics employed in the execution of the Agreement and comply with all provisions of the California Labor Code relating to the payment of prevailing wages (Sections 1770-1798, inclusive).

5.2 Labor Compliance. The Parties acknowledge that certain labor compliance regulations may apply to the Project. It is PM@R's responsibility to assure that the following procedures and record keeping are undertaken, either by PM@R or by its Construction Manager. PM@R, through its Construction Manager, is responsible for enforcing the Construction Contract provisions and ensure that all labor compliance requirements (if any) are performed and documented in the Project file(s). Generally, labor compliance requirements will be discussed at the pre-construction conference. When labor compliance problems are discovered by its Construction Manager, PM@R will require that they be reported to City. PM@R and its Construction Manager are responsible for determining the appropriate action required to remedy or address the problem. When labor compliance problems are discovered by process review they should be documented in the process review report with a recommendation for correction of the problem. PM@R will require its Construction Manager to maintain sufficient records to ensure each Contractor's compliance with wage and apprenticeship sections of the Agreement and as required by law.

6. DIFFERING SITE CONDITIONS; DELAYS; CHANGES; CLAIMS/DISPUTES

6.1 Differing Site Conditions. If Differing Site Conditions are encountered, PM@R will ensure that notice by the observing party is given promptly and in no event later than ten (10) days after first observance of the conditions. PM@R will ensure that the appropriate consultant will promptly investigate such conditions and consult with the Designated City Representative regarding whether the conditions constitute a Differing Site Condition. If the consultant determines that a Differing Site Condition exists, the consultant will notify City and PM@R of any anticipated increase in the cost of and/or time to complete the Project. If City and PM@R agree that a Differing Site Condition exists, PM@R will cause the affected Contractors to be notified and to prepare change orders to their Construction Contracts to reflect such additional expense and/or time. If the Designated City Representative agrees to the time adjustment and cost contained in the proposed change order, the proposed change order will be processed under the guidelines set forth in Section 6.4 below. The GMP will be adjusted to account for the increased costs attributable to such Differing Site Conditions to the extent approved by City. Any time delay associated with such Differing Site Condition will also cause an equitable adjustment to the Substantial Completion Date. If the consultant determines that the conditions at the Project Site are not at material variance with those indicated in the Project Documents and that no change in the items of this Agreement is justified, the consultant will so notify City and PM@R in writing, stating the reasons. After obtaining approval from City, PM@R will require its Construction Manager to notify all potentially affected Contractors of such determination and such reasons. Claims by City or PM@R in opposition to any determination by the consultant that Differing Site Conditions exists or do not exist must be made within twenty (20) working days after the consultant has given notice of its determination. If City, PM@R, and any Contractor cannot mutually agree regarding whether a Differing Site Condition exists and/or the amount of an adjustment to the contract sum or time

extension for an affected Construction Contract, the adjustments, if any, will be determined in accordance with the guidelines set forth in Section 6.5 below.

6.2 Excavations. In accordance with Public Contract Code §7104, if the Project Work involves digging trenches or other excavations that extend deeper than four feet below the surface, then the following applies to such trenches or excavations:

A. Notice. That the Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any:

(1) Material that the Contractor believes may be material that is hazardous waste, as defined in §25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Contract.

B. Investigation. That City will promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Construction Contract.

C. Dispute. That, in the event that a dispute arises between City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Construction Contract, but shall proceed with all work to be performed under the Construction Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

6.3 Delays.

A. Permissible Delays.

(1) Time Extensions. If a Permissible Delay occurs, then the Substantial Completion Date shall be extended for the period of time caused by such Permissible Delay. If City and PM@R agree that a Permissible Delay has occurred and the period of time that the Substantial Completion Date should be extended as a result of the Permissible Delay, the Substantial Completion Date shall be extended by change order. If City and PM@R cannot agree that a

Permissible Delay has occurred and/or the period of time that the Substantial Completion Date should be extended as a result of the alleged Permissible Delay, the adjustment to the Substantial Completion Date, if any, shall, be determined in accordance with Section 6.5 below.

(2) Costs. PM@R shall have a claim for PM@R's, CM's and Consultants' direct costs associated with delays that impact the Schedule of Performance and which are caused by any of the following: (a) any failure by City to approve or disapprove any drawings, Plans and Specifications or applications or to issue any permit for the development of the Project on the Project Site within the time allowed in the Schedule of Performance except to the extent that the delay is caused by the actions or inactions of PM@R, its CM, Consultants or the Contractors; (b) any Off-Site Work designated in the Scope of Work as being the responsibility of City that is not completed within the time frame set forth in the Schedule of Performance; or (c) an act or omission of City, by any separate contractor or agent employed by City. Direct costs shall not include: (1) lost opportunity costs; (2) consequential damages; (3) insurance; (4) taxes; (5) home office overhead; and/or (6) other costs incurred by PM@R, CM, and/or the Consultants which cannot be identified specifically and directly with the Project. PM@R shall also have a claim for Contractor's direct and indirect costs associated with the delays set for in this subsection, which costs shall be determined in accordance with the provisions contained in the Construction Contracts. If City and PM@R agree that the foregoing type of delay has occurred and the costs due and owing PM@R as a result thereof, the amount of the costs agreed to shall be paid by change order. If City and PM@R cannot agree that the foregoing type of delay has occurred and/or the amount of costs, the adjustment of PM@R's compensation, if any, shall, be determined in accordance with Section 6.5 below.

(3) Changes. PM@R shall have a claim for an adjustment of PM@R's and Construction Manager's compensation for Differing Site Conditions as described in Section 6.1 of this Agreement and changes to the Project. The adjustment of PM@R's and Construction Manager's compensation shall be calculated in accordance with Section 6.4 of this Agreement and processed by change order, unless the claim is disputed by City. If the claim is disputed by City, the adjustment, if any, shall, be determined in accordance with Section 6.5 below.

(4) Time of Payment. Payments for the cost of all Permissible Delays not in dispute shall be paid as reimbursable costs.

B. Liquidated Damages. In the event of a delay other than a Permissible Delay, the Parties acknowledge and agree that damages will

be sustained by City. Execution of this Agreement shall constitute agreement by the Parties that if the Project is not Substantially Completed by the Substantial Completion Date, City will suffer damages, the actual amount of which is impractical and infeasible to determine. Therefore, City and PM@R agree that PM@R shall pay to City as liquidated damages, and not as a penalty, the daily amount of liquidated damages set forth in the Preliminary Information section above for each and every calendar day of delay beyond the Substantial Completion Date (as adjusted for Permissible Delays) that the Project is not Substantially Completed. If PM@R fails to pay such liquidated damages, City may deduct the amount thereof from any money due or that may become due PM@R under this Agreement.

6.4 Changes. City has the right to make additions, deductions or other changes to the Scope of Work as provided in this section. Changes to the Scope of Work will be effected by written change orders, which will detail the addition, deduction, or other changes to the Scope of Work, as well as the adjustments to the GMP and/or the Schedule of Performance. If City and PM@R cannot reach agreement as the terms and conditions of a change order, such disagreement will be resolved in accordance with Section 6.5.

A. Changes Affecting PM@R and its Construction Manager. Changes to the Scope of Work to which City and PM@R agree may result in an adjustment to the GMP and PM@R's and Construction Manager's fee compensation, which will be determined as follows:

(1) For services performed by PM@R under this Agreement due to an approved change in the Scope of the Work of the Project or as a result of Differing Site Conditions, the change order will include the net cost of the change (including work performed by CM or Consultants, fees, equipment, labor and materials reflected in each change order with Contractors that results from such Scope of Work change or Differing Site Condition) plus a change to Professional Services Fixed Fee calculated by multiplying the net cost of the change by five percent (5%).

(2) For services performed by Construction Manager involving a change in Scope of Work of the Project or Differing Site Conditions, the change order will include the net cost of the change (including work, equipment, labor and materials performed by Contractors, reflected in each change order with Contractors that results from such Scope of Work change or Differing Site Condition) plus a change to Construction Manager's fee calculated by multiplying the net cost of the change by five percent (5%).

B. Changes Affecting Contractors. Change orders affecting the Contractors, and the rules governing the implementation thereof, will be set forth in the Construction Contracts. For additive change orders where the Prime Contractor is performing the additional work, the change order

will include overhead and profit for the Prime Contractor of fifteen percent (15%) of the cost of labor and materials. For additive change orders where the Prime Contractor is not performing the additional work (i.e., a subcontractor is performing the work), the change order will include overhead and profit for the Prime Contractor and subcontractor of five percent (5%) and fifteen percent (15%), respectively, of the cost of labor and materials.

C. Changes Affecting Consultants. Adjustments to the fee compensation of the Consultants will be calculated on a time and expense basis, or a mutually agreed to lump sum by the City and PM@R.

D. Approval of Change Orders. If permissible by the terms and conditions of this Agreement, PM@R may request additions to or deletions from the scope of the Project by submitting a change order request to City specifying the basis for any requested change and any requested adjustment to the Guaranteed Maximum Price and the Schedule of Performance occasioned by any such change order request. Change orders that require City Council approval can only be approved at a City Council meeting and shall be presented to the Designated City Representative in final form not less than 14 days prior to the City Council meeting in order to permit the City to place the change order on the City Council agenda. When applying any Contingency, PM@R will advise City of its intended use and prepare for City's review a no cost basis (i.e., no change to the GMP) change order request specifically identifying the proposed use of the Contingency, for which approval will not be unreasonably withheld by City. The Designated City Representative will have authority to sign the no cost basis change orders. PM@R's Principal Members have authority to sign change orders for PM@R.

E. Changes to the Plans and Specifications. City will require the Architect and the other design consultants under contract with City or the Architect to provide "clouded" revisions of all changes made to the Plans and Specifications and written narratives of all changes, so that all changes to the Plans and Specifications are clearly identified as changes. Such revisions will be issued in the form of a Bulletin, construction change directive, or other written means as agreed to between the Architect, City, and PM@R. Changes to the Plans and Specifications resulting from the issuance of RFI's, Submittals, or other forms of project information will be documented by the Architect and recorded electronically. If the Plans and Specifications as identified in **Exhibit A** (or later versions) are changed, and the change results in an impact to the cost of, and/or time to, perform the Project Work, then this will constitute a change in the Scope of Work and entitle PM@R to a change order that equitably adjusts the GMP and/or Schedule of Performance.

6.5 Disputes/Claims.

A. Claims Resolution Involving Contractors. Disputes involving Contractors will be resolved in accordance with the rules set forth in the Construction Contracts. City has the right to review these rules.

B. Dispute Resolution under this Agreement. PM@R and City intend to resolve all disputes at the Project level without resorting to legal proceedings. Consistent with this intent, PM@R and City will endeavor to include a similar statement of intent and resolution procedure in contracts they each enter into so that all disputes can be considered at the Project level as a precondition to further proceedings. Upon notification of a dispute by City or PM@R to the other occurring before Substantial Completion, City and PM@R will meet promptly to attempt to resolve the dispute. If unsuccessful, then prior to the initiation of any action or proceeding under the Contract Documents, PM@R and City will make a good faith effort to resolve the dispute by an **Early Neutral Evaluation** process. Participation in this evaluation process is mandatory, but will not require a delay in the filing of any notice of default under Section 11, or otherwise extend any cure period contained in that section. The Parties will select a disinterested third party mutually acceptable to both Parties ("Evaluator") with expertise in the designing and construction of similar projects. In all disputes concerning performance claims, the Evaluator will render an assessment of the dispute, which the Parties will use to structure a framework for settlement, or, at a minimum, to streamline the issues that will ultimately be settled, arbitrated or litigated as set forth below. To facilitate resolution, each party will prepare a "position paper" setting forth the material basis for their respective position. Each party will also prepare a short presentation before the Evaluator. Upon completion of the presentation, the Evaluator will identify areas of agreement, forecast liabilities, and establish, if applicable, a range for liability. The opinions and decision of the Evaluator will not be binding on either Party. Nothing disclosed by any Party or otherwise contained in the evaluation made by the Evaluator may be admitted in any subsequent arbitration or litigation. The Parties will work together to organize and complete the Early Neutral Evaluation process in a timely manner, and the Parties will share the Evaluator's fee and the filing fee equally.

7. INDEMNIFICATION.

7.1 Indemnification by PM@R. To the fullest extent permitted by law, PM@R will (and will require its CM, Consultants and Contractors to) indemnify, defend and hold harmless City, its City Council, boards and commissions, officials, officers, agents, volunteers and employees (collectively, the "**Indemnified Parties**") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, stop notices, judgments, fines, penalties, liabilities, costs and expenses (including, without

limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim;" collectively, "Claims"), to the extent that they arise from or in any manner relate (directly or indirectly) to: (a) any negligent or Defective work performed or services provided by PM@R, CM, Consultants, and Contractors under this Agreement; (b) any breach or default in the performance of, or the omission to perform, any obligation on PM@R's part under any term or provision of this Agreement or the Project Documents; (c) any willful misconduct or negligent act or omission to act by PM@R, PM@R's agents, representatives, employees, CM, Consultants, and Prime Contractors relating to the performance of, or omission to perform, any term or condition of the Agreement or the Project Documents; (d) any liability of any nature, for or on account of any patented or unpatented article, appliance, equipment or device used in the performance of the Agreement and not specified by City; and (e) any claims or damages arising out of a challenge to the legality of the project delivery structure or this Agreement's failure to conform to California law. Notwithstanding the foregoing, nothing herein will be construed to require PM@R to indemnify the Indemnified Parties for that portion of any Claim to the extent arising from the negligence or willful misconduct of the Indemnified Parties. This indemnity will apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PM@R.

7.2 Defense Obligation for Professional Negligence Claims. In accordance with Civil Code §2782.8, PM@R's obligation to indemnify and defend under Section 7.1 for claims based upon professional negligence does not include the obligation to defend actions or proceedings brought against City for professional negligence, but rather to reimburse City for attorney's fees and costs incurred by City in defending such professional negligence actions or proceedings brought against City to the extent caused by PM@R. PM@R is not required to indemnify or defend City for any loss, injury, death or damage caused by the negligence or willful misconduct of City or of other third parties for which PM@R is not legally liable.

7.3 Indemnification by City. To the fullest extent permitted by law, City will indemnify, defend and hold harmless PM@R, CM, Consultants, and Contractors (collectively, the "Indemnitees") from and against any and all Claims, to the extent that they arise from or in any manner relate (directly or indirectly) to: (a) any negligent or Defective design services provided by City or consultants engaged by City (including the Architect and any engineers or other design consultants retained by City, the Architect, or either of them); (b) any breach or default in the performance of, or the omission to perform, any obligation on City's part under this Agreement; (c) any willful misconduct or negligent act or omission by City relating to the performance of, or omission to perform, any term or condition of the Agreement; and (d) any liability of any nature, for or on account of any patented or unpatented article, appliance, equipment or device used in the performance of the Agreement and specified by City or its consultants (including the Architect). Notwithstanding the foregoing, nothing herein will be construed to

require City to indemnify the Indemnitees for that portion of any Claim to the extent arising from the negligence or willful misconduct of the Indemnitees. This indemnity will apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by City.

7.4 Defense of Claims. Except as set forth in Section 7.2, if any such Claim, action, or proceeding is brought pursuant to Sections 7.1 or 7.3 against the Indemnified Parties or Indemnitees, the Party responsible for providing a defense (if any) under the applicable section, shall defend the same at their sole cost and expense by competent and conflict-free counsel selected by the Party providing the defense and approved by the Party being indemnified, which approval will not be unreasonably withheld.

7.5 Notice of Claims. The Party to be indemnified must promptly notify the Party providing the indemnification of any Claim, action, or proceeding against the Indemnified Parties or Indemnitees, as the case may be, relating to the performance, or omission to perform, of any term or condition of this Agreement and the indemnifying Party's duty to indemnify, defend, and hold harmless shall be waived if the Party to be indemnified has knowledge of a Claim and fails to promptly notify the indemnifying Party and the indemnifying Party is prejudiced in the defense of such Claim from the failure to receive prompt notice. The Indemnified Parties and Indemnitees shall cooperate fully in the defense of such Claim, action, or proceeding.

7.6 Survival. The rights and obligations under this Section 7 will survive the termination or expiration of this Agreement.

8. INSURANCE.

8.1 General Requirements. Without limiting PM@R's indemnification of City, PM@R will maintain and will require its Consultants, Construction Manager, and any other person or entity providing services to PM@R hereunder to maintain in force at all times during the performance of this Agreement, a policy or policies of insurance of the type and amounts described in **Exhibit D**.

8.2 Property Insurance/Builders Risk. PM@R will require its Construction Manager to provide and maintain property insurance in the amount of 100% of the value of the replacement cost of the Project Work on the property where the Project is to be constructed. The property insurance premium will be a cost of the work included in the GMP. City will directly pay the cost of any deductibles on the property insurance (and these deductibles are not included in the GMP). The property insurance will insure against the perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, flood, water damage, mechanical and electrical breakdown, earthquake, windstorm, and physical loss or damage including, without duplication of coverage, payments for falsework, testing and startup, temporary buildings and debris removal, and will cover reasonable compensation for PM@R's and Construction Manager's services and expenses required as a result of such covered reasonable insured loss. The

insurance will include the interest of City, PM@R and its agents (including its CM, Consultants and the Contractors). Such insurance will be on an all-risk policy form reasonably acceptable to PM@R and City. Alternatively, City may elect to provide and maintain, at City's sole cost (including the cost of any deductibles), property insurance in the amount, including the interests of the parties, and covering the perils, each as identified above. If City elects to provide the property insurance, such insurance will be on an all-risk policy form reasonably acceptable to PM@R and Construction Manager. Additionally, if City elects to provide and maintain the property insurance, then City and PM@R will execute a deductive change order to deduct the cost of the property insurance included in the GMP; provided, however, that if Construction Manager requires Differences in Conditions coverage, then the deductive change order will be for the net deduction (i.e., the cost of the property insurance in the GMP minus the cost of the Differences in Conditions insurance). If City elects not to purchase property insurance that covers earthquakes, or directs PM@R or Construction Manager not to purchase property insurance that covers earthquakes, then PM@R and Construction Manager are not responsible for losses resulting from earthquakes.

8.3 Prime Contractor and Subcontractor Insurance. The types and amounts of all policy or policies of liability insurance to be provided by the Prime Contractors and requirements related thereto will be set forth in the Bid Documents (which are subject to City's approval) and in the Construction Contracts, and will be paid by the Prime Contractors (but the cost of the insurance will be included as an allowed cost in the GMP).

8.4 PM@R's Insurance. City will reimburse PM@R, as a Reimbursable Expense, a pro rata amount of PM@R's actual expense for the Commercial General Liability and Professional Liability insurance required by this Section 8. PM@R, in submitting its monthly payment applications, will include a breakdown of these insurance expenses, including the pro rata portion owed by City (with City's pro rata portion being calculated by dividing the amount of this Agreement by the aggregate amount of PM@R's contracts with its other clients). Said reimbursement is included in the GMP and no additional funds will be requested from the City.

8.5 Waiver of Subrogation for Property Insurance. City, PM@R and Construction Manager waive all rights against each other and any of their Prime Contractors, and all Subcontractors of every tier, their agents and employees; separate contractors, if any, and any of their subcontractors; agents and employees of the City; and the Architect and their employees, each of the other, for loss or damage to the extent covered by property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance. City, PM@R and Construction Manager, as appropriate, shall require of the Architect, Prime Contractors, all Subcontractors of every tier, separate contractors, if any, and agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The insurance policies of each person or entity shall

provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Notwithstanding the above, the waiver of subrogation in favor of the Architect, its agents and employees shall not apply to any losses as a result of the Architect's, its' agents or its' employees professional negligence.

8.6 Settlements. The entity responsible for purchasing the insurance will have power to adjust and settle in good faith a loss with insurers provided the entity responsible for purchasing the insurance has first provided notice of all relevant terms of the settlement to all parties in interest and no party has objected to the same within five days after receipt of the notice. If such objection is made, the dispute will be resolved as provided in the Agreement. The entity responsible for purchasing the insurance will, in good faith, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

8.7 Loss of Use Insurance. City, at its option and sole cost, may purchase and maintain such insurance as will insure City against the loss of use of City's property due to fire or other hazards, however caused.

9. BONDS.

9.1 General Requirements. This section sets forth the bonding requirements, which shall be imposed upon the Construction Manager and Prime Contractors.

A. **Filing Bonds.** Before allowing a Contractor to enter upon the Project Site and perform any Project construction work, PM@R will cause its Construction Manager to cause to be filed with City four (4) duplicates of each Performance Bond and Payment Bond, in the form attached hereto as **Exhibits E and F**, respectively, and incorporated herein by this reference, required under this section. These bonds will be in the amounts and for the purposes specified below. The surety bonds will be issued by: California Admitted Surety; and, either a current A.M. Best A:VIII rated Surety or an admitted surety insurer which complies with the provisions of the California Code of Civil Procedure §995.660.

B. **Replacement Bonds.** Should any surety or sureties upon said bonds or any of them become insufficient, PM@R will cause its Construction Manager and the Prime Contractors to obtain replacement bonds with good and sufficient sureties within ten (10) days after receiving notice from City that the surety or sureties are insufficient. The costs of any required bonds (whether original or replacement) are included in the GMP.

9.2 Performance Bond. PM@R will cause its Construction Manager to (a) post a Performance Bond in favor of City (on a form reasonably acceptable to City and equal in amount to 100% of the Contract Price under the Construction Management Agreement), as security for the faithful performance by PM@R's Construction Manager of its obligations under the Construction Management Agreement, and (b) require each Prime Contractor to deliver to City an executed Performance Bond in favor of City on a form reasonably acceptable to City and equal in amount to 100% of the contract sum of such Prime Contractor's Construction Contract, as security for the faithful performance by such Prime Contractor of the Prime Contractor's obligations under the Prime Contractor's Construction Contract. The cost of the foregoing bonds are included in the GMP.

9.3 Payment Bond. PM@R will obtain, or will cause its Construction Manager to obtain if the Construction Manager enters into the Construction Contracts with the Prime Contractors, a Payment Bond in favor of City, on a form reasonably acceptable to City and equal in amount to 100% of the Contract Price under the Construction Management Agreement, as security for the payment to all persons performing labor and furnishing materials under those Construction Contracts. Additionally, PM@R will require each Prime Contractor to deliver to City an executed Payment Bond in favor of City in an amount equal to 100% of the contract sum of such Prime Contractor's Construction Contract as security for the payment to all persons performing labor and furnishing materials under such Prime Contractor's Construction Contract. The cost of the foregoing bonds is included in the GMP.

9.4 Warranty Bond. PM@R (or its Construction Manager) shall deliver to City, substantially in the form of the City's standard Defective Materials and Workmanship Bond in the amount of 10% of the construction costs for the Project, concurrent with the release of the Performance Bond required in sub-Section 9.2, a warranty bond conditioned upon the PM@R (or its Construction Manager) correcting any defective work of improvement or materials incorporated into the Project that is discovered within one (1) year following Substantial Completion of the Project. In lieu of a warranty bond, the PM@R (or its Construction Manager), at their election, may extend the Performance Bond for one year following Substantial Completion of the Project to cover defective materials and workmanship.

10. DESIGN DOCUMENTS.

10.1 – Instruments of Service. Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "**Documents**"), prepared or caused to be prepared by PM@R or its CM or Consultants in the course of implementing this Agreement, will remain the property of PM@R or its CM or Consultants, as applicable, and City will have the right to use such Documents in the construction, operation, renovation, and modification of the Project without further compensation to PM@R, CM, Consultant or any other person or entity. PM@R grants (and will require its CM and Consultants to grant) to City a non-exclusive license to the Project Documents. Similarly, City grants (and will

require the Architect and its design consultants to grant) to PM@R, Construction Manager, and the Contractors a non-exclusive license to the Documents created by City or its agents. Among those Documents are certain "Instruments of Service," including the design drawings and all drawings, Plans and Specifications and other documents that are included in the Project Documents. The Party preparing the Instruments of Service shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

10.2 Re-Use of Documents. Documents, including drawings and specifications, are not intended or represented to be suitable for reuse by the Parties or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from the owners of the Documents will be at the other Party's sole risk and without liability to the Party (or its agents) that prepared the Documents. Further, any and all liability arising out of changes made to deliverables under this Agreement by the other Party or persons other than the Party that prepared the Documents is waived against the Party that prepared the Documents, and the other Party assumes full responsibility for such changes unless the other Party has given the Party that prepared the Documents prior notice and has received from the Party that prepared the Documents written consent for such changes. Additionally, each Party will indemnify and defend the other Party and its agents from any liability resulting from the re-use or unauthorized use of the Documents by the other Party or its agents.

10.3 Record Drawings. All improvement and/or construction plans will be prepared with indelible waterproof ink or electrostatically plotted on standard Mylar with a minimum thickness of three mils. PM@R will cause its Construction Manager to prepare record drawings for the Project showing all technical elements of the Project as actually constructed and installed, following completion of the Project. PM@R will deliver these record drawings to City on the date of final payment.

10.4 CADD Data. CADD data delivered to City or PM@R, if any, shall include the professional stamp of the engineer or architect in charge of or responsible for the Project Work. The Parties agree that the Parties (and their agents) preparing CADD data shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by the other Party, or anyone authorized by the other Party, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by the other Party, or anyone authorized by the other Party, of CADD data for additions to this Project, for the completion of this Project by others, or for any other project, excepting only such use as is authorized, in writing, by the Party preparing such CADD data. By acceptance of CADD data, each Party agrees to indemnify the other Party and its agents for damages and liability resulting from the modification or misuse of such CADD data. All original drawings submitted to City or PM@R, if any, shall be in the version of AutoCAD file format acceptable to City on a CD, and should comply with City's digital

submission requirements for Improvement Plans. City will provide AutoCAD file of City Title Sheets. All written documents shall be transmitted to City or PM@R in City's latest adopted version of Microsoft Word and Excel.

10.5 Electronic Data. Because data stored in electronic media format may deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the Party receiving electronic data agrees that it will perform acceptance tests or procedures within sixty (60) days and shall immediately notify the other Party of any errors detected by the receiving Party. The Party providing the data will correct any errors detected within sixty (60) days after receiving notice from the receiving Party. PM@R shall not be responsible to maintain documents stored in electronic media format after acceptance by City. When transferring documents in electronic media format, the Parties make no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those used by the other Party at the beginning of the Project. If discrepancies exist between the electronic files and the hard copies, the hard copies shall govern.

10.6 Intellectual Property Indemnity. City will, and will require its Architect and design consultants to, defend and indemnify PM@R, Consultants, Construction Manager, the Contractors, and their agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, related to any Plans and Specifications for the Project prepared by City, Architect, or any other design consultants retained by either of them.

11. TERMINATION.

11.1 Default. Except as otherwise provided in this Agreement, failure or delay by either party to perform any material term or provision of this Agreement will constitute a default under this Agreement; provided, however, that a party otherwise in default will not be deemed to be in breach under this Agreement if such party:

A. Non-Monetary Default. In the case of a non-monetary default, commences to cure, correct or remedy the default, within thirty (30) days after receipt of written notice from the injured party specifying such default, and diligently and continuously prosecutes such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in this Agreement, then within said time limits); or

B. Monetary Default. In the case of a monetary default, cures the default within ten (10) days after receipt of written notice from the injured Party specifying such default.

11.2 Remedies. The injured party must give written notice of default to the party in default, specifying the default complained of by the non-defaulting party:

Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default. Any failure or delays by either party in asserting any of their rights and/or remedies as to any default will not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of their rights and/or remedies will not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and the exercise by either party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

11.3 Termination.

A. By City. This Agreement may be terminated by City for the convenience of City, with or without cause, at any time, by giving PM@R at least thirty (30) days advance written notice. In the event of termination by City for any reason other than the default of PM@R under this Agreement, City shall pay PM@R for all labor and materials supplied to the Project up to the date of termination and unpaid but earned portions of fees to PM@R, Construction Manager and those of Contractors; provided that the sum of all such amounts will never exceed the Guaranteed Maximum Price. In the event of a material breach of this Agreement by PM@R or the failure to cure a breach after notice of default in accordance with Section 11.1, City may terminate this Agreement by providing PM@R notice thereof and may thereafter reduce any payment due to PM@R from City by an amount necessary to offset City's damage resulting from the breach, and may pursue any other remedy available under this Agreement, at law or in equity against PM@R for the breach.

B. By PM@R. PM@R may only terminate this Agreement in the event of a default by City that is not timely cured as provided in Section 11.1.

C. Assignment of Contracts. In the event this Agreement is terminated by City, PM@R will, if so requested by City, assign to City (or to any party designated by City), effective upon such termination, all of PM@R's contracts with its CM, Consultants, and any other person or company performing work on the Project (and City or its designee will assume PM@R's rights and obligations of such agreements), subject to the prior rights of the surety providing the payment and performance bond required under this Agreement.

12. CONFIDENTIALITY.

12.1 Confidential. All Documents of the PM@R or any Consultant, CM, Prime Contractor or subcontractor performing work on the Project, including but not limited to drafts, preliminary drawings or plans, notes and communications that result from or are directly related to the Project or the Project Work, shall be

kept confidential to the maximum extent permitted by law unless City authorizes in writing the release of information. PM@R shall ensure that contracts with any Consultants, CM, Prime Contractors or subcontractors, shall contain similar language protecting the Documents.

12.2 California Public Records Act. Notwithstanding Section 12.1, PM@R understands that City is subject to the California Public Records Act, and that most of the Project Documents would likely be considered public records subject to disclosure. To the degree that City determines (in its sole discretion) that certain Documents are subject to disclosure under local, state or federal law, PM@R will cooperate with City to provide copies of those Documents/records to City in a timely fashion and will otherwise fully conform to the requirements of the applicable law. Failure to comply with the requirements of this section will constitute a material breach, and constitutes grounds for termination of this Agreement by City in accordance with the provisions of Section 11.1.

13. CONFLICTS OF INTEREST.

13.1 California Political Reform Act. PM@R acknowledges that it and/or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "**Reform Act**") and California Government Code §1090, which (a) require public officers, employees and certain consultants to disclose any financial interest that may foreseeably be materially affected by the Project Work performed under this Agreement, and (b) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the Reform Act, PM@R will conform to all requirements of the Reform Act. Failure to do so constitutes a material breach this Agreement.

13.2 Non-Discrimination. PM@R covenants and agrees for itself, its CM, and Consultants, and their respective successors and assigns, that there will be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the performance of this Agreement or the work of improvement of the Project nor will PM@R, itself or any person claiming under or through it, establish or knowingly permit any such practice or practices of discrimination or segregation with reference to the performance of this Agreement or the work of improvement of the Project.

13.3 No Kickbacks. PM@R warrants that neither it nor Construction Manager have been or will be paid or given, and have not and will not pay or give, any third party any money, in kind contributions, or other consideration for obtaining this Agreement, any agreement between PM@R and Construction Manager or with any Consultants, or for obtaining or recommending a particular contractor for approval on any of the Construction Contracts. Third parties, for the purposes of this subsection shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects, construction managers, and the like when such fees are considered necessary by PM@R.

13.4 Non-Collusion Affidavit. PM@R will require its CM to require all Prime Contractors to execute and deliver to City a Non-Collusion Affidavit, in the form of **Exhibit G**, as required by Public Contract Code §7106.

14. MISCELLANEOUS PROVISIONS

14.1 Compliance With All Laws. Unless otherwise provided below, PM@R will at its own cost and expense comply with (and require its CM, Consultants and the Contractors to comply with) all Laws applicable to their respective performance of the Project Work enacted or promulgated by: (a) City that are now in effect; (b) all other governmental entities including, but not limited to, state, federal, and county whether now in force or hereinafter enacted; and (c) all permit requirements. If any subsequent Laws are enacted that must be complied with and which affects the time or cost of the Project (including but not limited to any tax on services), PM@R will submit a revised GMP and Schedule of Performance to reflect such changes and, once approved by City (which approval will not be unreasonably withheld), is authorized to direct its Construction Manager to process change orders with affected Contractors consistent with the approved revisions to the GMP and Schedule of Performance.

14.2 Waiver. A waiver by either Party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

14.3 Amendments. This Agreement may be modified or amended only by a written document executed by both PM@R and City and approved as to form by the City Attorney.

14.4 Severability. The provisions of this Agreement are severable. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited, unenforceable, or invalid under applicable law, such provision will be severed or modified so as to be legally enforceable (and, to the extent modified, it will be modified so as to reflect, to the extent possible, the intent of the parties) without invalidating the remainder of such provision or the remaining provisions of this Agreement.

14.5 Controlling Law And Venue. The laws of the State of California will govern this Agreement and all matters relating to it and any action brought relating to this Agreement will be adjudicated in a court of competent jurisdiction in the County in which the Project is located.

14.6 Conflicts In Documents. In the event of conflict between the terms set forth in the Agreement and any Exhibits, the provisions listed in the Agreement will control.

14.7 Notices. Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly

given if delivered by (a) personal delivery, (b) nationally recognized overnight courier service (e.g., FedEx, UPS, etc.), (c) first class or certified mail, postage prepaid, or (d) facsimile or other telegraphic or electronic communication in the manner provided in this Section, to the Parties at the locations identified in the Preliminary Information section. A Party may change its address by giving notice in writing to the other Party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by nationally recognized overnight courier service, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given one (1) business day after it has been deposited with the courier service, with delivery charges paid by the Party giving notice, and addressed as set forth above. If sent by mail, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, religious, or City holidays will be excluded.

14.8 Non-Liability Of City Officials And Employees. No member, official or employee of City shall be personally liable to PM@R or any successor in interest in the event of any default or breach by City under this Agreement or for any amount that may become due to PM@R or to its successor, or on any obligations under the terms of this Agreement, except as may be specifically allowed under California law. No officer, partner or constituent owner of PM@R will be personally liable to City or any successor in interest, in the event of any default or breach by PM@R under this Agreement or for any amount that may become due to City or its successor, or on any obligation under the terms of this Agreement, except as may arise from the gross negligence or willful acts of such officer, partner or constituent owner.

14.9 Entire Agreement. This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations, representations or agreements. This Agreement will not be superseded by any provisions of any documents for construction and may be amended only by written instrument signed by both City and PM@R.

14.10 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The subject headings of the sections and subsections of this Agreement are included for convenience of reference only, do not form a part of this Agreement and will not in any way affect the meaning or interpretation of this Agreement or any of its provisions. The use of the words "include," "includes," or "including" followed by one or more examples mean "including without limitation," and is

intended to be illustrative and is not a limitation on the scope of the description or term for which the examples are provided. The words "will," "shall" and "must" in this Agreement indicate a mandatory obligation.

14.11 Attorneys' Fees. If any legal action or other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement or interpretation of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and other costs, in addition to any other relief to which the party may be entitled. "Prevailing Party" will include without limitation: (a) a party who dismisses an action in exchange for sums due; (b) the party who receives performance from the other party of an alleged breach of covenant or a desired remedy where such performance is substantially equal to the relief sought in an action; or (c) the party determined to be the prevailing party by a court of law or arbitrator.

14.12 Cumulative Rights and Remedies. The rights and remedies in this Agreement will be cumulative, and in addition to, any duties, obligations, rights and remedies otherwise provided by law.

14.13 Counterparts/Facsimile Signatures. This Agreement may be executed in any number of counterparts, using facsimile signatures, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

14.14 Advice of Counsel. Each Party acknowledges and agrees that it has been represented by its own independent legal counsel with respect to entering into this Agreement, that each Party understands the terms of this Agreement, including the rights and obligations created and comprised by its terms, and that each Party knowingly and voluntarily enters into and accepts the terms of this Agreement.

14.15. Principal Members; Assignment.

A. Qualifications. The qualifications and identities of PM@R, the Principal Members (as identified in Subsection B, below) of PM@R, and CM are of particular and unique concern to City. City would not enter into this Agreement were it not for the qualifications and identities of PM@R, the Principal Members of PM@R, and CM.

B. Principal Members. For purposes of this Agreement, the Principal Members of PM@R are Roger Torriero and Gary Chubb. PM@R shall make available the Principal Members of the PM@R (so long as they are employed by PM@R, and subject to PM@R's right to reassign a Principal Member based on the Principal Member's performance) at all reasonable times during the term of this Agreement.

C. Termination of CM. PM@R shall not seek to replace or terminate CM without the prior written approval of City.

D. Removing Principal Members. PM@R shall not remove or reassign the Principal Members of PM@R (so long as they are employed by

PM@R) without the prior written consent of City, which consent will not be unreasonably withheld.

E. Replacing Principal Members. PM@R shall promptly replace a respective Principal Member at the request of the City Representative based on the Principal Member's performance.

F. Change in Control. PM@R shall promptly notify City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of PM@R, as well as any and all changes in the interest or the degree of control of PM@R by any such party.

G. Termination by City. Subject to the provisions of Subsection D above, if PM@R replaces or terminates CM, or PM@R removes or reassigns the Principal Members of PM@R, without the prior approval of City in each circumstance, City may terminate this Agreement, prior to completion of the Project, or City may seek any other available relief; provided, however, that (1) City shall first notify PM@R in writing of its intention to terminate this Agreement or to exercise any other remedy, and (2) PM@R shall have thirty (30) calendar days following its receipt of such written notice to commence and, thereafter, diligently and continuously proceed to cure the default of PM@R and submit evidence of the initiation and satisfactory completion of such cure to City, in a form and substance reasonably satisfactory to City.

H. Assignment. PM@R shall not sell, assign, convey, create any trust estate with respect to or otherwise transfer any of its interests in this Agreement, without the prior written approval of City, which approval shall not be unreasonably withheld. PM@R recognizes that the qualifications and identity of PM@R are of particular concern to City and that a sale, assignment, conveyance, creation of a trust estate with respect to or other transfer of any of PM@R's interests in this Agreement is, for all practical purposes, a transfer or disposition of the responsibilities of PM@R with respect to this Agreement, and, therefore, are only allowed in accordance with the provisions of this Section 14.15.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and PM@R have executed this Program Management Agreement by and through the signatures of their duly authorized representative(s) set forth below, as of the dates set forth below.

ATTEST

THE CITY OF SAN DIMAS

By: _____
City Clerk
For the City of San Dimas

Date: _____

By: _____
City Manager

Date: _____

APPROVED AS TO FORM

By: _____
City Attorney

Date: _____

PM@R
GRIFFIN STRUCTURES, INC., a
California corporation
CA License No. B-793600

By: _____
Its Chief Executive Officer

By: _____
Its Vice President

Date: _____

EXHIBIT D

Insurance Requirements

1. **Certificates of Insurance.** PM@R will provide and will require its CM and Consultants to provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City's Risk Manager prior to commencement of performance of the Project Work. Current certificates of insurance will be kept on file with City's Risk Manager at all times during the term of this Agreement.
2. **Signature.** A person authorized by the insurer to bind coverage on its behalf will sign certification of all required policies.
3. **Acceptable Insurers.** All insurance policies will be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California.
4. **Coverage Requirements for PM@R.** PM@R will maintain the following insurance:
 - A. **Workers' Compensation Coverage.** During the Term of the Agreement, PM@R will maintain Workers' Compensation Insurance in accordance with the laws of the State of California.
 - B. **Employer's Liability Insurance.** During the Term of the Agreement, PM@R will maintain Employer's Liability Insurance in the amount of \$1,000,000
 - C. **Commercial General Liability Insurance.** During the Term of the Agreement, PM@R will maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, property damage, and products and completed operations.
 - D. **Automobile Liability Insurance.** During the Term of the Agreement, PM@R will maintain automobile insurance covering bodily injury and property damage for all activities of PM@R arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
5. **Coverage Requirements for Construction Manager.** PM@R will require its Construction Manager to maintain the following insurance:
 - A. **Workers' Compensation Coverage.** During the Term of the Agreement, Construction Manager will maintain Workers' Compensation Insurance in accordance with the laws of the State of California.
 - B. **Employer's Liability Insurance.** During the Term of the Agreement, Construction Manager will maintain Employer's Liability Insurance in the amount of \$1,000,000 each accident.

C. Commercial General Liability Insurance. During the Term of the Agreement and for three (3) years following Substantial Completion, Construction Manager will maintain commercial general liability insurance in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury, property damage, and products and completed operations. Construction Manager may fulfill its insurance requirements under this section through a combination of insurance under its commercial general liability and excess/umbrella insurance policies.

D. Automobile Liability Insurance. During the Term of the Agreement, Construction Manager will maintain automobile insurance covering bodily injury and property damage for all activities of Construction Manager arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

E. Professional Errors and Omissions Insurance. If Construction Manager is performing any professional services, then during the Term of this Agreement and for three (3) years following Substantial Completion, Construction Manager will maintain and will require its consultants performing professional services to maintain professional errors and omissions insurance (on a claims made basis) which covers the professional services to be performed in connection with this Agreement in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

6. Coverage Requirements for Consultants. PM@R will require its Consultants to maintain the following insurance:

A. Workers' Compensation Coverage. During the Term of the Agreement, Consultants, excluding the Architect, will maintain and will require their consultants to maintain Workers' Compensation Insurance in accordance with the laws of the State of California.

B. Employer's Liability Insurance. During the Term of the Agreement, Consultants, excluding the Architect, will maintain and will require their consultants to maintain Employer's Liability Insurance in the amount of \$1,000,000 each accident.

C. Commercial General Liability Insurance. During the Term of the Agreement, Consultants, excluding the Architect, will maintain and will require their consultants to maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, and property damage.

D. Automobile Liability Insurance. During the Term of the Agreement, Consultants, excluding the Architect, will maintain and will require their consultants to maintain automobile insurance covering bodily injury and property damage for all activities of Consultants, excluding the Architect, arising out of or in connection with work to be performed under this Agreement, including

coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

E. Professional Errors and Omissions Insurance. During the Term of this Agreement and for three (3) years following Substantial Completion, Consultants, excluding the Architect, will maintain and will require its consultants to maintain professional errors and omissions insurance (on a claims made basis) which covers the services to be performed in connection with this Agreement in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

7. Endorsements. Each commercial general liability and automobile liability insurance policy will be endorsed with the following specific language:

A. City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of the work performed by the insured.

B. This policy will be considered primary insurance with respect to City, its elected or appointed officers, officials, employees, agents and volunteers with respect to all claims, losses, or liability arising directly or indirectly from the insured's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

C. This insurance will act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

D. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.

E. The insurance provided by this policy will not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of cancellation for non-payment of premium) written notice has been received by City.

8. Timely Notice of Claims. PM@R will give and will require the Contractors, Construction Manager, and Consultants to give City prompt and timely notice of claim made, including claims against the builder's risk policy, or suit instituted arising out of or resulting from this Agreement or any agreement between any of the foregoing parties.

9. Additional Insurance. PM@R will procure and maintain and will require its CM and Consultants to procure and maintain, at their own cost and expense, any additional kinds of insurance, which in their own judgment may be necessary for its proper protection and prosecution of the Project Work.

Exhibit E

Performance Bond

[Exemplar only – subject to change]

**CITY OF _____
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That,

WHEREAS, the CITY OF _____ (hereinafter called the "City") has awarded to Griffin Structures, Inc., a California corporation (hereinafter "PM@R"), a Program Management Agreement, dated _____, 200_ whereby PM@R agreed to provide construction management services through its construction manager, _____ (hereinafter designated as the "Principal");

WHEREAS, PM@R and Principal have entered in a Construction Management Agreement, pursuant to which Principal has agreed to perform through Prime Contractors work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for performance of the following project: _____ and related parking and related site work (the "Public Work");

WHEREAS, the Public Work to be performed by the Principal is more particularly set forth in the Program Management Agreement and the Construction Management Agreement, which are incorporated herein by reference made a part hereof; and

WHEREAS, said Principal is required under the terms of said Construction Management Agreement to furnish a bond for the faithful performance of said Construction Management Agreement;

NOW, THEREFORE, we, _____ as Principal, and _____ as Surety, are held and firmly bound unto the City and PM@R in the sum of _____ Dollars (\$ _____) this amount being not less than one hundred percent (100%) of the total contract price under the Construction Management Agreement, lawful money of the United States of America for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors jointly and severally, firmly by these presents and also, in case suit is brought upon the bond, will pay a reasonable attorney's fee to be fixed by the court.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said Construction Management Agreement (and, to the extent applicable, the Program Management Agreement) and any alteration thereof, made as therein provided, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then their obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

FURTHER, the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or modification of the Construction Management Agreement, the Program Management Agreement, the contract documents or of the work to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extensions of time, alteration or modification of the Construction Management Agreement, the Program Management Agreement, the contract document or of the work to be performed thereunder.

Surety's obligation shall be a guarantee of payment and performance and shall not be diminished by any bankruptcy or reorganization in bankruptcy or liquidation or the result of the foregoing or otherwise of Principal. Accordingly, the filing of any petition in bankruptcy or for rearrangement or reorganization or liquidation (or proceedings similar in purpose or effect) of Principal under any federal or state laws ("Insolvency Case") will not toll or delay the date due for payment or performance hereunder as more particularly specified in of the Construction Management Agreement. Neither City nor PM@R shall be required to await the outcome of an Insolvency Case or to enforce any of their respective rights under the Program Management Agreement or Construction Management Agreement, respectively, prior to obtaining payment in full from Surety. If for any reason payment received by the City or PM@R in respect of the obligations of the Principal under the Construction Management Agreement and, to the extent applicable, the Program Management Agreement guaranteed pursuant to this bond is rescinded or must be returned or restored by the City or PM@R, this bond shall be automatically reinstated and shall continue to be in effect as if such payment had not been made.

Collection of liquidated damages by City or PM@R due to Principal's failure to timely achieve Substantial Completion (as defined in the Construction Management Agreement) in accordance with paragraph 200.6.1 of the Construction Management Agreement and section 1.1 of the Program Management Agreement shall not limit, modify, or act as an offset or credit against Surety's obligation to arrange for or cause the completion of the Public Work as and when required by the Construction Management Agreement.

Principal and Surety shall not be liable under this bond to The City of _____ or Griffin Structures, Inc. unless the obligations to the Principal have been performed in accordance with the terms of said Construction Management Agreement.

Principal and Surety shall not be liable under this bond to The City of _____ or Griffin Structures, Inc. in the aggregate in excess of the penal sum of this bond stated above.

IN WITNESS WHEREOF three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named herein, on the _____ day of _____, 200_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Seal)

SURETY

By _____

ADDRESS

(Seal)

PRINCIPAL

By X _____
X _____

ADDRESS

APPROVED:

CITY ATTORNEY

Two (2) Notarized Signatures required from all Corporations.

INSTRUCTIONS

1. The above bond must be executed by both the Principal and the Surety.
2. If the Principal is a corporation, the bond must be executed in the corporate name and signed by the President or a Vice-President and the Secretary or Assistant Secretary, and the corporate seal affixed. If the Principal is a partnership, all partners must sign it. If the Principal is an individual doing business under a fictitious name, it must be signed by all persons having an interest in the business, and the fictitious name must be signed also. The bond must be notarized by both the Principal and the Surety.
3. The City Attorney of the City of _____ must approve the bond.
4. The bond, after approval, must be filed with the City Clerk of the City of _____.

Exhibit F

Payment Bond

[Exemplar only – subject to change]

**CITY OF _____
LABOR AND MATERIAL BOND
(PAYMENT BOND)**

KNOW ALL MEN BY THESE PRESENTS: That.

WHEREAS, the CITY OF _____ (hereinafter called the "City"), has awarded to Griffin Structures, Inc., a California corporation (hereinafter "PM@R"), a Program Management Agreement, dated _____, 200_, whereby PM@R agreed to provide construction management services through its construction manager _____ designated as the ("Principal").

WHEREAS, PM@R and Principal have entered in a Construction Management Agreement, pursuant to which Principal has agreed to perform through Prime Contractors work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for performance of the following project: _____ and related parking and related site work (the "Public Work");

WHEREAS, the Public Work to be performed by the Principal is more particularly set forth in the Program Management Agreement and the Construction Management Agreement, which are incorporated herein by reference made a part hereof;

WHEREAS, said Principal is required to furnish a bond in connection with said Construction Management Agreement providing that if said Principal and Prime Contractors (as defined in the Construction Management Agreement), or any of his or its subcontractors, shall fail to pay for any materials, provisions, provender, or other supplies or equipment used in, upon, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth:

NOW, THEREFORE, we _____, as Principal, and _____ as Surety are held and firmly bound unto the City, PM@R, and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the said Principal, in the sum of _____ Dollars (\$ _____) this amount being not less than one hundred percent (100%) of the total contract price, lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if said Principal or his or its Prime Contractors or their subcontractors, or the heirs, executors, administrators, successors or assigns thereof, shall fail to pay any of the persons named in Section 3181 of the Civil Code of the State of California for any materials, provisions, machinery or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or shall fail to pay any amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant or any amount required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and his Prime Contractors or their subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect of such work and labor, then said Surety will Pay for the same, in an amount not to exceeding the sum set forth hereinabove, and also, in case suit is brought upon the bond, will pay a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any and all persons named in the aforesaid Civil Code Section 3181 so as to give a right of action to them or their assigns in any suit brought upon the bond.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no charges, extensions of time, alterations or modifications of the Program Management Agreement, Construction Management Agreement, contract documents or of the work to be performed thereunder shall in any way affect its obligations on this bond; and it hereby waived notice of any and all such changes, extensions of time, and alterations or modifications of the Program Management Agreement, Construction Management Agreement, contract documents and/or of the work to be performed thereunder.

Surety's obligation shall be a guarantee of payment and performance and shall not be diminished by any bankruptcy or reorganization in bankruptcy or liquidation or the result of the foregoing or otherwise of Principal. Accordingly, the filing of any petition in bankruptcy or for rearrangement or reorganization or liquidation (or proceedings similar in purpose or effect) of Principal under any federal or state laws ("Insolvency Case") will not toll or delay the date due for payment or performance hereunder as more particularly specified in of the Construction Management Agreement. Neither City nor PM@R shall be required to await the outcome of an Insolvency Case or to enforce any of their respective rights under the Program Management Agreement or Construction Management Agreement, respectively, prior to obtaining payment in full from Surety. If for any reason payment received by the City or PM@R in respect of the obligations of the Principal under the Construction Management Agreement and, to the extent applicable, the Program Management Agreement guaranteed pursuant to this bond is rescinded or must be returned or

restored by the City or PM@R, this bond shall be automatically reinstated and shall continue to be in effect as if such payment had not been made.

Collection of liquidated damages by City or PM@R due to Principal's failure to timely achieve Substantial Completion (as defined in the Construction Management Agreement) in accordance with paragraph 200.6.1 of the Construction Management Agreement shall not limit, modify, or act as an offset or credit against Surety's obligation to arrange for or cause the completion of the Public Work as and when required by the Construction Management Agreement.

Principal and Surety shall not be liable under this bond to The City of _____ or Griffin Structures, Inc. unless The City of _____ and Griffin Structures, Inc. have performed their obligations to the Principal in accordance with the terms of said Construction Management Agreement. Notwithstanding the above, any person listed in Section 3181 of the California Civil Code will have direct access to this payment bond per the terms contained herein.

Principal and Surety shall not be liable under this bond to The City of _____ or Griffin Structures, Inc. in the aggregate in excess of the penal sum of this bond stated above.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purpose be deemed an original thereof, have been duly executed by the Principal and the Surety here in named on the _____ day of _____, 200_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Seal)
SURETY
By _____

ADDRESS

(Seal)
PRINCIPAL
By X _____
X _____

ADDRESS

APPROVED:

Two (2) Notarized Signatures required from all Corporations.

CITY ATTORNEY

INSTRUCTIONS

1. The above bond must be executed by both the Principal and the Surety.
2. If the Principal is a corporation, the bond must be executed in the corporate name and signed by the President or a Vice-President and the Secretary or Assistant Secretary, and the corporate seal affixed. If the Principal is a partnership, all partners must sign it. If the Principal is an individual doing business under a fictitious name, all persons having an interest in the business must sign it, and the fictitious name must be signed also. Both the Principal and the Surety must notarize the bond.
3. The City Attorney of the City of _____ must approve the bond.
4. The bond, after approval, must be filed with the City Clerk of the City of _____.

Exhibit G

Non-Collusion Affidavit

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER
AND SUBMITTED WITH BID**

State of California)
County of _____) ss.
)

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

EXHIBIT A

PROJECT DESCRIPTION

San Dimas Community Center

<u>DRAWING NO./DESCRIPTION</u>	<u>DATE</u>
General	
CS-1 Cover Sheet	08/03/09
G-0.01 Project Index General Info Product Data	09/04/09
G-0.02 General Notes	08/03/09
G-0.03 Signage Details	08/03/09
G-0.04 T-24 Accessibility Requirements	08/03/09
Architectural	
A0.01 Site Plan Limit Work	09/04/09
A0.02 Site Plan	09/04/09
A0.03 Egress Plans	09/04/09
A-1.01 Demo Plan	08/03/09
A-1.02 Demo Roof Plan	09/04/09
A-1.11 Floor Plan	09/04/09
A-1.12 Roof Plan	09/04/09
A-1.21 Reflected Ceiling Plan	09/04/09
A-1.31 Finish Plan	09/04/09
A-2.01 Exterior Elevations	08/03/09
A-3.01 Building Sections	08/03/09
A-4.01 Enlarged Floor Plans	09/04/09
A-5.01 Restroom Interior Elevations	09/04/09
A-5.02 Interior Elevations	09/04/09
A-6.01 Wall Types	09/04/09
A-6.02 Head of Wall Details	08/03/09
A-6.11 Suspended Ceiling Details	08/03/09
A-6.12 Interior Details	08/03/09
A-6.21 Door Window Schedule	08/10/09
A-6.22 Door Window Details	08/10/09
A-6.23 Misc Details	08/10/09
A-6.31 Roof Details	08/03/09
Structural	
S1 General Notes	09/04/09
S1.1 General Notes and Typical Details	09/04/09
S2 Foundation Plan	09/04/09
S3 Roof Framing Plan	09/04/09
S4 Foundation Details	09/04/09

S5	Construction Details	09/04/09
S5.1	Construction Details	09/04/09

Mechanical

M0.01	Legends, Schedules and Notes	09/04/09
M0.02	Title 24- Compliance	09/04/09
M1.00	Site Plan	09/04/09
M1.01	First Floor Demolition Mechanical Plan	08/03/09
M1.02	Mechanical Demolition Roof Plan	08/03/09
M2.01	First Floor Mechanical Plan	09/04/09
M2.01P	First Floor Piping Plan	09/04/09
M2.01Z	First Floor Zoning Plan	09/04/09
M2.02	Mechanical Roof Plan	09/04/09
M5.01	Details	08/03/09
M5.02	Details	08/03/09
M6.01	Wiring Diagrams	08/03/09

Plumbing

P0.01	Legends, Schedules and Notes	09/04/09
P0.02	Site Plan	09/04/09
P1.01	First Floor Demolition Plumbing Plan	09/04/09
P1.02	Plumbing Demolition Roof Plan	08/03/09
P2.01	First Floor Plumbing Plan	09/04/09
P2.02	Plumbing Roof Plan	09/04/09
P3.01	Plumbing Enlarged Floor Plans	09/04/09
P5.01	Details	09/04/09

Electrical

E-0.01	Symbol List General Notes	09/04/09
E-0.02	Fixture Schedule	09/04/09
E-0.03	Title-24	09/04/09
E-1.01	Site Electrical Plan	09/04/09
E-2.01	Community Building Lighting Plan	09/04/09
E-3.01	Community Building Power and Signal Plan	09/04/09
E-4.01	Single Line Diagram	09/04/09
E-6.01	Panel Schedules	09/04/09

Landscape

L1.01	Landscape Plan	No Date
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Abatement and Demolition by Citadel

ER-1.01	Demo Plan	09-04-09
ER-1.02	Demo Plan	09-04-09

San Dimas City Hall and Community Center

<u>Specification</u>	<u>Date</u>
Introductory Documents	
00000 Cover	6/22/2009
00005 Table of Contents	8/27/2009
REQUIREMENTS	
00320 Geotechnical Data	6/22/2009
DIVISION 1	
01100 Summary of the project	6/22/2009
01210 Allowances Procedures	6/22/2009
01230 Alternate Procedures	6/22/2009
01311 Project Coordination	6/22/2009
01312 Project Meetings	6/22/2009
01330 Submittals Procedures	6/22/2009
01410 Regulatory Requirements	6/22/2009
01420 Reference Standards and Abbreviations	6/22/2009
01450 Quality Control	6/22/2009
01451 Façade Testing	6/22/2009
01500 Temporary Construction Facilities and Controls	6/22/2009
01600 Product Requirements	6/22/2009
01722 Field Engineering	6/22/2009
01740 Cleaning Requirements	6/22/2009
01770 Contract Closeout Procedures	6/22/2009
01783 Operation and Maintenance Data	6/22/2009
01785 Product Warranties and Bonds	6/22/2009
01789 Project Record Documents	6/22/2009
DIVISION 2	
02065 Sawcut	6/22/2009
02080 Underground Pipe Construction	6/22/2009
02080 Asbestos Abatement	7/24/2009
02081 Lead	7/24/2009
02082 Miscellaneous Hazardous Materials	7/24/2009
02221 Selected Demolition	6/22/2009
02300 Earthwork	6/22/2009
02310 Landscape Finish Grading	6/22/2009
02510 Site Water System	6/22/2009
02530 Sanitary Sewer System	6/22/2009
02630 Storm Sewers	6/22/2009
02741 Hot Mixed Asphalt Paving	6/22/2009
02751 Site Concrete	6/22/2009
02780 Unit Pavers	6/22/2009
02810 Landscape Irrigation Systems	No Date

02900 Landscape Planting No Date

DIVISION 3- Concrete

03300 Cast in Place Concrete 6/22/2009
03331 Cast in Place Concrete Architectural Concrete 6/22/2009

DIVISION 4- Masonry

04810 Brick Masonry Veneer 6/22/2009

DIVISION 5- Metals

05065 Welded Stud Connectors 6/22/2009
05120 Structural Steel 6/22/2009
05310 Steel Deck 6/22/2009
05500 Metal Fabrications 6/22/2009

DIVISION 6- Wood and Plastics

06105 Miscellaneous Carpentry 6/22/2009
06400 Architectural Woodwork 6/22/2009

DIVISION 7- Thermal and Moisture Protection

07190 Water Repellants 6/22/2009
07210 Building Insulation 6/22/2009
07520 Cold Process Monolithic Built-Up Roofing 6/22/2009
07620 Sheet Metal Flashing and Trim 6/22/2009
07841 Through Penetration Firestop Systems 6/22/2009
07842 Fire Resistive Joint Systems 6/22/2009
07915 Façade Sealants 6/22/2009
07920 Joint Sealants 6/22/2009

DIVISION 8- Doors and Windows

08110 Steel Doors and Frames 6/22/2009
08125 Interior Aluminum Frames 6/22/2009
08163 Sliding Aluminum Framed Glass Doors 6/22/2009
08211 Wood Doors 6/22/2009
08411 Aluminum Framed Store Front Entrances 6/22/2009
08450 All Glass Entrance & Storefront 6/22/2009
08710 Door Hardware 7/22/2009
08740 In-Ground Automatic Swing Door Operator 6/22/2009
08800 Glazing 6/22/2009

DIVISION 9- Finishes

09110 Non-Load Bearing Metal Frame 6/22/2009
09200 Lath and Plaster 6/22/2009
09260 Gypsum Board Assemblies 6/22/2009
09310 Ceramic Tile 6/22/2009
09380 Cut Natural Stone 6/22/2009
09511 Acoustical Panel Ceiling 6/22/2009
09650 Resilient Flooring 6/22/2009
09680 Carpet 6/22/2009

09720	Wall Coverings	6/22/2009
09841	Accoustical Wall Panels	6/22/2009
09910	Painting	6/22/2009

DIVISION 10- Specialties

10010	Building Specialties	6/22/2009
10155	Toilet Compartments	6/22/2009
10810	Toilet Accesories	6/22/2009

DIVISION 11- Equipment

DIVISION 12- Furnishings

DIVISION 13- Special Construction

13900	Fire Protection	06/22/09
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DIVISION 14- Conveying Systems

DIVISION 15- Mechanical

15400	Plumbing	06/22/09
15800	Heating, Ventilating & Air Conditioning	08/27/09
15900	Direct-Digital Control System for HVAC	08/27/09

DIVISION 16- Electrical

16010	Electrical General Provisions	06/22/09
16050	Basic Electrical Materials and Methods	06/22/09
16111	Conduit and Wiring	06/22/09
16160	Branch Circuit Panel Boards and Terminal Cabinets	06/22/09
16191	Sound Control	06/22/09
16480	Motor Control Equipment	06/22/09
16500	Lighting Fixtures	06/22/09
16620	Standby Power	06/22/09
16722	Fire Alarm	06/22/09
16930	Lighting Control System	06/22/09
16931	Occupancy Motion Sensors	06/22/09

Geotechnical Report

Geotechnical Report- (Leighton Consulting) Issued, June 11, 2009

San Dimas City Hall and Community Center
Exhibit B
Overall Guaranteed Maximum Price

Date: November 10, 2009
Prepared By: Griffin Structures, Inc.

COMPONENT	CITY HALL & CC EXPANSION AND RENOVATION	COMMENTS
GMP - NOVEMBER, 2009 (CITY HALL, COMMUNITY CENTER, PLAZA)		
CONSTRUCTION MANAGER	12,259,000	
PRIME CONTRACTORS	9,903,000	
CM CONTINGENCY (PLAN CHECK, BIDDING, ESCALATION, CONSTRUCTION)	517,000	
GENERAL CONDITIONS (ON-SITE MANAGEMENT)	884,000	
CONSTRUCTION MANAGER OVERHEAD AND PROFIT	566,000	
CONSTRUCTION MANAGER INSURANCE AND BONDS	389,000	
PROGRAM MANAGER	775,000	
REIMBURSABLES	9,000	
LEGAL	15,000	
INSURANCE	91,000	
CONTINGENCY	280,000	
ADMINISTRATION, OVERHEAD, AND FEE	380,000	
REDUCTION FOR EXTENSION OF PRECONSTRUCTION THROUGH NOV. 10, 2009	-28,000	
TOTAL GMP BUDGET	13,006,000	
ALLOWANCES - CITY HALL AND COMMUNITY CENTER		
1. STRIPING OF NORTH PARKING LOT	1,200	Bid Alternate
2. WEST PARKING LOT REHABILITATION	203,000	Bid Alternate
3. EMPLOYEE PARKING LOT REHABILITATION	104,000	Bid Alternate
4. SKYLIGHTS AT CITY HALL	385,000	Bid Alternate
5. AUTOMATIC SLIDING DOORS AT PLAZA ENTRY - CITY HALL	24,000	Bid Alternate
6. REPLACE EXISTING HVAC UNIT IN COMMUNITY CENTER	147,000	Bid Alternate
7. NEW FIRE HYDRANT (CITY TO DESIGN AND INSTALL)	18,000	City of San Dimas to design and install new Fire Hydrant
8. PURCHASE OF NEW ADA LIFT FOR STAGE (CITY TO PURCHASE)	20,000	City of San Dimas to purchase portable lift through FF&E

Notes:

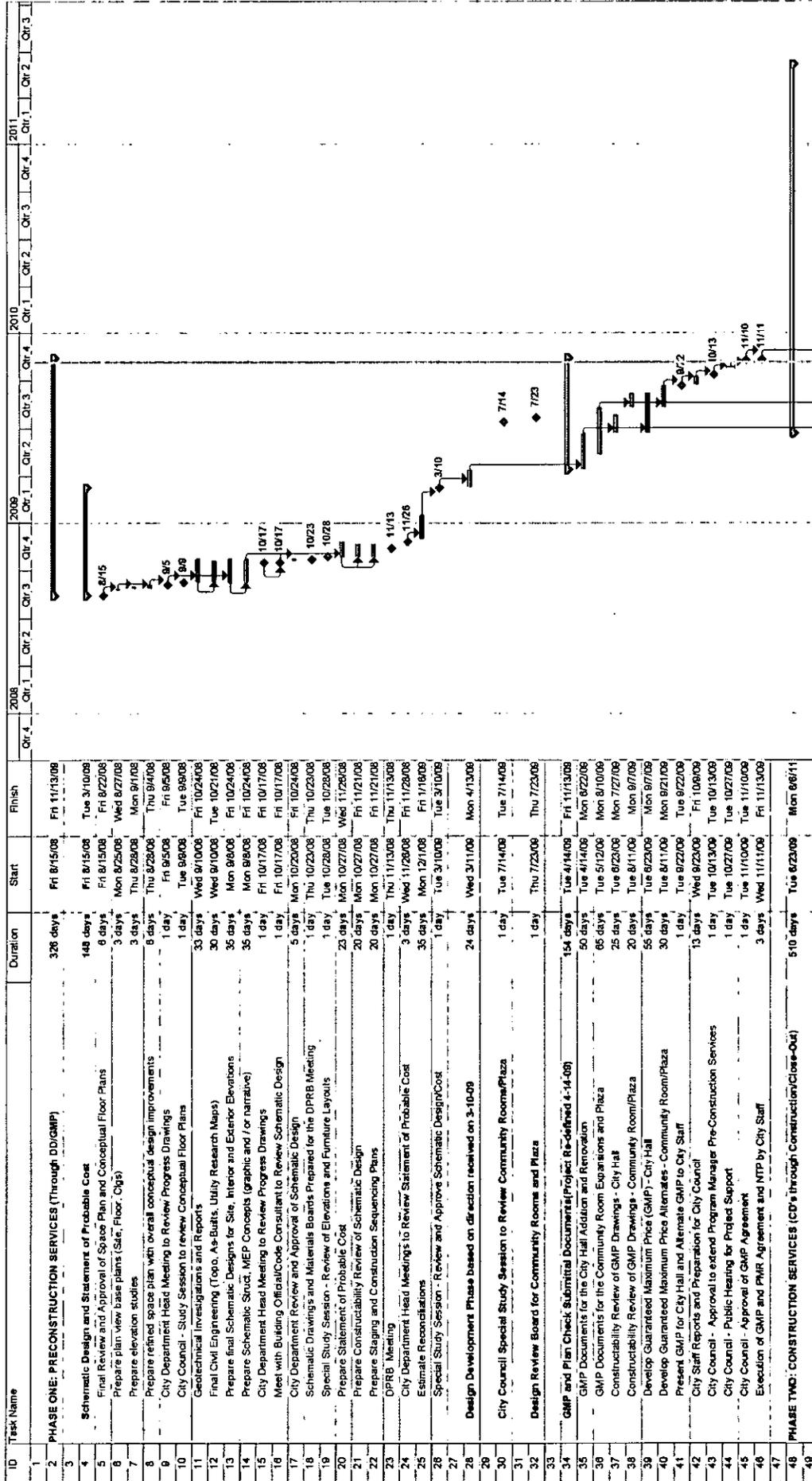
1. Program Manager Fixed Fee of \$380,000 will be billed in (19) equal increments over the course of the project commencing in November, 2009 through May of 2011.

QUALIFICATIONS, ASSUMPTIONS, AND EXCLUSIONS

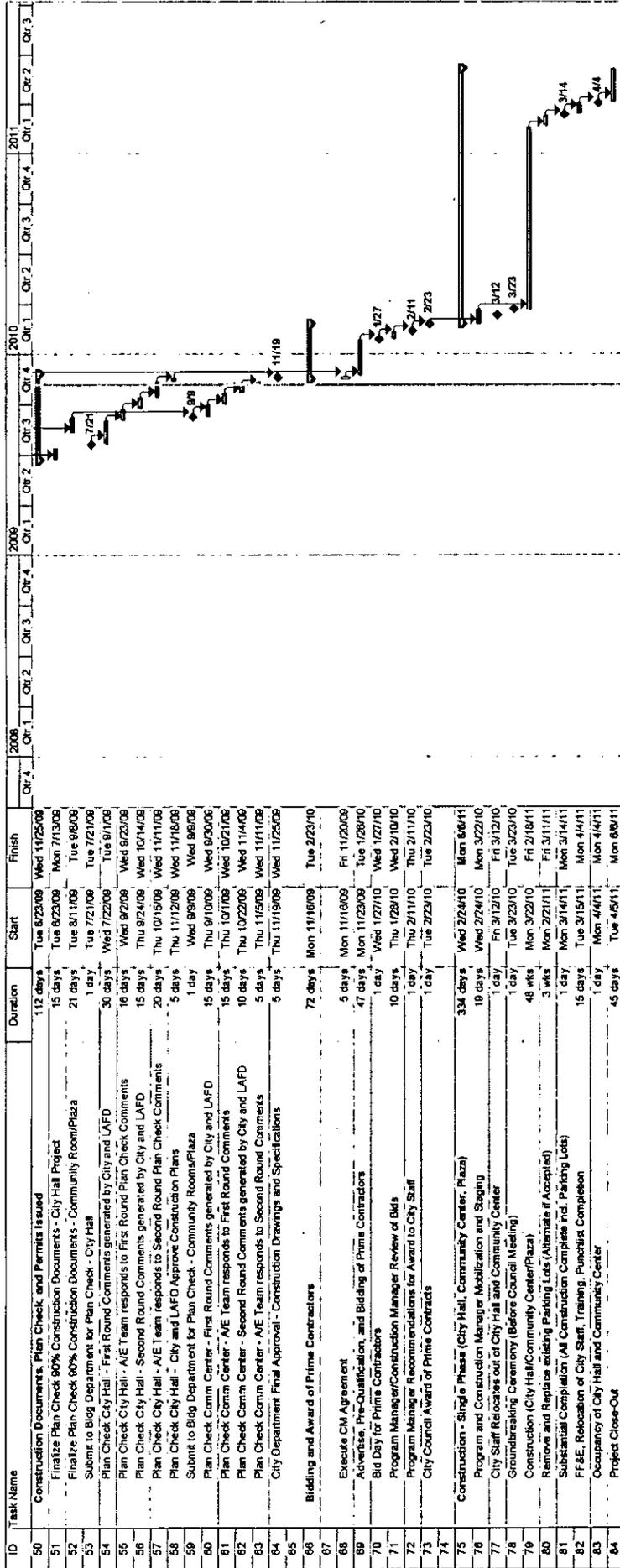
- 1 GMP does not include a separate Contingency to be held by the City of San Dimas.
- 2 GMP is based on awarding prime contracts by February 23, 2010 and starting construction in March, 2010.
- 3 GMP is based on City staff vacating both the City Hall and Community Center by March 12, 2010 and constructing both City Hall and Community Center concurrently.
- 4 GMP excludes the cost to purchase and install FF&E, free standing appliances, whiteboards, display cases, televisions, and other non-construction furnishings.
- 5 Qualifications to the GMP:
 - a. All new utility connection and service fees are to be paid by the City of San Dimas. This includes, but is not limited to, Southern California Edison, The Gas Company, Water, Sewer, Storm Drain, Telephone, Cable, and Satellite services. GMP includes contractor connection fees only.
 - b. New gas service to the on-site meter(s) will be by the Gas. Co. and will be paid for by the City of San Dimas.
 - c. GMP is based on State of California Prevailing Wage rate requirements only. Davis Bacon requirements are excluded.
 - d. Water pressure for the City Hall and Community Center Fire Sprinklers is assumed adequate without the use of a fire pump.
 - e. Builders Risk Insurance will be "All Risk" including earthquake and flood insurance. Premiums and Deductibles to be paid by the City of San Dimas.
 - f. GMP pricing is valid through November 20, 2009.
 - g. GMP is based on receiving agency approved bidding documents by November 18, 2009 per the Schedule of Performance Exhibit C.
 - h. Assumes the use of existing native on-site materials for backfill of new additions.
 - i. Assumes the abandonment of existing below grade utilities unless removal is required as part of new improvements.
 - j. If parking lot replacement alternatives are not accepted the GMP excludes the slurry seal or fog seal of existing AC pavement.
 - k. Landscaping maintenance of existing areas within construction areas not disturbed during construction to be performed by the City of San Dimas.
- 6 Exclusions to the GMP:
 - a. City of San Dimas, County of Los Angeles, and/or State of California assessment, impact, easement, and encroachment fees, including utility assessments, connection fees, meters, and school tax.
 - b. Unforeseen subsurface soil conditions and provisions for latent soils and groundwater conditions not identified in the Geotechnical Exploration reports.
 - c. Unforeseen subsurface or surface hazardous waste, abatement, and remediation.
 - d. Additional ALTA surveys, Topographic Maps, and Utility Research Maps for purpose of design coordination.
 - e. Any non-code requirements made or requested after issuance of grading, building, or other permits applicable to the project.
 - f. Permanent utility costs once established by the City of San Dimas, cost for monitoring the fire alarm and sprinkler system, and other operating expenses.
 - g. Relocation of existing utilities not required as part of the new construction.
 - h. Offsite street improvements other than depicted on the contract documents.
 - i. Resident and Special Deputy Inspectors. City of San Dimas to provide all inspectors for soils, structural, building, mechanical, plumbing, and electrical, and public works.
 - j. Plan check and permit fees City of San Dimas to pay for this service directly.
 - k. Costs associated with moving the City staff, equipment, or furnishings to be relocated from existing facilities to temporary and back to new facilities.
 - l. Peer Review fees and changes as a result of recommendations by outside agency reviews or additional Design Reviews by City staff.
 - m. AQMD Fees for new Emergency Generator. City of San Dimas to apply for permit directly.
 - n. On-site security or night watchman services.
 - o. Pest control services.
 - p. Independent third party commissioning agents or LEED services.
 - q. Rental costs of offsite vacant parking lots for construction crew parking.
 - r. Excludes reconstruction of Walnut Avenue driveway entrance per plan comments dated 8/26/2009.
 - s. Excludes median modifications per plan comments dated 8/26/2009.
 - t. Excludes site furnishings (tables, chairs, waste baskets, etc) and furnishings will be purchased through the City's FF&E budget.
 - u. Excludes sliding glass auto doors at entry to City Hall per plan check comments dated 8/26/2009.
 - v. Excludes anti-graffiti coatings and power washing/resealing/repainting of existing buildings.

San Dimas City Hall & Community Center
Renovation & Expansion
Exhibit C: Schedule for Performance

November 10, 2009



San Dimas City Hall & Community Center
Renovation & Expansion
Exhibit C: Schedule for Performance





Agenda Item Staff Report

TO: Honorable Mayor and Council Members
for the meeting of *November 10, 2009*

FROM: Blaine Michaelis, City Manager

INITIATED BY: Barbara Bishop, Finance/IS Manager

SUBJECT: Approval of the City's Annual Independent Audited Financial Statements

SUMMARY

The City's Annual Independent Audited Financial Statements are submitted for adoption by the City Council.

DISCUSSION

The attached is the City's Annual Independent Audited Financial Statements which must be approved by the City Council as the Annual Report. On November 2, 2009 the members of the Finance/Audit Committee; Mayor Morris, Councilman Templeman, Blaine Michaelis, Ken Duran and Barbara Bishop met with Don Parker from Lance, Soll & Lunghard to discuss the annual audit and the financial statements.

Per the auditor's *Report on Internal Control Over Financial Reporting and On Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards*, they **did not identify any deficiencies** in internal control over financial reporting that they consider to be material weaknesses. Additionally, during the tests performed of compliance with certain provisions of laws, regulations, contracts, and grant agreements, the results of the tests disclosed **no instances of noncompliance** or other matters that were required to be reported under *Government Auditing Standards*.

The auditor concluded based upon the audit, that there was a reasonable basis for rendering an unqualified opinion that the City of San Dimas' financial statements for fiscal year ended June 30, 2009, are fairly presented in conformity with *Generally Accepted Accounting Principles (GAAP)* and present the results of the operations and financial position of the City for fiscal year 2008-09. As management we assert that to the best of our knowledge and belief, these financial statements are complete and reliable in all material respects.

The following is explanation for some of the major financial highlights found on pages 5 & 6 of the Management's Discussion and Analysis.

FINANCIAL HIGHLIGHTS

The City's net assets (including capital assets such as land, buildings, infrastructure and equipment) increased by \$2,337,754 from \$73,462,112 to \$75,799,866 as a result of the 2008-09 operations.

6c

The total for all fund revenues was \$32,434,364 and the cost of governmental activities was \$28,957,371 (refer to p13 of financial statements for detail) resulting in an increase in net assets (cash surplus) of \$3,476,993 for all funds. Transfers In and Transfers Out between funds are not shown as revenues and expenditures for financial statement presentation, but are recorded on the City books and for budget purposes as revenues and expenditures.

The General Fund reported actual excess revenues over expenditures of \$834,997 (p18). The General Fund as stated on the financial statements includes Fund 70 Equipment Rental Fund in the total. The General Fund Balance of \$35,200,993 is comprised of:

Fund Balance General Fund 01	\$34,206,138
Fund Balance Equipment Rental Fund 70	<u>\$994,855</u>
Total General Fund Balance	\$35,200,993

The available General Fund Balance which is used for budgeting purposes and represents the **cash position** of the funds shows an ending balance or surplus of \$16,902,810 for **Fund 01** and \$994,855 for **Fund 70**. These amounts **do not** include the reserves of \$17,303,328 for loans owed to the General Fund from CRA and the Golf Course. When those are factored in, the total General Fund Balance **01/70** is the \$35,200,993 as stated above. The General Fund **01/70** ending fund balance as of 6/30/09 shows a net increase of \$604,294 from the prior year as reported on page 18.

The financial statements include Budgetary Comparison Statements for the General Fund on page 21 the Golf Course Fund on page 22 and for all other special funds beginning on page 57. Total long term debt increased by \$655,980 during the current fiscal year. The key factor in this increase was due to the Walker House Loan (refer to page 39 of financial statements for detail).

RECOMMENDATION

It is recommended that the City Council accept and approve these statements as the Annual Report by minute action.



Agenda Item Staff Report

To: Honorable Mayor and Members of the City Council
For the Meeting of November 10, 2009

From: Krishna Patel, Director of Public Works *KP*

Subject: **Approval and Appropriation of up to \$20,500 for Puente Street/ Avenida Monte Vista Avenue Landscape Improvements and License Agreement**

SUMMARY

Appropriation of up to \$20,500 from Infrastructure Fund to complete landscape and fencing improvements as per options presented. Approval of License Agreement to encroach onto Via Verde Country Club property.

BACKGROUND

In response to a resident request, at the June 23, 2009 meeting, it was the consensus of the Council to enhance the entry to the Avenida Monte Vista/Avenida Loma Vista neighborhood. The Council approved the relocation of the existing chain link fence between 3 to 4 feet back into Via Verde Country Club property and to landscape this strip (see Exhibit A, attached) and directed staff to return with cost estimates to complete the improvement.

DISCUSSION

License Agreement

Since Council's approval, Mr. Del Lee, the owner of Via Verde Country Club has agreed to have the chain link fence moved back and provide the necessary water to irrigate the strip as long as the City maintained and paid for all associated improvements. To formalize this arrangement, attached for Council review and approval is a License Agreement for the proposed landscaping and encroachment onto his property. This agreement has been reviewed and approved by the City Attorney. In principle, the agreement includes the following:

- Placement of landscaping on a 3-4 foot wide strip of land located at both sides of the intersection of Puente Street and Avenida Monte Vista.
- Maintenance of landscaping by the City
- Irrigation installation and appropriate watering provided by the property owner (Via Verde Country Club)
- Pro-rated compensation to the City by Mr. Lee in the event he decides to terminate the license agreement within three years of installing the improvement.

6d

LANDSCAPE IMPROVEMENT OPTIONS

Option A

To proceed with the proposed drought-tolerant landscaping within the 3-4 foot strip of land, Staff requests Council's consideration to appropriate \$15,500 to complete the following:

- \$3,000- Irrigation System and Landscape plants and material
- \$12,500- Relocate and reinstall galvanized fence and complete infill grading.
- \$15,500

Option B

Suggestions have been made that in lieu of re-installing the existing rusted galvanized chain link fabric, to consider using green vinyl fencing to further improve the look of this corner. To consider this, the vinyl fence will cost an additional \$5,000 in material cost. The extent of the vinyl fence may be greater than the galvanized fencing due to the need of aesthetically blending the new fence with the existing. In other words, for aesthetic reasons, all the existing galvanized fencing along Avenida Monte Vista would be replaced. The total budget under this option would be \$20,500.

Option C

If desire of Council is not to proceed with either the above mentioned options due to higher costs attributed to moving the existing fence and some minor infill grading. However, the desire is to still provide some minimal landscaping and irrigation. Staff presents an alternative where the existing strip of dirt between the walkway and fence that varies in width from approximately 10 to '24 inches could be landscaped with drought tolerant plants and climbing vine. The estimated cost to complete this is \$ 3,000.

RECOMMENDATION

Staff will proceed at Council's pleasure. Provided below are options for Council to consider:

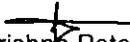
Option A Appropriate \$15,500 from Infrastructure Funds to relocate and reinstall existing chain link fence and landscape. OR

Option B Appropriate \$20,500 from Infrastructure Funds to replace, relocate, and reinstall with green vinyl fencing as necessary and complete landscape AND/OR

Option C Appropriate \$3,000 from Infrastructure Funds to complete minimum landscape between existing chain link fence and back of sidewalk.

Upon approval of the option selected, Council authorize the Mayor to execute the draft License Agreement for the encroachment onto Via Verde Country Club property pending some minor changes.

Respectfully Submitted,


 Krishna Patel
 Director of Public Works
 kp/lm/10-09-48

Attachment Exhibit A: Aerial of Proposed Fence, Existing Fence, Back of Walk and add'l landscaped areas.
 License Agreement

EXHIBIT A



- PROPOSED FENCE
- EXISTING FENCE
- BACK CURB
- ▨ ADDITIONAL LANDSCAPED AREAS ON VIA VERDE COUNTRY CLUB

**LICENSE AGREEMENT
FOR THE ENCROACHMENT AND THE
MAINTENANCE OF LANDSCAPING AT THE
INTERSECTION OF PUENTE STREET AND
AVENIDA MONTE VISTA**

This LICENSE AGREEMENT is made and entered into this _____ day of September 2009 between the City of San Dimas, hereinafter referred to as "City" and Via Verde Country Club, hereinafter referred to as "Owner".

WHEREAS:

Owner(s) are the owner(s) of the real property in the City of San Dimas more in particular as shown in Exhibit A. Common street address known as 1400 Avenida Entrada. The City has jurisdiction of, in particular, Puente Street and Avenida Monte Vista and has the right to regulate the use of such street.

The City desires a license to place landscaping on approximately a 3 to 4-foot wide strip of land identified as Areas 1 and 2 on a portion of the owners' land on both sides of the intersection of Puente Street and Avenida Monte Vista. The purpose of this strip of land is to enhance the entrance to the neighborhood by landscaping and softening the appearance of the chain link fence.

The owner shall permit the City to plant and maintain landscaping on this said strip of land under this license agreement.

NOW, THEREFORE, in consideration of mutual understanding and obligation of the parties as hereinafter set forth, City and Owner hereby agree as follows:

The Owner, hereby, subject to the terms and conditions provided in this License Agreement, licenses City to permit them to install, maintain, use,

repair and remove the landscaping and irrigation in accordance with the following:

The landscaping installed on the "strip of land" and City right-of-way or all landscaping installed on the street side of the chain link fence shall be maintained by the City or their agents in a safe and workmanlike manner in compliance with all applicable laws, rules and regulations.

The Owner, recognizing the mutual benefits derived shall also provide the necessary water and one time sprinkler system installation for the proposed City landscaping.

The landscape installed shall be maintained by the City or their agents in safe and workmanlike manner in compliance with all applicable laws, rules and regulations.

Owner hereby licenses the City to enter into Areas 1 and 2 as applicable for purposes of performing their obligations under this Agreement in accordance with the following:

The City shall indemnify, defend and hold the Owner harmless from against any and all claims, expenses, costs or other losses and liabilities resulting from any injury, death or damage (on any claim against the owner) arising out of activity in the above mentioned areas by contractors, subcontractors, agents, employees or other entities.

The Owner hereby agrees to indemnify, defend and hold the City harmless from against any and all claims, expenses, costs or other losses and liabilities resulting from any injury, death or damage (or any claim against the Owner) arising out of activity in this above-mentioned areas by contractors, subcontractors, agents, employees or other entities.

The Owner hereby agrees to indemnify defend and hold the City harmless against any and all claims, expenses, costs or other losses and liabilities resulting from any injuries, deaths, or damages for claims against the City,

arising out of activity on the Owner's property outside areas 1 and 2 by the contractors, subcontractors, agents, employees or other entities.

This License Agreement shall continue in effect for a term of one (1) year from the date hereof and from year to year thereafter, unless sooner terminated by mutual written agreement. This License Agreement may be terminated by either party hereto at any time by written notice given not less than sixty (60) days prior to the intended termination. In the event of such termination, the City shall remove all of said landscaping, attachments and complete repairs as necessary to the termination of this License Agreement.

The provisions hereof shall insure to the benefit of and bind the respective successors in interest, representatives, and/or assignees of the parties hereto; provided, however, that this License Agreement shall not be assignable without the prior written consent of the City in its sole and absolute discretion.

IN WITNESS WHEREOF, City and Owner have executed this License Agreement by and through their respective officers thereunto authorized as of this day and year first herein above written.

City of San Dimas

Via Verde Country Club

By _____

By _____

Title

Title



CITY OF SAN DIMAS
MINUTES
SAN DIMAS REDEVELOPMENT AGENCY MEETING
TUESDAY, OCTOBER 27, 2009
COUNCIL CHAMBERS
245 E. BONITA AVENUE

PRESENT:

Chairman Curtis W. Morris
Vice Chairman Denis Bertone
Mr. Emmett G. Badar
Mr. Jeffrey W. Templeman
Executive Director Blaine Michaelis
Agency Attorney Ken Brown
Secretary Ina Rios
Assistant City Manager of Community Development Larry Stevens
Assistant City Manager Ken Duran
Director of Development Services Dan Coleman
Director of Public Works Krishna Patel
Director of Parks and Recreation Theresa Bruns

ABSENT:

Mr. John Ebiner

CALL TO ORDER

Chairman Morris called the meeting to order at 8:45 p.m.

ORAL COMMUNICATIONS *(This is the time set aside for members of the audience to address the Board. Speakers are limited to three minutes.)*

There were no comments.

APPROVAL OF MINUTES

It was moved by Mr. Badar, seconded by Mr. Templeman, to approve the minutes of the October 13, 2009 meeting. The motion carried by those present; Mr. Ebiner was absent.

EXECUTIVE DIRECTOR

There were no comments.

AGENCY ATTORNEY

There were no comments

MEMBERS OF THE AGENCY

There were no comments.

ADJOURNMENT

Chairman Morris adjourned the meeting at 8:46 p.m.

Respectfully submitted,

Ina Rios, Secretary

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