

File No. 170193

Committee Item No. 6
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date March 16, 2017

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Linda Wong Date March 10, 2017
Completed by: Linda Wong Date _____

1 [Supplemental Authorizations for Interdepartmental Property Transfer - MOU Amendment
2 No. 1 - Central Fleet Maintenance Shop Relocation - Increasing Transfer Price by \$8,578,429
3 to an Amount Not to Exceed \$82,278,429; Authorizing Notice to Proceed - Oryx
4 Development I, LLC]

5 **Resolution approving supplemental authorizations for the jurisdictional transfer of**
6 **1800 Jerrold Street (portions of Assessor's Parcel Block Nos. 5262 and 5270) from the**
7 **General Services Agency's Office of Contract Administration ("OCA") to the San**
8 **Francisco Public Utilities Commission ("SFPUC") Wastewater Enterprise; and the**
9 **jurisdictional transfer of 555 Selby Street and 1975 Galvez Avenue (Assessor's Parcel**
10 **Block No. 5250, Lot Nos. 15 and 16), and the leasehold of 450 Toland Street (Assessor's**
11 **Parcel Block No. 5230, Lot No. 18), from SFPUC to OCA (collectively "Project Site"),**
12 **subject to Amendment No. 1 to the Memorandum of Understanding previously entered**
13 **into between the Real Estate Division, OCA, and SFPUC to create the functionally-**
14 **equivalent facilities for the relocation of the City's Central Fleet Maintenance Shop**
15 **("Central Shops") from 1800 Jerrold Street; increasing the total transfer price**
16 **by \$8,578,429 to an amount not to exceed \$82,278,429 from SFPUC Wastewater**
17 **Enterprise funds; authorizing the issuance of a Notice to Proceed for the next**
18 **construction phase under a Board-authorized design-build Project Delivery Agreement**
19 **with Oryx Development I, LLC, for the construction of facilities to relocate Central**
20 **Shops to the Project Site; and finding the proposed transactions are in conformity with**
21 **the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

22 WHEREAS, By Ordinance No. 8-16, this Board approved the jurisdictional transfer
23 of 1800 Jerrold Avenue to SFPUC from OCA, and the Project Site to OCA from SFPUC,
24 subject to the terms and conditions of a Memorandum of Understanding entered into between
25

1 the OCA, SFPUC and RED, which is on file with the Clerk of the Board of Supervisors under
2 File No. 151226 (the "MOU"); and

3 WHEREAS, The City's Director of Property determined that the current fair market
4 value of 1800 Jerrold Avenue is less than the reasonable and necessary expense required to
5 relocate Central Shops to facilities that are functionally equivalent to Central Shops' existing
6 facilities, including property acquisition costs, rent, development, design and construction of
7 replacement improvements; and

8 WHEREAS, At that time, the MOU established a Transfer Price of \$73,700,000, from
9 SFPUC Wastewater Enterprise funds, based on the estimated expense required to acquire
10 the Project Site and construct new facilities to relocate Central Shops; and

11 WHEREAS, On February 14, 2017, the SFPUC adopted Resolution No. 17-0028, on
12 file with the Clerk of the Board of Supervisors in File No. 170193, authorizing Amendment
13 No. 1 to the MOU, to increase the Transfer Price by \$8,578,429 to an amount not to
14 exceed \$82,278,429, due to increased costs of securing possession of the Project Site,
15 unforeseen conditions on the Project Site, and increased construction costs for the new
16 Central Shops facilities based on final design documents; and

17 WHEREAS, SFPUC, OCA and RED executed Amendment No. 1 to the MOU on
18 February 16, 2017, and now seek Board approval of the proposed jurisdictional transfers,
19 subject to the MOU, as amended; and

20 WHEREAS, On October 28, 2015, the Planning Department's CEQA Coordinator,
21 Timothy Johnston, issued a notice that this project is categorically exempt under California
22 Environmental Quality Act (CEQA) Guidelines Section 15332 (Infill Development, Class 32);
23 and

24 WHEREAS, The Planning Department, through a General Plan Referral letter dated
25 November 5, 2015, which is on file with the Clerk of the Board of Supervisors under File

1 No. 151226, verified that the City's acquisition of 1975 Galvez Avenue and 555 Selby Street,
2 and lease of 450 Toland Street, together with the jurisdictional assignments and transfers
3 noted herein, are all consistent with the General Plan, and the eight policies of Planning Code,
4 Section 101.1; and

5 WHEREAS, In Ordinance No. 8-16 this Board found that the Proposed Project, and
6 jurisdictional transfers of 1800 Jerrold Avenue from OCA to SFPUC and the Project Site from
7 SFPUC to OCA, subject to the terms and conditions of the MOU, is consistent with the City's
8 General Plan, and the eight priority policies of Planning Code, Section 101.1 and incorporated
9 the General Plan Referral letter by reference as though fully set forth in that Ordinance; and

10 WHEREAS, Based on the recommendation of the Directors of Property and
11 Purchasing, the SFPUC General Manager, and the Mayor, this Board, by Ordinance No. 8-16
12 determined that the jurisdiction of 1800 Jerrold Avenue shall be transferred to the SFPUC,
13 and the jurisdiction of the Project Site shall be transferred to OCA, subject to the terms and
14 conditions of the MOU; and

15 WHEREAS, To accomplish the design and construction of new facilities for Central
16 Shops on the Project Site, the departments sought Board approval to waive the competitive
17 selection requirements in Administrative Code, Chapter 6, Sections 6.61(b) and 6.61(c) (1) –
18 (4) in order to authorize the City and Oryx Development I, LLC (the "Developer"), to enter into
19 a Project Delivery Agreement (the "PDA") for Oryx to complete the development, design, and
20 construction of the Project with FM&E Architecture and Design (the "Architect") as the
21 architect, and Charles Pankow Builders, Ltd (the "General Contractor") as the general
22 contractor for the Project; and

23 WHEREAS, The OCA, RED and SFPUC determined that the design-build project
24 delivery method was necessary and appropriate to achieve anticipated time efficiencies, and
25 that the use of the design-build project delivery method is in the public's best interest; and

1 WHEREAS, By Ordinance No. 8-16, this Board recognized that the Project is occurring
2 at one of the most robust construction periods in the history of San Francisco, and as such,
3 there were limited availabilities of design and construction teams led by a developer entity
4 willing and able to perform the Project within the budget and timeline provided by the City, and
5 determined that the design and construction of the Project by Developer was exempted from
6 the requirements of Administrative Code, Chapter 6, Sections 6.61(b) and 6.61(c)(1) – (4),
7 which would otherwise require a competitive selection process for the proposed design-build
8 PDA; and

9 WHEREAS, The Board of Supervisors approved the selection of the Developer, the
10 Architect, and the General Contractor as set forth in the PDA, without competitive bidding, and
11 authorized the OCA and RED to enter into the proposed PDA, subject to the Mayor's
12 approval; and

13 WHEREAS, The PDA approved by the Board of Supervisors requires compliance with
14 the procedures and requirements for procurement of trade work (subcontractors) consistent
15 with Administrative Code, Chapter 6, Section 6.61(c)(5); and

16 WHEREAS, The PDA also requires compliance with Administrative Code, Chapter 6,
17 Sections 6.61, subsections (d) (e) (f) and (g), among other provisions, which incorporate by
18 reference City requirements governing contract terms and working conditions in
19 Administrative Code, Chapter 6, Section 6.22, including but not limited to provisions for
20 Insurance, Prevailing Wage, Local Hiring, Liquidated Damages, Bonds, City Right to
21 Terminate for Convenience, Employment of Apprentices, Contractor Prompt Payment to
22 Subcontractors, and Administrative Code Chapters 12 and 14; and

23 WHEREAS, On March 21, 2016, the City entered into the PDA with Oryx
24 Development I, LLC. The PDA is a design-build agreement with two phases; and
25

1 WHEREAS, During the first phase, for a negotiated price of ten million three hundred
2 thousand dollars (\$10,300,000), the Developer and its approved subcontractors were to
3 complete design of the proposed improvements, permitting and initial construction work to
4 prepare the Project Site and install piles; and

5 WHEREAS, The proposed PDA obligated the Developer to design the project based on
6 the RED and OCA's then estimated total budget of fifty five million dollars (\$55,000,000); and

7 WHEREAS, When the Architect completed 100% construction drawing to the City's
8 satisfaction, the Developer was required to provide the City with a proposed Guaranteed
9 Maximum Price and schedule establishing the duration for completion of the construction
10 work; and

11 WHEREAS, Phase II consists of new construction of an approximately 54,000 square
12 foot, 35-foot-high building to be used for maintenance and repair of medium and heavy duty
13 vehicles, such as fire trucks, heavy equipment transporters, dump trucks, and street
14 sweepers, as well as for administrative offices, support functions, and employee amenities on
15 the property at 555 Selby Street and 1975 Galvez Avenue; and tenant improvements to 450
16 Toland Street modifying the existing approximately 45,000 square foot building's interior to
17 provide for three functional programs (Light Duty Vehicle Shop, Body/Paint Shop, and Ladder
18 Shop), associated building systems, and related employee amenities (collectively, the
19 "Project"); and

20 WHEREAS, Ordinance No. 8-16 further provided that if the Guaranteed Maximum
21 Price of the Project exceeds the \$55 million in SFPUC funds as provided in the MOU, then the
22 OCA and RED will work with the Developer to amend the scope of the Project to bring it within
23 budget, or seek the Mayor and Board's approval of supplemental authorization; and

24 WHEREAS, Since the adoption of Ordinance No. 8-16 (1) the Developer obtained
25 actual costs for design of industrial equipment and construction based on completed

1 schematic design drawings in August of 2016, resulting in Developer's Guaranteed Maximum
2 Price proposal increasing to \$60.9 million with the price increase attributable to unforeseen
3 soil conditions requiring a more robust foundation system, further development of design and
4 industrial equipment requirements, and market cost escalation for labor and construction
5 materials as reflected in actual bids; (2) Developer and City engaged in value engineering
6 efforts to reduce the price resulting in Developer lowering its Guaranteed Maximum Price
7 proposal to \$60.2 million based on design development phase drawings issued in December
8 of 2016; (3) Developer's final proposed Guaranteed Maximum Price remains at \$60.2 million
9 based on final construction documents issued on February 1, 2017; (4) the Public Utilities
10 Commission voted on February 14, 2017, to amend its MOU with GSA to fund the increase of
11 Developer's Guaranteed Maximum Price in the PDA from \$55 million to \$60.2 million; and (5)
12 the OCA and RED now seek Board approval of the supplemental authorization to issue the
13 Notice to Proceed for Phase II of the PDA; and

14 WHEREAS, Under the MOU, as amended, the SFPUC has agreed to increase the
15 Transfer Price to an amount not to exceed \$82,278,429, from Wastewater Enterprise funds
16 appropriated under Project Number CWWSIPRPL91, allocated as follows: (1) \$11,303,429
17 previously expended to acquire properties at 555 Selby Street and 1975 Galvez Avenue, as
18 authorized by this Board in Ordinance No. 525-15; (2) not to exceed \$2,200,000 to secure
19 possession of the Project Site from, and pay relocation assistance to, the existing tenants
20 at 555 Selby and 1975 Galvez Avenue; (3) not to exceed \$60,200,000 for the Guaranteed
21 Maximum Price under the PDA with Oryx; (4) not to exceed \$2,025,000 construction
22 contingency, at the SFPUC's discretion, for expediting the construction schedule and
23 necessary change orders during construction due to changed circumstances or unforeseen
24 conditions; (5) not to exceed \$250,000 to relocate existing electric service facilities at 1975
25 Galvez Avenue; (6) not to exceed \$6,000,000 toward the cost of a ten-year lease of 450

1 Toland Street, reflecting offset of \$900,000 in OCA/RED rent receipts from Project Site since
2 acquisition; and (7) not to exceed \$300,000 for reimbursement of moving expenditures to
3 OCA; and

4 WHEREAS, The MOU, as amended, establishes a schedule for transfer of funds from
5 SFPUC funds appropriated for this Project to OCA; and

6 WHEREAS, The Planning Department has determined that the actions contemplated in
7 this Resolution comply with the California Environmental Quality Act (California Public
8 Resources Code Sections 21000 et seq.); and

9 WHEREAS, Said determination is on file with the Clerk of the Board of Supervisors in
10 File No. 151226 and is incorporated herein by reference; and

11 WHEREAS, The Board affirms this determination; now, therefore, be it

12 RESOLVED, That the Board reaffirms that the Project, and jurisdictional transfers
13 of 1800 Jerrold Avenue from OCA to SFPUC and the Project Site from SFPUC to OCA,
14 subject to the terms and conditions of the MOU, as amended by Amendment No. 1, is
15 consistent with the General Plan, and the eight priority policies of Planning Code,
16 Section 101.1, as determined by the Planning Department General Referral Letter
17 incorporated by reference in Ordinance No. 8-16; and, be it

18 FURTHER RESOLVED, The jurisdiction of 1800 Jerrold Avenue shall be transferred to
19 the SFPUC, and the jurisdiction of the Project Site shall be transferred to the OCA, subject to
20 the terms and conditions of the MOU, as amended by Amendment No.1, executed by the
21 SFPUC, OCA and RED; and, be it

22 FURTHER RESOLVED, That this Board authorizes the second phase of the PDA, and
23 issuance of a Notice to Proceed to the Developer for the construction of the Project, subject to
24 the SFPUC funding obligations in the MOU, as amended; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes any additions,
2 amendments, or other modifications to the MOU or PDA, and any other documents or
3 instruments in connection with same, that the SFPUC, Director of Property and the City
4 Administrator determine, following consultation with the City Attorney, are in the City's best
5 interests, do not materially decrease the City's benefits or materially increase the City's
6 obligations or liabilities, and are appropriate and advisable to complete the proposed
7 transaction, such determination to be conclusively evidenced by the execution and delivery of
8 any such additions, amendments, or other modifications.

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Item 6 Files 17-0193	Departments: San Francisco Public Utilities Commission (SFPUC) General Services Agency (GSA) Office of Contract Administration (OCA), Real Estate Division (RED) Public Works
EXECUTIVE SUMMARY	
Legislative Objectives	
<ul style="list-style-type: none"> • Resolution authorizing the (a) jurisdictional transfer, subject to Amendment No. 1 to the Memorandum of Understanding (MOU) between the Real Estate Division, the General Services Agency's Office of Contract Administration (OCA) and the San Francisco Public Utilities Commission (SFPUC), to increase the total Transfer Price by \$8,578,429 to a not-to-exceed \$82,278,429 for 1800 Jerrold Street from OCA to SFPUC; (b) jurisdictional transfer of 555 Selby Street and 1975 Galvez Avenue and the leasehold of 450 Toland Street (collectively the Project Site) from the SFPUC to OCA to create functionally-equivalent facilities for the relocation of the City's Central Fleet Maintenance Shop (Central Shops) from 1800 Jerrold Street; (c) issuance of a Notice to Proceed for the construction phase under a Board of Supervisors' authorized design-build Project Delivery Agreement with Oryx Development I, LLC for the construction of facilities to relocate Central Shops to the Project Site; and (d) finding the proposed transactions in conformity with the General Plan and the eight priority policies of Planning Code, Section 101.1. 	
Key Points	
<ul style="list-style-type: none"> • GSA plans to relocate Central Shops from 1800 Jerrold Avenue to (1) 1975 Galvez Avenue, (2) 555 Selby Street and (3) 450 Toland Street. Relocation of Central Shops will be funded by the SFPUC, which wants to secure the 1800 Jerrold Avenue site for improvements. • Phase 1, the design phase is near completion. Phase 2, the construction phase is anticipated to begin in April 2017 and be completed by June 2018, on schedule. 	
Fiscal Impact	
<ul style="list-style-type: none"> • Acquisition, lease, design and construction costs to replace the existing Central Shops facilities were previously estimated to total \$73,700,000. Now the estimated total project cost is \$82,278,429, an increase of \$8,578,429 or 11.6%, primarily due to increased tenant relocation expenses, unforeseen construction issues and additional contingencies. • The project will be funded with Wastewater Enterprise Funds from sewer customers. SFPUC has appropriated \$90 million, to include an additional \$7.7 million for City-related costs. 	
Policy Consideration	
<ul style="list-style-type: none"> • The Board of Supervisors previously waived the competitive bidding requirements and approved the selection of the developer, architect and general contractor on a sole source basis to complete the project within the City's schedule and budget. 	
Recommendation	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Administrative Code Chapter 23, Article II establishes the policies and procedures for the jurisdictional transfers of City property from one department to another. These procedures include that the Director of Property shall prepare a report regarding the estimated fair market value of the property to be transferred and that the Board of Supervisors approve such jurisdictional transfers of City properties.

BACKGROUND

Central Shops Relocation

The City's Central Fleet Maintenance Shop (Central Shops) is located on a City-owned 5.3-acre site at 1800 Jerrold Avenue under the jurisdiction of the City's General Services Agency (GSA). Central Shops provides repair services for City vehicles. Located immediately adjacent to 1800 Jerrold Avenue is the San Francisco Public Utilities Commission (SFPUC) Southeast Water Pollution Control Plant (Plant). The SFPUC seeks to secure this large site at 1800 Jerrold Avenue adjacent to the Plant for capital improvements necessary to maintain essential utility services.

GSA plans to relocate Central Shops from 1800 Jerrold Avenue to (1) 1975 Galvez Avenue, (2) 555 Selby Street and (3) 450 Toland Street. On December 15, 2015, the Board of Supervisors approved a resolution (File 15-1215; Resolution No. 525-15) authorizing

(a) purchase of the 1975 Galvez Avenue property for \$5 million, and the 555 Selby Street property for \$6,300,000 to be merged into one site for Central Shops heavy duty fleet repair operations such as fire trucks, dump trucks and street sweepers, and include administrative offices and support functions; and

(b) lease at 450 Toland Street for ten years with two five-year options, for \$735,600 annually with 3% annual increases for the Central Shops light duty fleet repair operations such as light duty trucks, body and paint shop and related employee support functions.

Project Delivery Agreement with Oryx Development, LLC

On February 9, 2016, the Board of Supervisors approved an ordinance (File 15-1226; Ordinance No. 8-16) to

(a) execute a Project Delivery Agreement with Oryx Development LLC (Oryx) to design and construct the Central Shops facilities at 1975 Galvez Avenue, 555 Selby Street and 450 Toland Street at a total project cost of \$55,000,000 from SFPUC Wastewater Enterprise funds, without competitive bidding¹; and

¹ The ordinance waived the City's competitive bidding requirements to approve Oryx as Developer, FM&E Architecture & Design as Project Architect and Charles Pankow Builders, Ltd, as General Contractor due to time constraints coupled with the extraordinarily competitive real estate market for industrial land. The "Director of Property informally approached entities capable of executing the Proposed Project and identified one team reasonably available and deemed capable of carrying the Proposed Project within the time frame required and within the budget developed".

(b) authorize the jurisdictional transfer of 1800 Jerrold Avenue from GSA to SFPUC and the jurisdictional transfer of 555 Selby Street, 1975 Galvez Avenue and 450 Toland Street from the SFPUC to OCA, subject to the terms and conditions of a Memorandum of Understanding (MOU) between Real Estate, OCA and SFPUC.

In accordance with Ordinance No. 8-16, the Board of Supervisors authorized Oryx to commence Phase 1, the design phase, and OCA was required to obtain the Board of Supervisors approval to proceed with Phase 2, the construction phase, if the negotiated guaranteed maximum price exceeded \$55,000,000.

On February 9, 2016, the Board of Supervisors also approved an ordinance to appropriate \$62,300,000 from SFPUC Wastewater Enterprise Funds to the City Administrator for the Central Shops Relocation project and placed \$45,000,000 on Budget and Finance Committee Reserve (File 16-0021; Ordinance No. 21-16).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the

(a) jurisdictional transfer, subject to Amendment No. 1 to the Memorandum of Understanding (MOU) between the Real Estate Division (RED), the General Services Agency's Office of Contract Administration (OCA) and the San Francisco Public Utilities Commission (SFPUC), to increase the total Transfer Price by \$8,578,429 from \$73,700,000 to a not-to-exceed \$82,278,429 for 1800 Jerrold Avenue from OCA to SFPUC;

(b) jurisdictional transfer of 555 Selby Street and 1975 Galvez Avenue and the leasehold of 450 Toland Street (collectively the Project Site) from the SFPUC to OCA to create functionally-equivalent facilities for the relocation of the City's Central Fleet Maintenance Shop (Central Shops) from 1800 Jerrold Street;

(c) issuance of a Notice to Proceed for the construction phase under a Board of Supervisors' authorized design-build Project Delivery Agreement with Oryx Development I, LLC for the construction of facilities to relocate Central Shops to the Project Site; and

(d) finding that the proposed transactions are in conformity with the General Plan and the eight priority policies of Planning Code, Section 101.1.

Memorandum of Understanding (MOU)

On November 10, 2015 and December 8, 2015, the SFPUC approved initial and revised MOUs respectively with OCA and the Real Estate Division (RED) agreeing that SFPUC would pay OCA a total of \$73,700,000 from SFPUC Wastewater Enterprise funds for the relocation of functionally equivalent Central Shops by July 31, 2017. The projected total Transfer Price of \$73,700,000 to be paid by SFPUC to OCA included the purchase and lease of the sites, the design and construction of the facilities, the jurisdictional transfer of 1800 Jerrold Avenue to the SFPUC, and the jurisdictional transfer of the Project Site to OCA. The MOU itself was not subject to Board of Supervisors approval.

On February 16, 2017, the SFPUC, OCA and RED approved a first amendment to the MOU to increase the Transfer Price from \$73,700,000 to \$82,278,429, an increase of \$8,578,429 or

11.6%. The Fiscal Impact Section below summarizes the earlier 2015 MOU agreed Transfer Price of \$73,700,000 and the recent 2017 amended Transfer Price of \$82,278,429 that the SFPUC agreed to pay OCA for the purchase, lease, design and construction of Central Shops and the jurisdictional transfer of the properties. The proposed resolution would approve both the jurisdictional transfers of 1800 Jerrold Avenue from the OCA to SFPUC and the jurisdictional transfer of the Project Site from the SFPUC to OCA, subject to the increased price to be paid by the SFPUC of \$82,278,429, as specified in Amendment No 1 to the MOU.

As noted above, the earlier Ordinance No. 8-16 approved by the Board of Supervisors in February 2016 already authorized these jurisdictional transfers of properties subject to the terms of the previous MOU. However, one of the key terms of the previous MOU was the amount the SFPUC would pay for the relocation of Central Shops. The SFPUC, OCA and RED have now executed Amendment No. 1 to the MOU, which authorizes the SFPUC to pay a higher Transfer Price of \$82,278,429, an increase of \$8,578,429 or 11.6%, a material amendment. Ms. Noreen Ambrose, City Attorney for the SFPUC, advises that the previous Board of Supervisors approval did not authorize material amendments to the MOU, the terms of which were conditions of the Board's approval of the jurisdictional transfers, such that the Board of Supervisors is now being requested to confirm approval of the jurisdictional transfer of properties subject to the new Transfer Price.

Notice to Proceed

The proposed resolution would also authorize Public Works, acting on behalf of OCA, to issue a Notice to Proceed for the construction phase under a Board of Supervisors' authorized design-build Project Delivery Agreement with Oryx Development I, LLC for the construction of facilities to relocate Central Shops to the Project Site. As noted above, this project included Phase 1, design phase and Phase 2, construction phase. Table 1 below summarizes the design phase.

Table 1: Summary of Phase I, Design Phase

- | |
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| <ul style="list-style-type: none"> • Complete project design, including demolition, permitting, site grading and piles; • Select and retain licensed architect to design the project; • Select and retain licensed general contractor to construct the project; • Provide City with all analyses, surveys, designs, engineering, permits, warranties, etc.; • Comply with Local Hire, First Source and Local Business Enterprise Program Requirements; • Design and construct project within budget of \$55 million to be completed by June 29, 2017; • Procure trade subcontractors on competitive basis, with award to lowest responsive bid; • Developer may procure design, preconstruction or design-assist subcontractor services based on qualifications only; Subject to City representative sole discretion, developer may negotiate with subcontractors outside Core Lower-Tier list, up to 7.5% of subcontract costs; • Developer through its General Contractor may self-perform specific trade work; • Provide Guaranteed Maximum Price and Schedule for completion; • Conditioned on agreement to proceed with Phase II (construction), developer will provide the City with a completed project. |
|--|

According to Mr. Samuel Chui, Project Manager at Public Works, Phase 1, the design phase is almost complete, noting that permit review and plan checks are now proceeding and site

grading and piles will be completed by the summer 2017. As shown in Table 1 above, in Phase 1, the design and construction budget was anticipated to be \$55 million to be completed by June 29, 2017². However, the total project costs have now increased to \$82,278,429, including a design and construction budget of \$60,200,000, which is \$5,200,000 more than the \$55 million previously estimated budget.

It should be noted that when the Board of Supervisors approved Ordinance No. 8-16 in February 2016, the Board of Supervisors were informed that when the architect completed the construction drawings, the developer would provide a guaranteed maximum price and schedule for completion. If the guaranteed maximum price exceeded the \$55 million, the City would work with the developer to reduce the scope of the project, or seek Mayor and Board of Supervisors approval to proceed with construction for a guaranteed maximum price that exceeded \$55 million. Mr. Chui advises that City staff worked with the developer to reduce the increased costs through value engineering by \$1.9 million from \$62,100,000 to \$60,200,000. Therefore, the Board of Supervisors is now being requested to approve the proposed resolution, which authorizes increases in the total cost, dates and requirements for completion.

According to Mr. Chui, Phase 2, the construction phase is anticipated to begin in April 2017 and be completed by June 2018, on schedule. Ms. Shelby Campbell, Project Manager at the SFPUC advises that the Central Shops project is on an expedited schedule to be completed on time.

Conformity with General Plan and Planning Code

On November 5, 2015, the Planning Department found that the proposed transactions are in conformity with the General Plan and the eight priority policies of Planning Code, Section 101.1.

FISCAL IMPACT

Design Phase

When the Phase I, design phase was approved by the Board of Supervisors, the Board amended Ordinance 8-16 to increase the estimated cost of Phase I from \$8,430,000 to a not-to-exceed \$10,300,000, an increase of \$1,870,000 or 22.2% due to extensions in the schedule and scope of services. Table 2 below shows the total design and site preparation projected cost of \$10,300,000, including development management fees of up to \$1,380,000 (\$987,000 + \$393,000) and general contingency of \$941,340.

² Mr. Chui advises that the June 2017 completion date included in the previous documents was a typographical error and should have been June 2018. Ms. Shelby Campbell, Project Manager at the SFPUC confirms this error.

Table 2: Projected Costs for Phase I, Design

Acquisition due diligence	\$25,000
Architect and sub-consultants	2,419,488
Design- build sub-consultants	479,737
Pre-construction services (Pankow)	627,000
Permits and fees	925,475
Legal, insurance, accounting and administration	215,000
Development Management Base Fee	987,000
Development Management Bonus Fee	393,000
Demolition/Site-grading/Piles	3,286,960
General Contingency (10%)	941,340
Total	\$10,300,000

Total Project Costs

Table 3 below compares the total estimated cost for the Central Shops relocation project of \$73,700,000 in the 2015 MOU to the \$82,278,429 in the recent 2017 Amendment No. 1 to the MOU and that is included in the proposed resolution. As shown in Table 3, this results in an increase cost of \$8,578,429 or 11.6% to be paid by the SFPUC to OCA. The proposed resolution would approve the jurisdictional transfers of properties, subject to the increase in the total Transfer Price to a not-to-exceed \$82,278,429.

Table 3: Total SFPUC Costs

	2015 MOU Total Transfer Price	2017 Total MOU Transfer Price	Increased Transfer Price (11.6%)
Acquisition of 555 Selby Street	\$6,300,000		
Acquisition of 1975 Galvez Avenue	<u>5,000,000</u>		
Subtotal Acquisitions	\$11,300,000	\$11,303,429	\$3,429
Tenant Relocation Costs	200,000	2,200,000	2,000,000
10-Year Lease of 450 Toland Street	6,900,000	6,000,000	(900,000)
Construction of new Central Shops	55,000,000	60,200,000	5,200,000
Contingency for Oryx Contract		2,025,000	2,025,000
Relocation of existing PG&E service		250,000	250,000
Moving Expenses	300,000	300,000	0
Total	\$73,700,000	\$82,278,429	\$8,578,429

Mr. John Updike, Director of Real Estate and Mr. Chui provided the following explanations for the changes in costs shown in Table 3 above:

- Property Acquisitions – Increase of \$3,429 due to final closing and escrow costs.
- Tenant Relocation Costs – Increase of \$2,000,000 due to the cost to acquire the remaining term of the leasehold interest held by Blue Line Rentals at 1975 Galvez (\$1.65 million) with the balance budgeted for the estimated cost of relocation expenses that will be incurred by DeSoto (dba Flywheel) at 555 Selby Street to vacate these two recently acquired properties, under the California Relocation Assistance Act requirements.

- 10-Year Lease at 450 Toland Street – Reduction of \$900,000 due to unanticipated leaseback revenues generated from HULU for filming at 450 Toland as well as lease revenues from Blue Line Rentals at 1975 Galvez and DeSoto (dba Flywheel) at 555 Selby Street.
- Construction of new Central Shops – Net increase of \$5,200,000 due to approximately (a) \$1.7 million increased foundation support costs from poor soil conditions on the 555 Shelby site based on updated structural engineer's report, (b) \$1.2 million increased pre-cast walls cost due to poor soil condition of site and market escalation, (c) \$900,000 increased costs for industrial equipment, (d) \$1.0 million increased electrical costs based on completed design to install additional intervening facilities required for SFPUC electric customers and (e) \$400,000 miscellaneous hard cost increases.
- City contingency for Oryx Contract – new cost of \$2,025,000 to fund additional unforeseen City-caused schedule delays, differing site conditions, future changes requested by the City to the scope of work or criteria package including potential option to expedite the project schedule.
- Relocation of existing PG&E service – new cost of \$250,000 to relocate previously unidentified PG&E poles, transmission and distribution service lines at 1975 Galvez to another easement area within the project site.

Previous Appropriation of Funds

Ms. Campbell advises that to date \$90 million of Wastewater Enterprise Sewer System Improvement Program funds have been appropriated by the Board of Supervisors for this project. Ms. Campbell explains that the difference between the \$90 million already appropriated by the SFPUC and the total \$82,278,429 Transfer Price included in the proposed resolution or \$7,721,571 of additional costs are due to:

- Additional assessment studies, design studies completed by DPW for other options, environmental consultants, site investigation consultants and peer review consultants;
- City project management costs for SFPUC, DPW and OCA;
- Civic Design Review and Public Arts Fees;
- Contingency for additional unknown costs, such as City legal expenses for tenant settlements, etc.

To fully fund this project, SFPUC will need to sell additional Wastewater revenue bonds, subject to Board of Supervisors approval. Wastewater bonds are financed with sewer revenues paid by SFPUC customers.

POLICY CONSIDERATION

Ordinance No. 8-16 authorized the existing agreement with Oryx LLC as Developer, FM&E Architecture & Design as Project Architect and Charles Pankow Builders, Ltd, as General Contractor to design and construct the new Central Shops facilities without competitive bidding because this was determined to be the one team available and capable of completing the project within the City's schedule and budget. At that time, the design and construction agreement was for \$55,000,000 and the total project budget was for a not-to-exceed

\$73,700,000. While approving a sole source selection of the developer, architect and general contractor likely expedited the selection process and design phase, the City's requirements for competitive bidding promote larger public policy objectives of providing an open process to obtain the most competitive price for the City.

As noted above, the project is on schedule, at an expedited pace. However, the previous not-to-exceed \$73,700,000 total project budget is now anticipated to be \$82,278,429, an increase of \$8,578,429 or 11.6%. To date, the SFPUC has appropriated approximately \$90 million or \$7.7 million more, to pay for additional City-related expenses for this project.

However, when the previous Ordinance No. 8-16 was approved by the Board of Supervisors in February 2016, the Board of Supervisors were informed that when the design phase was completed, if the price was determined to exceed the original budget, the City would seek Board of Supervisors approval for such increased costs, which is the subject of the proposed resolution. In addition, City staff report that because this is a design-build contract, and the contractor has now supplied a guaranteed maximum price following the near completion of design, this provides greater protection against any further cost increases for the Central Shops relocation project.

RECOMMENDATION

Approve the proposed resolution.

AMENDMENT No. 1
MEMORANDUM OF UNDERSTANDING
(Central Shops)

THIS AMENDMENT OF THE MEMORANDUM OF UNDERSTANDING ("AMENDMENT No. 1"), by and between the City and County of San Francisco, through its Public Utilities Commission ("SFPUC"), the City and County of San Francisco General Services Agency's Office of Contract Administration ("OCA"), and the City and County of San Francisco General Services Agency's Real Estate Division ("RED" or collectively "OCA"), all three entities collectively defined as the "Parties" is dated for reference purposes only as of February 16, 2017 ("Agreement Date").

RECITALS

- A. On November 10, 2015, the Commission approved Resolution No. 15-0241, authorizing the General Manager to execute a Memorandum of Understanding (MOU) with the OCARED, establishing the terms and conditions of the jurisdictional transfer of the property at 1800 Jerrold in San Francisco (1800 Jerrold) to the SFPUC, subject to Board of Supervisors approval.
- B. The MOU required the SFPUC to incur or pay the projected reasonable and necessary costs of relocating Central Shops in the total amount of Seventy-Three Million Dollars Seven Hundred Thousand Dollars (\$73,700,000), ("Transfer Price").
- C. On December 8, 2015, the Commission approved Resolution No. 15-0265 revising the terms of the MOU to authorize the SFPUC to incur the cost of entering into property transactions for the property necessary for relocation of Central Shops, approved by the Board of Supervisors (Board Ordinance No. 0525-15). The City's Director of Property executed agreements for the acquisition of 555 Selby and 1975 Galvez ("Acquisition Sites") and for the lease of 450 Toland ("Leased Site").
- C. Amendment No. 1 to the MOU modifies the Transfer Price to Eighty-Two Million Dollars Two Hundred Seventy-Eight Thousand Dollars Four Hundred Twenty Nine Dollars (\$82,278,429), an increase of \$8,578,429.
- D. The City's Director of Property has determined that an additional \$2,200,000 may be required to secure possession of the Acquisition Sites from the existing tenants
- E. OCA agrees to contribute rent proceeds from the Acquisition Sites and Leased Site ("Transfer Sites") in the amount of \$900,000 ("OCA Contribution") toward the project. The contribution will be deducted from the final Balance Transfer.
- G. The Board of Supervisors adopted Ordinance 0008-16, authorizing the City to enter into the Project Development Agreement with Oryx Development LLC, dated March 21, 2016 (Contract No. 7994A) to undertake design and construction of Replacement Facilities for the relocation of Central Shops. The Agreement for Phase 1 was \$10,300,000.

H. The Board of Supervisors requires OCA to obtain Board approval to proceed with Phase 2, construction after the negotiated Guaranteed Maximum Price ("GMP") is determined. The total project cost including Phase 1 was estimated at \$55,000,000 at the time of the initial Board approval. Total project cost under the GMP will be \$60,200,000, an increase of \$5,200,000. The variance in cost is due to 1) development of design and industrial equipment requirements, 2) unforeseen site conditions, 3) higher bids, and 4) escalation.

I. The SFPUC desires to include a contingency in the amount of \$2,025,000 ("City's Contingency") to evaluate options for expediting the schedule and for unforeseen conditions during construction.

J. The project requires the relocation of existing PG&E service within the Acquisition Sites, determined to be outside the Franchise Agreement and therefore a cost to the project, in an amount estimated to not exceed \$250,000. The relocation will require the issuance of an easement, subject to Board of Supervisors approval.

K. Subject to the Board of Supervisors' approval of legislation required to implement the relocation of the Central Shops to the Acquisition Sites and Leased Site, and the Board's approval of the jurisdictional transfer of 1800 Jerrold Avenue to the SFPUC, consistent with the terms of the MOU, as amended by Amendment No. 1, the SFPUC will transfer funds per the terms and conditions set forth in the MOU, as amended by Amendment No. 1.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporate herein by this reference.
2. **Section 3. Transfer Price; Allocation of Transfer Price; Timing of Transfer of Funds; Transaction Costs of the MOU** shall be replaced in its entirety by the following:

Section 3. Transfer Price; Allocation of Transfer Price; Timing of Transfer of Funds; Transaction Costs

- a. **Transfer Price.** In consideration for the jurisdictional transfer of the Transfer Site, and jurisdiction over the Acquisition Sites, the SFPUC shall incur or pay OCA an amount ("Transfer Price") equal to \$82,278,429. The SFPUC has no obligation to pay any amount above the Transfer Price to OCA related to the relocations of Central Shops from the Transfer Site.
- b. **Allocation of Transfer Price.** SFPUC Funds will be expended in the following manner.
 - i. Expenditures in the amount of \$11,303,429 have been expended to acquire 555 Selby Street and 1975 Galvez Avenue.

- ii. Not to exceed \$2,200,000 to secure possession from the existing Tenants at 555 Selby and 1975 Galvez Avenue.
- iii. Not to exceed \$60,200,000 for the GMP under the Contract with Oryx for construction of a new maintenance shop building at Selby and Galvez; and tenant improvements at 450 Toland.
- iv. Not to exceed \$2,025,000 contingency for the Contract with Oryx, at SFPUC's General Manager's discretion, for expediting the schedule or for unforeseen conditions during construction.
- v. Not to exceed \$250,000 for the relocation of existing PG&E service at 1975 Galvez, subject to reimbursement to SFPUC if PG&E is not entitled to compensation to relocate its facilities.
- vi. No more than \$6,000,000 towards the cost of the ten-year lease of 450 Toland. This includes the deduction of rent proceeds from the lease of the Transfer Sites in the amount of \$900,000, as reflected in the final Balance Transfer under Section 5 of the MOU, as amended.
- vii. No more than \$300,000 for reimbursement of moving expenditures to OCA.

Any deviation to this allocation shall require the prior written approval of the SFPUC General Manager and the City's Controller, which shall not be unreasonably withheld.

- c. Timing of Transfer of Funds. The SFPUC has available funds appropriated in the amount of \$82,278,429 to be applied towards costs incurred and payment of the Transfer Price. Each future transfer is conditioned upon the SFPUC's approval of all demands for payment prior to the disbursement of funds by OCA for expenditures, including but not limited to, contracts, invoices, and construction draws and change orders, and the City Controller shall be consulted as is appropriate prior to funding transfers.
 - i. The SFPUC incurred the cost of \$11,303,429 for the acquisition of 555 Selby Street and 1975 Galvez Avenue on March 4, 2016.

The SFPUC shall incur the cost of acquiring the remaining term of the leasehold from the existing tenant at 1975 Galvez and relocations expenses for that tenant, and the tenant at 555 Selby, not to exceed \$2,200,000.

- ii. The SFPUC shall incur the cost of the Project Delivery Agreement for design and construction of new facilities in an amount not to exceed \$60,200,000. The SFPUC incurred the cost of \$10,300,000 for Phase 1. The SFPUC shall make an installment of half of Phase 2, \$24,950,000, upon issuance of the Notice to Proceed for Phase 2. The SFPUC shall make a second installment payment of \$24,950,000, upon 50% completion of construction.

- iii. The SFPUC shall incur the cost for the relocation of the existing PG&E service at 1975 Galvez, in an amount no greater than \$250,000, subject to reimbursement if it is determined that PG&E is not entitled to compensation to relocate the facilities located on that site.
- iv. The SFPUC shall maintain a contingency in the amount of \$2,025,000 to be disbursed for the purpose of expediting the schedule or unforeseen conditions during construction.
- v. The SFPUC shall incur the annual cost of the Leased Site, in an amount not to exceed \$1,900,000, prior to the vacation of the Transfer Site.
- vi. The SFPUC shall pay the balance of the Transfer Price, or Four Million One Hundred Thousand (\$4,100,000), to OCA within ten (10) business days following Central Shop's and DTIS' vacation of the Transfer Site. Once the Transfer Price is fully paid, jurisdiction of the Transfer Site shall automatically transfer from GSA to the SFPUC, consistent with the terms of the Board of Supervisors authorization, and this MOU, as amended.

d. Transaction Costs. Any costs charged by RED and any costs charged by the city Attorney's Office to negotiate and draft transaction documents related to and arising from the jurisdictional transfer of the Transfer Site and effect the Final Closing pursuant to Section 2 shall be borne by the SFPUC.

3. **Section 4 Rights and Obligations of the Parties** is amended only with the replacement of Sub-Section 4 b. to read as follows, with all other sub-sections to remain as provided in the MOU:

4 b. If OCA receives the transfer of funds according to the schedule set forth above, Central Shops and DT shall vacate the Transfer Site by the earlier of 60 days following issuance of both TCO's for the Acquisition Sites or July 31, 2018. OCA shall remove all Debris from the Transfer Site, except those items within a building, currently stored in service bays under a roof, or set forth on **Exhibit D**, before vacating the Transfer Site. For purposes of this Section, the term "**Debris**" shall include any other discarded equipment, vehicles, personal property, lumber, equipment, trash, rubbish, or building materials lying on or about the Transfer Site.

4. **Section 5 Termination Default** is amended only with the replacement of Sub-Section 5b. to read as follows, with all other sub-sections to remain as provided in the MOU:

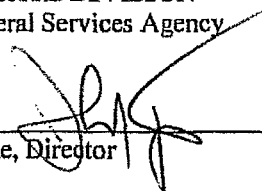
5b. If OCA fails to attain TCOs for new locations by May 31, 2018, or if there is a delay in the construction schedule for the functionally equivalent facilities of more than 30 days, the SFPUC, at its option, may terminate this MOU by giving not less than thirty (30) days' notice to OCA and RED ("**Termination Notice**") and retain jurisdiction over the Acquisition Sites and control of the Lease Site, or may assume the rights and obligations under the agreements entered into by OCA to accomplish the completion of

the functionally equivalent facilities. Any such Termination Notice shall identify the effective date of the termination ("**Termination Date**"), which shall be a date not less than thirty (30) days after delivery of the Termination Notice to OCA and RED. Any funds paid by the SFPUC to OCA or RED as a portion of the Transfer Price shall be returned to the SFPUC, minus OCA's and RED's reasonable costs and expenses arising from and related to this MOU, the amounts paid under the Purchase and Sale Agreements for Acquisition Sites, the amounts paid under the Lease for the Leased Site, if any, and unrecoverable costs incurred upon termination of the agreements related to the improvements to be constructed on the Acquisition Sites or Lease Site, if any, no later than sixty (60) days following the Termination Date. Alternatively, in the SFPUC's sole discretion, the SFPUC may assume the rights and obligations under those agreements entered into by OCA for improvements to the Acquisition Sites or the Leased Site, for the relocation of Central Shops, or otherwise to recover the benefit of SFPUC expenditures.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the last date written below.

CITY AND COUNTY OF SAN FRANCISCO

RED: REAL ESTATE DIVISION
Of the General Services Agency

By:  _____
John Updike, Director

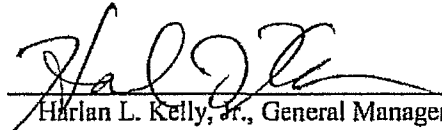
Date: 2/16/17

OCA: OFFICE OF CONTRACT ADMINISTRATION
Of the General Services Agency

By:  _____
Jael Fong, Director

Date: 2/16/2017

PUBLIC UTILITIES COMMISSION

By:  _____
Harlan L. Kelly, Jr., General Manager

Date: 2/16/17

APPROVED BY:

PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. _____

By: _____
Commission Secretary

Date: _____





San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

25 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
T 415.487-5213

To: Harlan L. Kelly, Jr.
General Manager

Through: Michael Carlin 
Deputy General Manager

From: Rosanna S. Russell 
Real Estate Director

Date: January 4, 2016

Re: **Request for the General Manager's Signature -Central Shops Memorandum of Understanding**

Attached for your signature is the *revised* Memorandum of Understanding with the City and County of San Francisco (“**City**”) General Services Agency’s Office of Contract Administration (“**OCA**”), and the City and County of San Francisco General Services Agency’s Real Estate Division (“**RED**” or collectively “**OCA**”), approving the transfer of the Central Shops (a portion of San Francisco Assessor’s Block/Lot 5262-009, with a street address of 1800 Jerrold Avenue) to the San Francisco Public Utilities Commission (SFPUC).

On November 10, 2015, this Commission approved a Memorandum of Understanding (Initial MOU) with OCA and RED, agreeing to incur costs and pay OCA the total amount of \$73,700,000 to accomplish the jurisdictional transfer of 1800 Jerrold to the SFPUC, provided that OCA agrees to obtain or construct the necessary functionally equivalent facilities for Central Shops, and relocate by June 2017. The Initial MOU provided that *the SFPUC would retain jurisdiction* over the Acquired Sites, subject to Central Shops’ right to maintain jurisdiction over and use the Acquired Sites for Central Shops’ functions.

After November 10, 2015, the SFPUC, OCA and RED agreed that *OCA, rather than the SFPUC, will acquire jurisdiction over the Acquired Sites* and decided to enter into the Revised MOU.

Our Commission approved the revised MOU on December 8, 2015. John Updike, City’s Director of Property, has requested that you sign the MOU prior to approval and signature by the Board of Supervisors and the Mayor.

Under the revised MOU, the SFPUC will transfer funds for the City to (i) enter into purchase and sale agreements to acquire the properties at 555 Selby and 1975 Galvez in San Francisco (“**Acquisition Sites**”); (ii) enter into a ten-year lease of the property at 450 Toland in San Francisco (“**Leased Site**”), and (iii) enter into agreements with consultants to undertake development, design and construction of improvements on the Acquisition Sites and Leased Site to accommodate vacation of and relocation of Central Shops functions no later than July 31, 2017.

The Acquisition Sites acquired by the City for the relocation of Central Shops will be placed under GSA’s jurisdiction, subject to the irrevocable right of GSA

Edwin M. Lee
Mayor

Francesca Vietor
President

Anson Moran
Vice President

Ann Moller Caen
Commissioner

Vince Courtney
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, Jr.
General Manager



to occupy and use the acquired and improved property for Central Shops functions.

If Central Shops fails to occupy, vacates, or ceases to use the acquired property for Central Shop functions (Triggering Event), however, GSA must pay to the SFPUC within thirty (30) days after the Triggering Event a sum equal to the unamortized value of the Acquisition Sites. The amortization schedule shall be straight-line depreciation of land and improvements over thirty (30) years, commencing on the date of receipt of Temporary Certificate of Occupancy, with a first year value of \$50,000,000.

The SFPUC will transfer \$73,700,000 in funds in installments to pay for OCA's costs in vacating and relocating Central Shops.

Upon the Board of Supervisors' approval of legislation authorizing the acquisition of the Acquisition Sites, the execution of a lease of the Leased Site, and agreements necessary to complete the development, design and construction of functionally equivalent relocation facilities, and the conditional jurisdictional transfer of Central Shops to GSA, subject to the revised MOU, then upon vacation of Central Shops and final payment of the transfer of funds, jurisdiction of Central Shops will automatically transfer from OCA to GSA.

Shelby Campbell will monitor the MOU transfer payments.

Please contact me with any questions at 487-5213.

Thank you.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 15-0265

WHEREAS, By Resolution No. 15-0241 on November 10, 2015, this Commission approved a Memorandum of Understanding (Initial MOU) with the General Services Agency (GSA)'s Office of Contract Administration (OCA) of the City and County of San Francisco (City) and the GSA's Real Estate Division (RED), establishing the terms and conditions of the jurisdictional transfer of the property at 1800 Jerrold in San Francisco (1800 Jerrold) to the SFPUC, OCA and RED, agreeing to incur costs and pay OCA the total amount of \$73,700,000 to accomplish the jurisdictional transfer of 1800 Jerrold to the SFPUC, provided that OCA agrees to obtain or construct the necessary functionally equivalent facilities for Central Shops, and relocate by June 2017; and

WHEREAS, The Initial MOU provided that the SFPUC would retain jurisdiction over the properties to be purchased for the relocated facilities, subject to Central Shops' right to maintain jurisdiction over and use such properties for Central Shops' functions; and

WHEREAS, After November 10, 2015, the SFPUC, OCA and RED agreed that OCA, rather than the SFPUC, would acquire jurisdiction over the purchased properties and decided to revise the Initial MOU to address these new terms and conditions (Revised MOU); and

WHEREAS, On December 1, 2015, the SFPUC introduced a Resolution at the Board of Supervisors (Board File No. 151215) to authorize the execution and acceptance of a ten-year lease by and between the City and Four Fifty Toland, LLC for a leased site at 450 Toland Street (Leased Site) with an initial rental amount of \$735,600 per year; the execution and acceptance of a Purchase and Sale Agreement by and between the City and the Selby and the Hudson Corporation, for the real property located at 555 Selby Street for \$6,300,000; the execution and acceptance of a Purchase and Sale Agreement by and between the City and W.Y.L. Five Star Service Industries, Inc. for the real property located at 1975 Galvez Avenue for \$5,000,000; and finding the proposed transactions are in conformance with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1 (Proposed Resolution); and

WHEREAS, The purchased properties at 555 Selby Street and 1975 Galvez Street are referred to as the Acquisition Sites; and

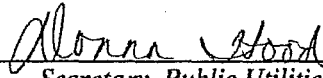
WHEREAS, The SFPUC seeks to enter into the Leased Site and Acquisition Site transactions to further the proposed jurisdictional transfer of 1800 Jerrold, subject to the terms and conditions of the Revised MOU, and further subject to the final adoption of a proposed Ordinance authorizing the jurisdictional transfer of 1800 Jerrold (Proposed Ordinance) and the agreements to undertake development, design and construction of new improvements on the Acquisition Sites and the Leased Site. However, if the Board of Supervisors approves the Proposed Resolution, the SFPUC intends to execute the Lease and the Purchase and Sale Agreements for SFPUC Wastewater Enterprise purposes, and such action is not contingent on final approval of the Proposed Ordinance; and



FURTHER RESOLVED, That any deviation to this allocation of SFPUC funds transferred to OCA shall require the prior written approval of the SFPUC's General Manager; and be it

FURTHER RESOLVED, That this Commission approves the terms and conditions of the Revised MOU and authorizes the General Manager of the SFPUC to execute the Revised MOU and enter into any amendments or modifications to the Revised MOU, including without limitation, modification, addition, or deletion of exhibits and to enter into any related documents, instruments, memorandum, or other agreements reasonably necessary to consummate the transaction contemplated in the Revised MOU, that the General Manager determines, in consultation with the City Attorney, are in the best interests of the City; do not materially increase the liabilities or obligations of the SFPUC or materially diminish the benefits to the SFPUC; are necessary or advisable to effectuate the purposes and intent of the Revised MOU or this Resolution; and comply with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of December 8, 2015.



Secretary, Public Utilities Commission

MEMORANDUM OF UNDERSTANDING

(Central Shops)

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”), dated for reference purposes only as of December 5, 2015 (“**Agreement Date**”), is by and between the City and County of San Francisco, through its Public Utilities Commission (“**SFPUC**”), the City and County of San Francisco General Services Agency’s Office of Contract Administration (“**OCA**”), and the City and County of San Francisco General Services Agency’s Real Estate Division (“**RED**” or collectively “**OCA**”), all three entities collectively defined as the “**Parties**”.

RECITALS

A. In 1946, the City and County of San Francisco (“**City**”) Board of Supervisors (“**Board**”) passed Resolution No. 4744 (Series of 1939) requiring the City to purchase certain real property “for the construction, operation, and maintenance of the North Point Sludge Treatment Plant near Islais Creek.” now commonly known as the Southeast Water Pollution Control Plant (“**SEP**”).

B. In 1946, pursuant to Board Resolution No. 4744 (Series of 1939) and specifically for the purposes of a sludge treatment plant, the City purchased Assessor’s Block 5262 in its entirety [Board Resolution No. 5518 (Series of 1939)].

C. Between 1946 and 1948, pursuant to Board Resolution No. 4744 (Series of 1939) and specifically for the purposes of a sludge treatment plant, the City purchased the portion of Assessor’s Block 5270 east of the Southern Pacific Railroad tracks [Board Resolution Nos. 5385, 5437 and 5963, and Board Ordinance No. 4849 (all Series of 1939)].

D. Until August 1, 1996, the San Francisco Department of Public Works had jurisdiction over and maintained the City’s wastewater system including all municipal sewage treatment and disposal systems and other related facilities located within the City.

E. Effective August 1, 1996, jurisdiction over the City’s wastewater system, including sewerage facilities, assets and properties, including a portion of Assessor’s Block 5262 was transferred to the SFPUC.

F. Currently, the City’s Central Fleet Maintenance Shop is located on the northwest corner of the intersection of Jerrold Avenue and Quint Street, on a portion of Block/Lot 5262-009 (previously designated as Block 5262 and as a portion of Block 5270), commonly known as 1800 Jerrold Avenue (“**Transfer Site**”). The Transfer Site is more fully described in the attached **Exhibit A** and depicted on the attached **Exhibit B**.

G. The Transfer Site, is currently used as an automobile and truck maintenance and repair shop, including ancillary shops, and offices for the City’s fleet, commonly referred to as the “**Central Shops**,” which is under the jurisdiction of OCA. The San Francisco Department of Technology (“**DT**”) also occupies a portion of Central Shops.

H. The Transfer Site is located adjacent to the SFPUC's SEP, also on Block/Lot 5262-009, among other parcels, which the City owns under the SFPUC's jurisdiction.

I. The SEP facilities are old, and require substantial maintenance, repair and replacement. The SFPUC is undertaking scheduled repair and replacement projects at the SEP and throughout the City in the near term, and has immediate need for additional space for storage of equipment and vehicles and temporary relocation of existing uses in the vicinity of the SEP. In the longer term, the SFPUC anticipates a continuing need for more space for capital improvement projects related to existing facilities and upgrades to the sewage system. Due to the existing intensive competition for available industrial land in the City, particularly in proximity to SFPUC's existing utility plants and facilities, the SFPUC now seeks to secure land necessary to support its current and future obligation to provide essential utility services.

J. OCA is willing to consent to a jurisdictional transfer of the Transfer Site to the SFPUC, provided it receives compensation to enable occupancy of functionally equivalent facilities and related necessary relocation expenses.

K. The SFPUC desires to acquire jurisdiction over the Transfer Site, subject to approval of a jurisdictional transfer consistent with this MOU by the Commission, Board of Supervisors and Mayor.

L. OCA desires to transfer jurisdiction of the Transfer Site to the SFPUC, subject to the Board of Supervisors' and Mayor's approval of a jurisdictional transfer consistent with this MOU.

M. In a letter dated November 9, 2015 to the Director of Real Estate, the San Francisco Planning Department ("**Planning Department**") found that the proposed jurisdictional transfer of the Transfer Site from OCA to the SFPUC was consistent with the City's General Plan and Planning Code Section 101.1(b).

N. The SFPUC's Bureau of Environmental Management determined the proposed jurisdictional transfer of 1800 Jerrold to the SFPUC is categorically exempt as a Class 32: In-Fill Development categorical exemption under section 15332 of the California Environmental Quality Act ("**CEQA**").

O. The Planning Department sent notification on October 13, 2015 of the Project receiving environmental review and received no public comments by the end of the specified comment period.

P. On October 28, 2015 the Planning Department concurred with the categorical exempt determination for the proposed Jurisdictional Transfer.

Q. The City's Director of Property has determined the current fair market value of the Transfer Site is less than the reasonable and necessary costs to vacate the Transfer Site and relocate Central Shops to functionally equivalent facilities. Therefore, the Director of Property has determined that the SFPUC must pay OCA the reasonable cost of the Central Shops' relocation and the cost of

functionally equivalent facilities, as set forth in the memorandum dated November 3, 2015 **attached as Exhibit C** in exchange for the jurisdictional transfer of the Transfer Site to the SFPUC.

R. The Director of Property recommends the City (i) enter into purchase and sale agreements to acquire the properties at 555 Selby and 1975 Galvez in San Francisco ("**Acquisition Sites**"); (ii) enter into a ten-year lease of the property at 450 Toland in San Francisco ("**Leased Site**"), and (iii) enter into agreements with consultants to undertake development, design and construction of improvements on the acquired and leased properties to accommodate vacation of the Transfer Site and relocation of Central Shops functions no later than July 31, 2017 (collectively "**GSA Project**").

S. On December 1, 2015, the SFPUC introduced a Resolution at the Board of Supervisors (Board File No. 151215) to authorize the execution and acceptance of a Lease by and between the City and County of San Francisco and Four Fifty Toland, LLC, a California limited liability company, for the real property located at 450 Toland Street with an initial lease amount of \$735,600 per year; the execution and acceptance of a Purchase and Sale Agreement by and between City and Selby and Hudson Corporation, a California corporation, for the real property located at 555 Selby Street for \$6,300,000; the execution and acceptance of a Purchase and Sale Agreement by and between the City and W.Y.L. Five Star Service Industries, Inc., a California corporation, for the real property located at 1975 Galvez Avenue for \$5,000,000; and finding the proposed transactions are in conformance with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1 ("**Proposed Resolution**"). The SFPUC seeks to enter into these transactions to further the proposed jurisdictional transfer of the Transfer Site, subject to the final adoption of an Ordinance authorizing the jurisdictional transfer of the Transfer Site, subject to this MOU, and the agreements to undertake development, design and construction of improvements on the Acquisition Sites and Leased Site ("**Proposed Ordinance**"). However, if the Board approves the Proposed Resolution, the SFPUC intends to execute the Lease and the Purchase and Sale Agreements for SFPUC Wastewater Enterprise purposes, and such action is not contingent on final approval of the Proposed Ordinance.

T. If both the Proposed Resolution and the Proposed Ordinance become effective, the Acquisition Sites acquired by the City for the relocation of Central Shops will be placed under the jurisdiction of GSA, subject to one condition. If Central Shops fails to occupy, vacates, or ceases to use the acquired property for Central Shop functions ("**Triggering Event**"), GSA must pay to the SFPUC within thirty (30) days after the Triggering Event a sum equal to the unamortized value of the Acquisition Sites. The amortization schedule shall be straight-line depreciation of land and improvements over thirty (30) years, commencing on the date of receipt of Temporary Certificate of Occupancy ("**TCO**"), with a first year value of \$50,000,000. For example purposes only, should the TCO date be June 1, 2017, and the Triggering Event date be June 1, 2037, the payment amount due SFPUC shall be \$16,666,666 (20 years of 30 years total = 0.33 remaining life. $\$50,000,000 \times 0.33 = \$16,666,666$).

U. OCA and the SFPUC understand and acknowledge that OCA will incur substantial costs in vacating the Transfer Site and relocating Central Shops.

V. OCA desires to accept, and the SFPUC desires to transfer the funds necessary to replace the Transfer Site with facilities that will provide functional equivalent utility for Central Shops.

W. Upon the Board of Supervisors' approval of legislation authorizing the acquisition of the proposed Acquisition Sites, the execution of a lease of the Leased Site, and agreements necessary to complete the development, design and construction of functionally equivalent relocation facilities, subject to the MOU, then upon vacation of Central Shops (OCA) from the Transfer Site and final payment of the Balance Transfer, as defined and pursuant to Section 3.c.iv., requiring the SFPUC to incur or pay the projected reasonable and necessary costs of relocating Central Shops in the total amount of Seventy-Three Million Dollars Seven Hundred Thousand dollars (\$73,700,000), jurisdiction of the Transfer Site will automatically transfer from OCA to the SFPUC.

X. OCA is willing transfer and the SFPUC is willing to accept the transfer, subject to the approval of the Board of Supervisors, consistent with the terms and conditions set forth in this MOU.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Transfer of Jurisdiction.
 - a. RED shall submit the Proposed Ordinance to the Board of Supervisors to obtain approval of the jurisdictional transfer, subject to the terms and conditions of this MOU and agreements necessary to complete the development, design and construction of functionally equivalent relocation facilities necessary for the jurisdictional transfer of the Transfer Site.
 - b. If the Proposed Resolution authorizing the acquisition of the proposed Acquisition Sites, the execution of a lease of the Leased Site, and the Proposed Ordinance are approved and final, then:
 - i. The Acquisition Sites and Lease Site will be placed under OCA's jurisdiction and control in order to effect the improvements contemplated by this MOU, and OCA will retain jurisdiction over the Acquisition Sites if SFPUC obtains jurisdiction over the Transfer Site, subject to the Triggering Event, GSA must pay the SFPUC within thirty (30) days after the Triggering Event a sum equal to the unamortized value of the Acquisition Sites. The amortization schedule shall be straight-line depreciation of land and improvements over thirty (30) years, commencing on the date of receipt of Temporary Certificate of Occupancy ("TCO"), with a first year value of \$50,000,000. For example purposes only, should the TCO date be June 1, 2017, and the Triggering Event date be June 1, 2037, the payment amount due SFPUC shall be \$16,666,666 (20 years of 30 years total = 0.33 remaining life, $\$50,000,000 \times 0.33 = \$16,666,666$); and

ii. Upon payment of the Balance Transfer by the SFPUC as set forth in Section 3 below, (“**Closing Date**”), jurisdiction over the Transfer Site shall automatically transfer to the SFPUC, and OCA jurisdiction over the Acquisition Sites and control of the Lease Site shall be final, subject to the condition set forth above in subsection 2.b.i., and RED shall prepare, execute and file all applicable documentation to effect the transfer and memorialize the jurisdictional transfer of the Transfer Site in the City’s real estate records (“**Final Closing**”).

3. Transfer Price; Allocation of Transfer Price; Timing of Transfer of Funds; Transaction Costs.

a. Transfer Price. In consideration for the jurisdictional transfer of the Transfer Site, and jurisdiction over the Acquisition Sites, the SFPUC shall incur or pay OCA an amount (“**Transfer Price**”) equal to \$73,700,000 as provided in Section 3(b) below. The SFPUC has no obligation to pay any amount above the Transfer Price to OCA related to the relocation of Central Shops from the Transfer Site.

b. Allocation of Transfer Price. SFPUC Funds will be expended in the following manner.

- i. No more than \$11,500,000 to acquire 555 Selby Street and 1975 Galvez Avenue, and relocate the existing tenant.
- ii. No more than \$6,900,000 towards the cost of the ten-year lease of 450 Toland.
- iii. No more than \$55,000,000 for the construction of a new maintenance shop building at Selby and Galvez; and tenant improvements at 450 Toland.
- iv. No more than \$300,000 for reimbursement of moving expenditures.

Any deviation to this allocation shall require the prior written approval of the SFPUC General Manager and the City’s Controller, which shall not be unreasonably withheld.

c. Timing of Transfer of Funds. The SFPUC has available funds appropriated in the amount of \$73,700,000 to be applied towards costs incurred and payment of the Transfer Price. Each future transfer is conditioned upon the SFPUC’s approval of all demands for payment prior to the disbursement of funds by OCA for expenditures, including but not limited to, contracts, invoices, and construction draws and change orders, and the City Controller shall be consulted as is appropriate prior to funding transfers.

- i. The SFPUC shall incur the cost of Eleven Million Five Hundred Thousand Dollars (\$11,500,000) upon final approval of the Proposed Resolution for the purchase and sale agreements for the Acquisition Sites and the cost of entering into the Lease for 450 Toland; and if the Proposed Ordinance is final and approved by the Board and the Mayor, the SFPUC will transfer funds in the

amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000) minus the costs incurred to that date for the Lease of 450 Toland (“**Initial Transfer**”).

- ii. The SFPUC shall make a second installment payment of Twenty Three Million Two Hundred Thousand Dollars (\$23,200,000) (“**Second Transfer**”) to OCA upon the issuance of building permits and notice to proceed on construction at the Acquisition Sites and Lease Site.
 - iii. The SFPUC shall make a third installment payment of Twenty Four Million Dollars (\$24,000,000) (“**Third Transfer**”) to OCA upon 50% completion of the new improvements at the Acquisition Sites.
 - iv. The SFPUC shall pay the balance of the Transfer Price or Six Million Five Hundred Thousand Dollars (\$6,500,000) (“**Balance Transfer**”) to OCA within ten (10) business days following Central Shop’s and DT’s vacation of the Transfer Site. Once the Transfer Price is fully paid, jurisdiction of the Transfer Site shall automatically transfer from GSA to the SFPUC.
- d. Transaction Costs. Any costs charged by RED and any costs charged by the City Attorney’s Office to negotiate and draft transaction documents related to and arising from the jurisdictional transfer of the Transfer Site and effect the Final Closing pursuant to Section 2 shall be borne by the SFPUC.

4. Rights and Obligations of the Parties.

- a. The Parties agree to cooperate and work together in good faith to accomplish the purpose and intent of the MOU.
- b. If OCA receives the transfer of funds according to the schedule set forth above, Central Shops and DT shall vacate the Transfer Site by the earlier of 30 days following issuance of both TCO’s for the Acquisition Sites or June 30, 2017. OCA shall remove all Debris from the Transfer Site, except those items within a building, currently stored in service bays under a roof, or set forth on **Exhibit D**, before vacating the Transfer Site. For purposes of this Section, the term “**Debris**” shall include any other discarded equipment, vehicles, personal property, lumber, equipment, trash, rubbish, or building materials lying on or about the Transfer Site.
- c. To accomplish the objectives of this MOU, OCA shall seek approval by the Board of Supervisors and Mayor of authorization for agreements necessary to complete the acquisitions, lease and improvements required to achieve functional equivalent facilities for the Central Shops operations and relocation on the timeline set forth herein. Because substantial SFPUC funds are at risk pending completion of those functionally equivalent facilities, the SFPUC shall have the right to:
 - (i) Designate a representative who shall attend regular GSA Project status meetings

between OCA, RED and their representatives, agents and contractors; and

- (ii) Be advised by OCA, RED and their representatives in advance of any decision that would either increase the cost or delay by more than ten (10) days the completion of the functionally equivalent facilities on either the Acquisition Sites or the Leased Site, or could potentially result in termination of any of the agreements entered into by OCA that are necessary to accomplish the vacation of Central Shops or DT from the Transfer Site, and OCA and RED shall also so advise the City Controller.
- d. Prior to the date of Central Shop's vacation of the Transfer Site, the SFPUC, its employees, agents, consultants, contractors, authorized representatives, invitees and guests (collectively, "PUC Affiliates") may access and use the Transfer Site for any necessary geotechnical and environmental investigations, provided that the SFPUC does not unreasonably interfere with Central Shop's operations. Each party will appoint a contact person to coordinate access.
- e. Prior to the vacation of the Transfer Site, the SFPUC shall not construct or place any permanent structures or improvements in, on, under or about the Transfer Site, nor shall the SFPUC make any alterations or additions to any existing structure or improvement on the Transfer Site.

5. Termination Default.

- a. If the SFPUC fails to pay the full Transfer Price consistent with this MOU, OCA may, at its option, terminate this MOU and the SFPUC's right of possession and transfer by giving not less than thirty (30) days' notice to the SFPUC ("Termination Notice"). Any such Termination Notice shall identify the effective date of the termination ("Termination Date"), which shall be a date not less than thirty (30) days after delivery of the Termination Notice to the SFPUC. Any funds paid by the SFPUC to OCA as a portion of the Transfer Price shall be returned to the SFPUC, minus OCA's and RED's reasonable costs and expenses arising from and related to this MOU, the amounts paid under the Purchase and Sale Agreements for Acquisition Sites, the amounts paid under the Lease for the Leased Site, if any, and unrecoverable costs incurred upon termination of the agreements related to the improvements to be constructed on the Acquisition Sites or Leased Site, if any, supported by written documentation delivered to the SFPUC no later than ninety (90) days following the Termination Date.
- b. If OCA fails to attain TCOs for new locations by June 30, 2017, or if there is a delay in the construction schedule for the functionally equivalent facilities of more than 30 days, the SFPUC, at its option, may terminate this MOU by giving not less than thirty (30) days' notice to OCA and RED ("Termination Notice") and retain jurisdiction over the Acquisition Sites and control of the Lease Site, or may assume the rights and obligations under the agreements entered into by OCA to accomplish the completion of the

functionally equivalent facilities. Any such Termination Notice shall identify the effective date of the termination (“**Termination Date**”), which shall be a date not less than thirty (30) days after delivery of the Termination Notice to OCA and RED. Any funds paid by the SFPUC to OCA or RED as a portion of the Transfer Price shall be returned to the SFPUC, minus OCA’s and RED’s reasonable costs and expenses arising from and related to this MOU, the amounts paid under the Purchase and Sale Agreements for Acquisition Sites, the amounts paid under the Lease for the Leased Site, if any, and unrecoverable costs incurred upon termination of the agreements related to the improvements to be constructed on the Acquisition Sites or Lease Site, if any, no later than sixty (60) days following the Termination Date. Alternatively, in the SFPUC’s sole discretion, the SFPUC may assume the rights and obligations under those agreements entered into by OCA for improvements to the Acquisition Sites or the Leased Site, for the relocation of Central Shops, or otherwise to recover the benefit of SFPUC expenditures.

- c. “**Reasonable costs and expenses**” shall mean, for the purpose of this Section, the reasonable costs and expenses actually incurred by OCA and RED: (i) to investigate relocation sites; (ii) to negotiate and execute Purchase and Sale Agreements for Acquisition Sites; (iii) to negotiate and execute a Lease for the Leased Site; (iv) to hire consultants to implement and manage the Central Shops improvements at the Acquisition Sites and Leased Site (“**Project Management**”) and (v) any funds paid under any purchase and sale agreements or relocation lease.

7. Allocation of Liability.

- a. Upon the jurisdictional transfer of the Transfer Site, the SFPUC shall assume responsibility for any damage to the property of the SFPUC or for any bodily injury to or death of any such persons, resulting or arising from the condition of the Transfer Site or its use by the SFPUC, and the SFPUC expressly assumes responsibility for any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including without limitation, reasonable attorneys’ and consultants’ fees and costs (together, “**Claims**”), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with any such property damage, injury or death, or the physical or environmental condition of the Transfer Site and any related improvements or any law or regulation applicable thereto or the suitability of the Transfer Site for SFPUC’s intended use.
- b. OCA and the SFPUC acknowledge that this MOU is subject to termination and in view of such fact, OCA and the SFPUC each expressly assumes the risk of making any expenditure in connection with this MOU, even if such expenditures are substantial.
- c. Upon jurisdictional transfer, the SFPUC accepts the Transfer Site in its “AS IS” condition, without representation or warranty of any kind by OCA or RED or their

employees, agents, consultants, contractors, and authorized representatives, subject to the obligations of OCA to remove Debris pursuant to Section 4.b., and further subject to all applicable laws, rules and ordinances governing the use of the Transfer Site. Without limiting the foregoing, this MOU is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Transfer Site, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

8. Conditions to Jurisdictional Transfer. Notwithstanding anything to the contrary contained herein (but subject to the remedies set forth in Section 5), the SFPUC shall have no obligation to make the Balance Transfer unless and until all of the following conditions are satisfied:

- (a) Central Shops and DT have vacated the Transfer Site as set forth in Section 4.
- (b) Prior to the Final Closing, OCA shall have maintained the Transfer Site in substantially the same condition it was in as of December 1, 2015, and OCA shall not, without first obtaining the SFPUC's prior written approval, have taken any of the following actions: (i) constructed any additional improvements on the Transfer Site, (ii) encumbered all or any part of the Transfer Site with any lien, transfer, grant, lease, license, or other encumbrance, or entered into any contract affecting the Transfer Site, except for operation contracts necessary under applicable Federal, State, and local law and regulations for the safe operation of the facilities and contracts that are terminable on thirty (30) days' notice or less, or (iii) caused or authorized any use of the Transfer Site different from the use of the Transfer Site as of the Agreement Date.
- (c) The SFPUC's Commission and the Board of Supervisors and the Mayor (as necessary and if required), shall have approved the appropriation of funds for SFPUC payment of the Transfer Price for the Transfer Site.

9. Approval Contingency. This MOU shall only be effective as of the date that all of the following conditions are met: (i) all Parties hereto have executed this MOU; (ii) the SFPUC's Commission, acting in its sole discretion, approves the Resolution requesting the jurisdictional transfer, authorizes execution of this MOU, and requests appropriations as necessary; and (iii) the Board of Supervisors and Mayor, acting in their sole discretion, approve the Proposed Resolution authorizing the execution and acceptance of a Lease by and between the City and County of San Francisco and Four Fifty Toland, LLC, a California limited liability Company, for the real property located at 450 Toland Street with an initial lease amount of \$735,600 per year; the execution and acceptance of a Purchase and Sale Agreement by and between the City and the Selby and Hudson Corporation, a California corporation, for the real property located at 555 Selby Street for \$6,300,000; the execution and acceptance of a Purchase and Sale Agreement by and between the City and W.Y.L. Five Star Service Industries, Inc., a California

corporation, for the real property located at 1975 Galvez Avenue for \$5,000,000, and (iv) the Board of Supervisors and Mayor adopt the Proposed Ordinance, and it becomes final, authorizing the jurisdictional transfer of the Transfer Site to the SFPUC, subject to the terms of this MOU, approves appropriations as necessary, and agreements necessary to complete the development, design and construction of functionally equivalent relocation facilities, as necessary to implement the terms and intent of this MOU.

10. No Assignment. This Agreement is personal to each of the named Parties, and shall not be assigned, conveyed or otherwise transferred by any Party under any circumstances. Any attempt to assign, convey or otherwise transfer this MOU shall be null and void and cause the immediate termination and revocation of this MOU.
11. Notices. All notices, demands, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be delivered in person, via email, Interdepartmental Delivery, or sent by United States Postal Service, postage prepaid, or reputable commercial courier, and addressed as follows:

If to RED: Real Estate Division
Office of the Director
25 Van Ness, Suite 400
San Francisco, CA 94102
Attn: Director of Real Estate
Telephone: (415) 554-9850

If to SFPUC: San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102
Attn: General Manager
Telephone: (415) 554-3155

With a copy to: San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Telephone: (415) 487-5210
RES@sfwater.org

If to OCA: General Services Agency
Office of Contract Administration
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Director

Telephone: (415) 554-6743
oca@sfgov.org

or such other address that a party may from time to time designate by notice to the other Parties given pursuant to the provisions of this Section. Telephone numbers are provided to facilitate communication and shall not be a sufficient method of delivering notice. Any correctly addressed notice sent by a method that provides confirmation of delivery shall be deemed delivered on the first date of confirmed delivery or confirmed attempted delivery.

12. Authority. All matters requiring RED's approval shall be approved by the Director of RED or his or her designee. All matters requiring OCA's approval shall be approved by the Director of the Office of Contract Administration or his or her designee and, by the Board of Supervisors, if required. All matters requiring the SFPUC's approval shall be approved by the SFPUC's Commission, if required, or by the General Manager, or his or her designee, if authorized.
13. Identification and Application of Additional Funding Sources. The SFPUC shall have the right to apply for any federal, state or local funds that may be available to pay for the costs of implementing the MOU. OCA shall cooperate to provide any materials or documents held by OCA or RED necessary to submit such applications or to qualify for distribution of such funds.
14. Cooperation. Subject to the terms and conditions of this MOU, staff of all Parties to this MOU shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all Parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU. In addition to any conditions described in this MOU, the Parties' obligations are expressly subject to the receipt of all legally required approvals following environmental review.
15. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the Director of RED, or his or her designee, the Director of the OCA, or his or her designee, the SFPUC, through its General Manager, or his or her designee and the Controller, or his or her designee. (b) No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all exhibits) contains the entire understanding between the Parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) Notwithstanding anything to the contrary set forth herein, no officer, director, or employee of RED, OCA or the SFPUC has the authority to bind his or her department to take any action to be performed by his or her department under this MOU unless and until the SFPUC's Commission and the Board of Supervisors and the Mayor, as applicable, approves of the action.

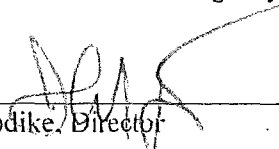
(e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the last date written below.

CITY AND COUNTY OF SAN FRANCISCO

RED: REAL ESTATE DIVISION
Of the General Services Agency

By: 
John Updike, Director


Date: 1-14-2016

OCA: OFFICE OF CONTRACT ADMINISTRATION
Of the General Services Agency

By: 
Jaei Fong, Director

Date: 1-14-2016

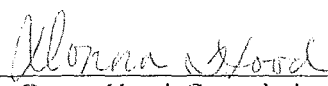
PUBLIC UTILITIES COMMISSION

By: 
Harlan L. Kelly, Jr., General Manager

Date: 1-13-2016

APPROVED BY:

PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. 15-0265

By: 
Donna Hood, Commission Secretary

Date: 1-6-16

March 20, 2013

Exhibit "A"
LEGAL DESCRIPTION
Central Shops

All that certain real property situate in the City and County of San Francisco, State of California, being more particularly described as follows;

BEGINNING at the intersection of the northerly line of Hudson Avenue, as said Avenue existed prior to the vacation of a portion thereof by Ord. 10607, September 23, 1957, B.8-P.239, and the westerly line of Quint Street, as said Street existed prior to the vacation of a portion thereof by Resolution No. 245-78, March 27, 1978, B.10-P18;

thence along the westerly line of said Quint Street, South 35°31'49" West, 560.00 feet to the northerly line of Jerrold Avenue;

thence along said northerly line of Jerrold Avenue, North 54°28'11" West, 313.28 feet to the easterly line of the Rail Road Right-of-Way as described in Resolution No. 5518 (series of 1939), approved May 28, 1946;

thence along said Rail Road Right-of-Way, North 6°17'09" East, 641.80 feet to the Northerly line of said Hudson Avenue extended to the northwest;

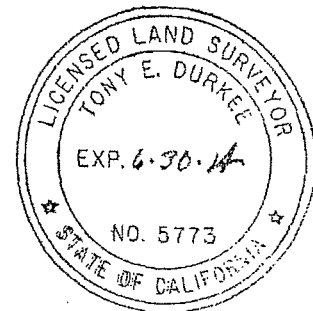
thence along said northerly line of Hudson Avenue and the extension thereof, South 54°28'11" East, 626.82 feet to the **POINT OF BEGINNING**.

Containing 6.04 acres, more or less.

A plat showing the above-described parcels is attached herein and made a part hereof as Exhibit "B".

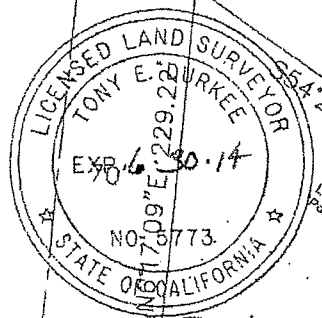
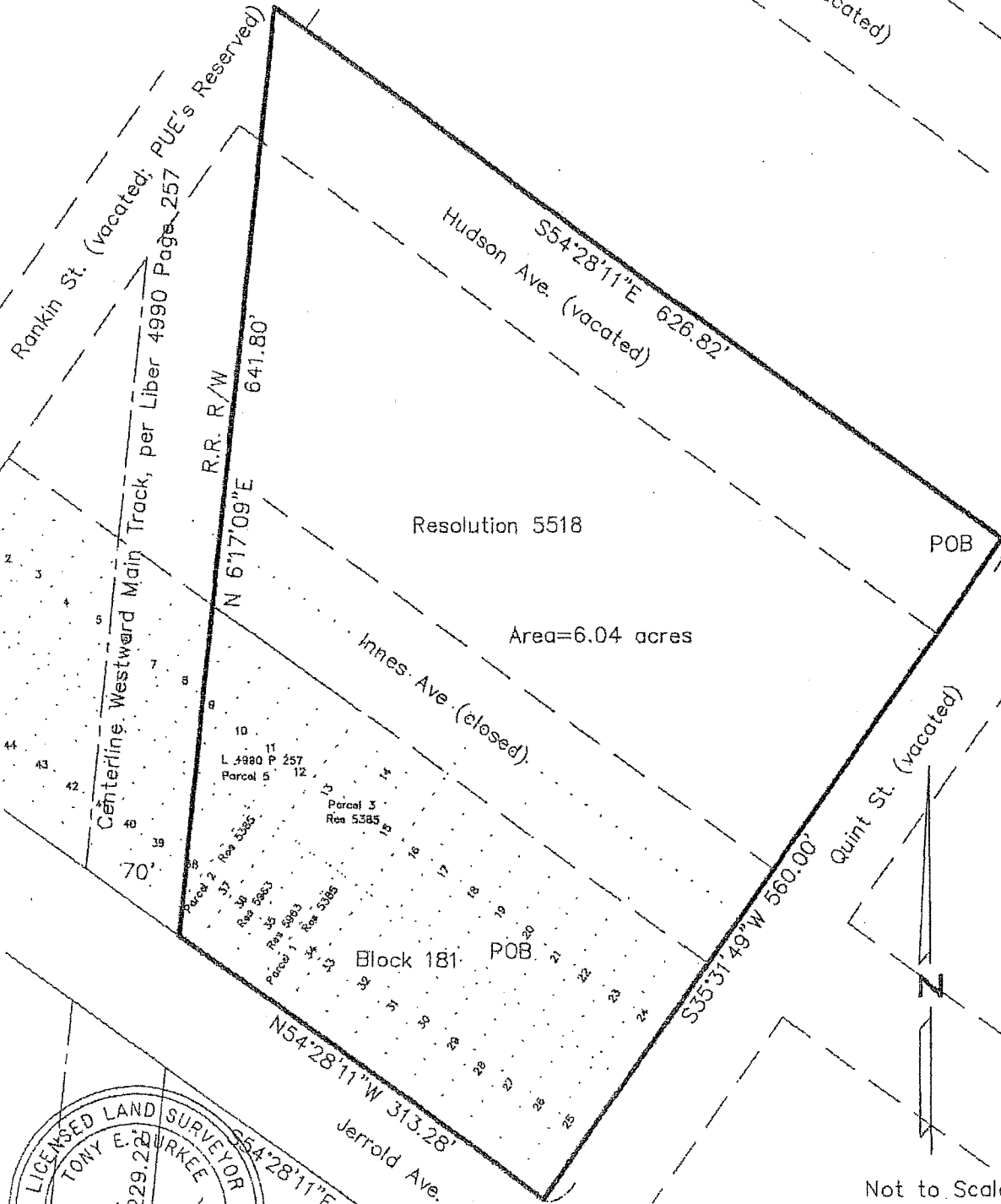
This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

Tony E. Durkee 3.20.13
Tony E. Durkee, PLS 5773



END OF DESCRIPTION

EXHIBIT "B"



Tony E. Burke 3-20-13
 central shops.dwg 03/20/2013

City and County of San Francisco Public Utilities Commission Real Estate Services
CENTRAL SHOPS Parcel
City and County of San Francisco

Not to Scale

EXHIBIT B

SITE MAP

(See attached.)



SCALE
0 500 1000
FEET

- Current Southeast Plant
- Future Southeast Plant
- Current Central Shops
- Future Central Shops

SOUTH-EAST
WATER POLLUTION
CONTROL PLANT

CENTRAL
SHOPS

FLANN
FLAMP
STATION

SEASIDE
PLANT

SOUTH-EAST
COMMUNITY
FACILITY

555 SILEBY ST
1975 CALVEZ AVE

450 TOLAND ST

DESAI CHAVEZ ST

CANROWAY

THIRD ST

UNIVERSITY

CLYDE ST

CLYDE ST

CLYDE ST

CLYDE ST

CLYDE ST

CLYDE ST

CLYDE ST

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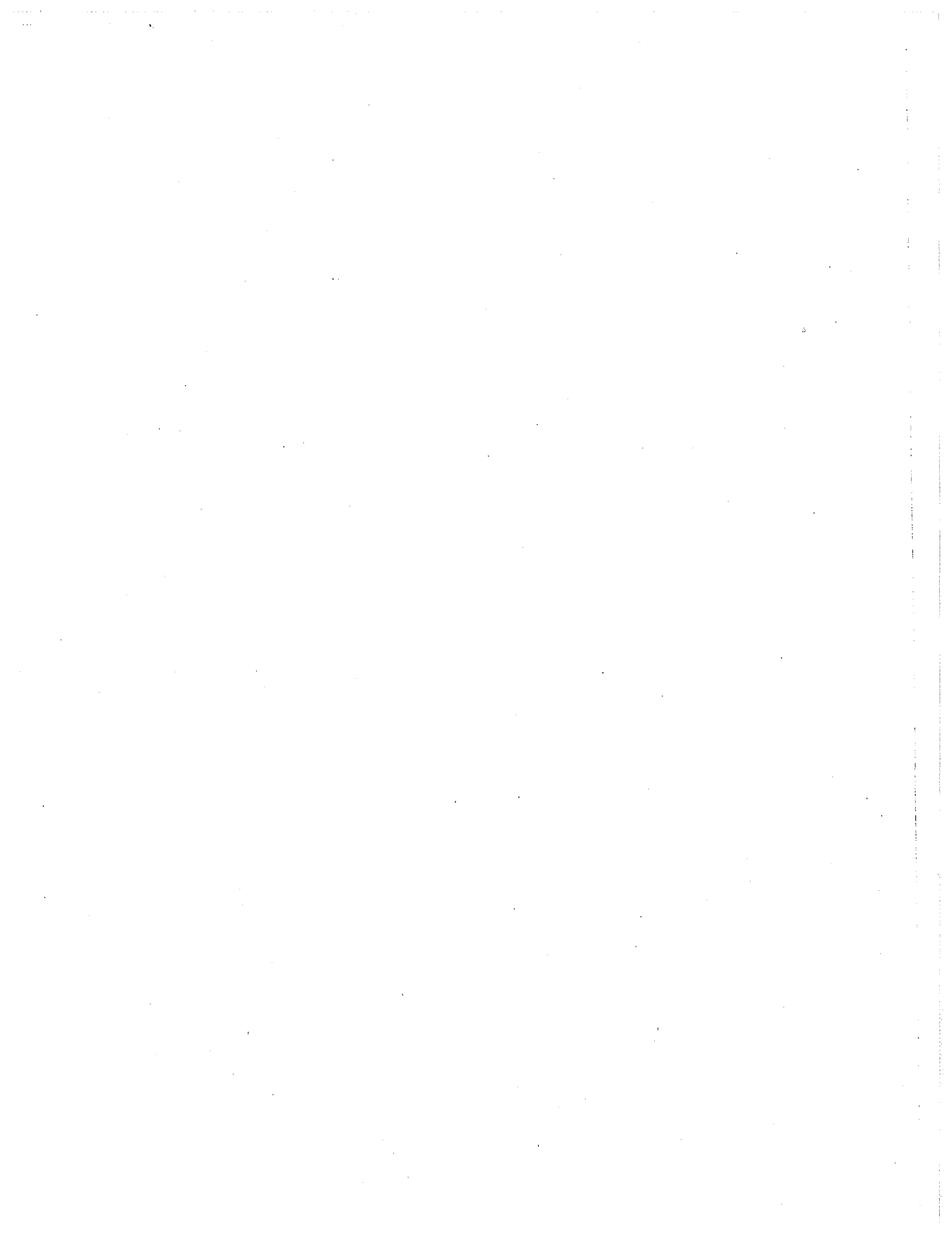
CLYDE ST

CLYDE ST

EXHIBIT C

DIRECTOR OF PROPERTY MEMORANDUM DATED NOVEMBER 3, 2015

(See attached.)





Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator

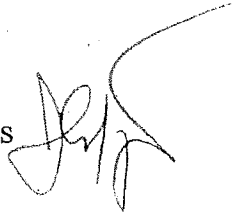


John Updike
Director of Real Estate

MEMORANDUM

Date: November 3, 2015

To: Rosanna S. Russell, Director of SFPUC Real Estate

From: John Updike, Director of Real Estate, Administrative Services 

Subject: Jurisdictional Transfer of 1800 Jerrold

The SFPUC desires to acquire jurisdiction over the subject property, subject to its Commission's approval of a jurisdictional transfer consistent with an MOU between the SFPUC and the General Services Agency, aka Administrative Services Department ("GSA"). GSA desires to transfer jurisdiction of the property from GSA to the SFPUC, subject to the Board of Supervisors' approval of a jurisdictional transfer consistent with the MOU.

Another site suitable to the needs of Central Shops has been identified and GSA is agreeable to relocating to this property on the condition that the jurisdictional transfer of 1800 Jerrold includes the functional replacement cost of relocating.

GSA and the SFPUC understand and acknowledge that GSA will incur substantial costs in vacating the property and relocating Central Shops. GSA desires to accept, and the PUC desires to transfer the funds necessary to functionally replace the property with another facility which will provide functional equivalent utility for Central Shops. As the City's Director of Property, I have determined the current fair market value of the property is less than the reasonable and necessary costs to vacate and relocate Central Shops. Therefore, I have determined that SFPUC must pay GSA the reasonable cost of Central Shops' relocation, including acquisition costs, rent (as capitalized), tenant and other physical improvements. Upon payment of the projected reasonable and necessary

costs of relocation of Central Shops in the amount of \$75,000,000 and complete vacation of Central Shops from the property, jurisdiction of the property will then transfer from GSA to the SFPUC, pursuant to the legislation to be submitted to the Board of Supervisors shortly.

Similar to how state acquisitions and relocations are addressed when a local municipal public use is to be displaced, this relocation is proposed to be a functional replacement of the real property in public ownership. Functional replacement is recognized and deployed by state agencies such as Caltrans, and by the Federal Government, under Title 49, Part 24 (Uniform Relocation Act, "URA"). Functional replacement is essentially an administrative settlement wherein cash compensation from the displacing agency may be insufficient to restore the status quo as a result of acquiring a public facility such as a school, police or fire station or other similar unique public use. It is similar in approach to the Last Resort Housing provisions of the URA, but applied to publicly owned facilities. The cost to secure 1800 Jerrold is therefore not based on an appraised valuation of the property. It is a settlement payment for the cost of replacing the facilities at a new location.

City staff have identified an assemblage of two properties to be acquired, and a separate though nearby property to be leased, of three separate properties, totaling less than 4 acres – considerably less acreage than the existing Shops location at 1800 Jerrold. The purchase sites are located in Block 5250 at Innes Avenue and Selby Street, only a few hundred feet away from the subject property. The leased site is located at 450 Toland, just a few blocks away. The acquisition, capitalized 10 year lease expenses, and construction costs to functionally replace the existing facility are estimated to cost approximately \$75,000,000.

It is proposed that the involved parties enter into a Memorandum of Understanding (MOU) that outlines the fiscal responsibilities of the acquiring party, and the relocation responsibilities of the displaced party. With this MOU in place, as approved by the SFPUC Commission, The Board of Supervisors can then approve the acquisitions and lease of the replacement properties which will include the development of improvements sufficient to functionally replace the existing facilities at 1800 Jerrold. Upon vacation of the 1800 Jerrold premises, the jurisdiction to 1800 Jerrold would vest in the SFPUC. I find the process outlined herein to be consistent with the URA as it applies toward the displacement of municipal uses.

EXHIBIT D

PORTION OF DEBRIS TO BE REMOVED BY OCA FROM THE TRANSFER SITE

Description	L x W x H in Ft
Hazardous Materials Cabinet	10x10x6
Hazardous Materials Cabinet	6x8x10
Waste Oil Tank	6x6x5
Generator	12x6x5
Guard Shack	8x10x10

CENTRAL SHOPS REPLACEMENT FACILITIES PROJECT

CONTRACT NO. 7994A

PROJECT DELIVERY AGREEMENT

Between

CITY AND COUNTY OF SAN FRANCISCO,

a charter city and county,

as the City

and

ORYX DEVELOPMENT I, LLC,

a Nevada limited liability company,

as Developer

Dated as of March 21, 2016

Amended and Restated as of February __, 2017

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EXHIBITS AND SCHEDULES ATTACHED HERETO

- Exhibit A Project Budget
- Exhibit B Criteria Package
- Exhibit C Scope of Developer Services
- Exhibit D Project Schedule
- Exhibit E Reserved
- Exhibit F Developer's Insurance Requirements
- Exhibit G City Requirements
- Exhibit H Design Professional Contract Provisions
- Exhibit I Local Hire, First Source and LBE Requirements
- Exhibit J Form of Assignment of Intangibles
- Exhibit K Partnering Requirements

PROJECT DELIVERY AGREEMENT

THIS PROJECT DELIVERY AGREEMENT (“Agreement”), is made for the convenience of the parties this _____ day of _____, 2016, by and between Oryx Development I, LLC, located at 1001 Van Ness Avenue, San Francisco, California (“Developer”), and the City and County of San Francisco, State of California (the “City”), acting through its Director of Real Estate (“Director”).

RECITALS

WHEREAS, the City ~~intends to acquire~~has acquired: (1) fee title to the real property located at 555 Selby Street and 1975 Galvez Street, San Francisco, CA (Lots 015 and 016, Block 5250) (the “Purchased Site”), and (2) a leasehold interest to the real property located at 450 Toland Street, San Francisco, CA (Lot 18, Block 5230) (the “Leased Site”) (collectively the “Development Sites. ~~This Agreement shall not take effect unless and until the City successfully completes its acquisition of the specified interests in real property for the Purchased Site and the Leased Site~~”); and

WHEREAS, the City desires to develop: (1) the Purchased Site into a one-story vehicular repair facility with ancillary administrative office space containing approximately 53,000 gross square feet upon the Purchased Site for medium duty, heavy duty and ladder shops as well as administrative, amenity and support spaces, and (2) the Leased Site by making tenant improvements to modify the existing 45,000 square foot building to accommodate maintenance and repair of light duty vehicles, ~~ladder shop~~, body and paint shop, metal fabrication and welding shop, and administrative offices and amenities. The scope of work to be performed on the Development Sites is described in greater detail in the Criteria Package, an initial draft of which is attached as Exhibit B (the “Central Shops Replacement Facilities Project” or the “Project”); and

WHEREAS, the City wishes to retain Developer to Provide all services necessary to design and construct a complete and fully-functional Project, including but not limited to project management, design, and construction services. The City acknowledges that Developer does not hold any contractor, architect, or engineering licenses, and that Developer will retain Subcontractors holding such licenses to perform all Work under this Agreement that must be performed by a licensed entity or individual. Developer wishes to Provide the services sought by the City as described above, all on the terms and conditions hereinafter set forth.

WHEREAS, prior to the date this Agreement was amended and restated, Developer completed the following services in furtherance of the Project: 1) Completion of Concept Design, Schematic Design, Design Development and Construction Document plan and specifications issuances; 2) timely submittal of the Site Permit, Demo Permit and Addenda 1-3 (foundation, structural, core-and-shell, interiors and mechanical/electrical/plumbing as relevant for each building) per the dates in the schedule attached in Exhibit D; 3) completed budgeting exercises at

100% Schematic Design and 100% Design Development/GMP and was in progress on the 100% Construction Documents; budgeting exercise and 4) met obligations for budgeting, scheduling and reporting, as provided in Exhibit C, "Scope of Developer Services."

NOW, THEREFORE, Developer, in consideration of the mutual covenants set forth in this Agreement, promises and agrees to Provide all services to design and construct the Project in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfactions of the Director, to prosecute the Work with diligence from day to day to Final Completion, to furnish all project management services, design services, and all construction work, labor and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of Developer's obligations under the Contract Documents, as and when required under the Contract Documents, to the satisfaction of the Director. Developer's execution of this Agreement signifies its acceptance of the Contract Time and the Contract Sum as being sufficient for completion of Phase One and Phase Two of the Work as hereinafter defined and development of proposals for Provision of Phase Two of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

1. Developer's Responsibilities

1.1 Contract Documents. Developer shall Provide all Work according to the Contract Documents, which are incorporated into and made a part of this Agreement by this reference, and all labor, materials and services used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between Developer and the City concerning the Provision of the Work, are defined in the General Conditions. Defined terms used in this Agreement shall be given the definition set forth herein or as set forth in the Article 1.01 of the General Conditions.

1.2 General Responsibilities.

(a) Developer shall provide all "Developer Services" (as set forth in Exhibit C) required to design, construct, and Deliver the Project to the City.

(b) The Work of this Project is divided into two phases: (1) Phase One—the Design Phase; and (2) Phase Two—the Construction Phase, as set forth, as described in greater detail in Exhibits C and D hereto. ~~At As of the time of execution date of this Amended and Restated Agreement, the City is only proceeding with Phase One. The Contract Sum and Contract Time set forth herein apply only to Phase One Work. Proceeding with Phase Two is conditioned upon approval by the City of Phase One has been completed, and City has approved the Construction Documents and subsequent agreement by the Parties on the Contract Sum, Contract Time, and Scope of Work applicable to Phase Two Work, all as set forth herein.~~

(c) Developer shall select and retain a Subcontractor that is a licensed design professional (“Architect”), subject to City Approval, to design the Project in Phase One and obtain the regulatory approvals needed to complete the project in Phase One and to assist the General Contractor with design-related issues and project administration during Phase One and Phase Two. City has pre-approved Developer’s request to approve FM&E Architecture & Design as a Subcontractor to Developer serving as the Project Architect.

(d) Developer shall select and retain a Subcontractor that is a licensed general contractor (“General Contractor”): (1) to provide input into the Architect’s Project design and construct the Site Work during Phase One and Phase Two; and (2) conditioned on the issuance of a Notice to Proceed for Phase Two as set forth above in Paragraph 1.2 (b) above), to construct the Project during Phase Two. City has pre-approved Developer’s request to approve Charles Pankow Builders, Ltd., A California Limited Partnership, as a Subcontractor to Developer serving as the Project’s General Contractor.

(e) Developer shall Provide the City with all Phase One Work as set forth herein (Project design and construction of approved pre-Construction Phase site work), including, but not limited to, all applicable investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

(f) ~~Conditioned on agreement by the Parties to proceed with~~In Phase Two-~~(Construction) of the Project~~, Developer shall Provide the City with a fully-functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

~~(g) In the event that the City’s Civil Service Commission hearing (currently scheduled for May 2nd 2016, does not approve the City’s sole sourced contract with the Developer and /-or Developer’s contract with the Architect, the Parties will engage in good faith negotiations on adjustment permitting the Parties to proceed. If the Parties fail to agree on such an adjustment within a reasonable period of time, this Agreement shall terminate pursuant to the provisions authorizing Termination by the City for Convenience (General Conditions, Article 14.03) and the termination procedures shall be governed by said Article 14.03.~~

1.3 Design Services.

(a) Design. The City will issue a Notice to Proceed with Design within five (5) Days after execution of the Agreement. Developer shall perform the Design Requirements based on the scope of work contained in the initial draft of the Criteria Package (Exhibit B) and its commitment to assist the City in its efforts to meet the City's Project budget and schedule. The parties will work together in good faith to finalize the Criteria Package as soon as practicable after City's issuance of the Notice to Proceed. ~~Developer acknowledges and agrees that the Developer is designing toward a budget limit set by the City for the Project ("Budget Limit") as set forth in Exhibit B for all Work necessary to Deliver the Project. Developer shall perform all reviews, estimates, and other Design Requirements in conformance with the Budget Limit and timelines set by the City pursuant to the terms of this Agreement; provided however, that (i) the City acknowledges that the construction costs reflected in the Project Budget are merely estimates and that the actual cost of Phase Two will be determined only upon the acceptance by the City of the Phase Two Budget (defined below), (ii) modifications to the Criteria Package by the City may result in cost increase above the Budget Limit, (iii) the discovery of latent, concealed, or otherwise differing conditions in the Development Sites unknown at the date of this Agreement, including but not limited to the discovery of hazardous materials, may result in cost increases above the Budget Limit~~

~~(i) During Phase One, The City's total Phase One Project Limit, which is that portion of the Budget Limit for all Phase One services by Developer under this Agreement, is \$10,300,000.~~

~~(ii) Developer shall provide all Design Requirements in conformance with the Project Schedule and shall provide timely comment, input, reports, or responses as appropriate. Failure by Developer to provide timely services may result in termination of this Agreement for cause.~~

~~(iii) During the Design Phase, Developer will oversee and coordinate the work of the Architect and other design sub-consultants, including the General Contractor and Core Lower-Tier Trade Subcontractors, and work closely with the City Representative to facilitate discussion and design decisions and provide information, estimates, schemes, and recommendations to the City regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality, energy conserving and efficient building within the Budget Limit and schedule for the Project.~~

(b) Core Lower-Tier Subcontractors. At any time after the Notice to Proceed with Phase One (~~Design~~), Developer may select Core Lower-Tier Subcontractors for design, preconstruction, or design-assist services for the disciplines listed below based on qualifications only. The selected Core Lower-Tier Subcontractors may also provide construction services as more fully described in Section 1.5(b).

(i) Mechanical,

- (ii) Electrical,
- (iii) Plumbing,
- (iv) Fire Protection/Fire Suppression,
- (v) Building Envelope/Curtain Wall,
- (vi) Steel/Rebar,
- (vii) Elevators,
- (viii) Earthwork & Grading,
- (ix) Site Utilities,
- (x) Deep Foundations,
- (xi) Abatement, and
- (xii) Demolition

1.4 Construction Services.

(a) General. Following the City's issuance of a Notice to Proceed with Phase Two Construction, Developer's General Contractor and all of its subcontractors contracted for the construction of the Project will provide all construction services from mobilization through Final Completion necessary to construct the Project in accordance with the Contract Documents and to render the Project and all of its components operational and functionally and legally usable. Developer will furnish construction administration and management services and will perform the Project in an expeditious and economical manner consistent with the requirements of the Contract Documents.

(b) Standard. At a minimum, Developer and its General Contractor shall be responsible to perform construction services consistent with the standards reasonably expected from a general contractor who submits a competitive bid with its own list of subcontractors to perform all of the construction work under a contract, including, but not limited to, construction, value engineering/integration services, construction management, contract administration, cost control, subcontractor procurement, scheduling, coordination, testing, shop drawing development, processing/review, and distribution of product warranties/related documentation, commissioning and startup, and project closeout.

1.5 Procurement and Award of Trade Subcontracts.

(a) **Competitive Procurement.** Developer shall assure full and open competition for the procurement of all Trade Subcontractors except as otherwise permitted hereunder. In doing so, except as provided in this Article 1.5, Developer shall follow a two-step process: (1) pre-qualification and (2) competitive bid as follows:

(i) **Pre-Qualification:** Developer, with City's approval, will develop pre-qualification standards for all Trade Subcontractors. Developer will establish a pool of no fewer than three (3) pre-qualified bidders for each trade package, subject to the approval of the City. If Developer is unable to pre-qualify at least three (3) bidders for a trade package, Developer shall provide a written justification to the City for approval. The City, in its sole discretion, may require the Developer to take additional steps to pre-qualify bidders such as advertising the subcontracting opportunity on a publicly-accessible City website. Only pre-qualified bidders will be allowed to bid. Developer, with the assistance of the City, will resolve any protests or disputes relating to the pre-qualification process.

(ii) **Trade Packages:** Developer shall receive sealed bids from pre-qualified bidders. The bid security provisions of San Francisco Administrative Code Section 6.21 will not apply, unless expressly pre-approved by the City. The City Representative ~~will~~may, in its sole discretion, require that it be present at bid opening/openings to ensure a fair and equitable process. Developer will consult with the City Representative before rejecting any bids.

(iii) Developer shall award the Trade Package to the responsible bidder submitting the lowest responsive bid.

(b) Limited Noncompetitive Procurement – Core Lower-Tier Trade Subcontractors. Developer may procure design, preconstruction, or design-assist services from Core Lower-Tier Trade Subcontractors based on qualifications only. As soon as practical, Developer may seek from a Core Lower-Tier Trade Subcontractor a written cost proposal for construction of the related trade package and submit the cost proposal to the City Representative for consideration. The City may either approve Developer's request to award the trade subcontract to the Core Lower-Tier Trade Subcontractor based on the cost proposal or, at the City Representative's sole discretion, he or she may require the Developer to competitively procure the trade package by competitive bid in conformance with section 1.5(a), in which event the Developer may request a noncompensable extension of time. The City shall approve the request for a noncompensable time extension only if bidding the trade package will create a critical path delay on Developer's most recent critical path schedule.

(c) **Self-Performed Trade Work:** Developer through its General Contractor may self-perform Trade Work under the following conditions:

(i) **Eligible scopes of work:** Cast-In-Place Concrete, Rough Carpentry, Millwork, Demolition & Salvage.

(ii) The City, in its sole discretion, shall either authorize General Contractor to bid against pre-qualified Trade Subcontractors or accept a fair and reasonable price proposal for the Trade Package from the General Contractor.

(iii) In determining whether the General Contractor's price proposal is fair and reasonable, the City Representative ~~will~~may, at its sole discretion, make the determination by comparing the General Contractor's cost proposal against an independent cost estimate.

(d) Developer may negotiate subcontracts for trade work up to an amount not exceeding 7.5% of total estimated construction subcontract costs. The City Representative shall establish a maximum dollar value for each negotiated trade subcontract.

(e) ~~Contingent upon the Parties' agreement on a budget for Phase Two (the "Phase Two Budget"), the City will modify this Agreement thereby increasing Developer's scope of Work and the Contract Sum by the amount of the Phase Two Budget. Once the Phase Two Budget is added to the Agreement, the~~The City acknowledges it will be obligated to pay Developer the amount of funds certified by the Controller for conforming work actually performed, provided there is no offset by the City for liquidated damages, non-conforming work, or other circumstances preventing payment. Developer acknowledges that any work related to Trade Packages to the extent such work has not been added to the Agreement by written, properly authorized Trade Package Set is done at the sole risk of Developer.

1.6 Developer Services. During the term of this Agreement, Developer shall Provide all Developer Services necessary for the Project's management, design, construction, completion, and delivery of the completed Project to the City. Developer shall Provide all design and construction services necessary for receipt of all occupancy permits and authorizations (e.g., LEED requirements in Chapter 7 of the Administrative Code for municipal buildings, Civic Design Review approval by the San Francisco Arts Commission, regulatory approvals such as Building Permit and trade construction permits) to operate a facility that meets or exceeds all design and specification requirements that have been agreed upon between the City and Developer based on the criteria set forth herein and in the Criteria Package (Exhibit B), including, but not limited to, compliance with all industry standards and all applicable codes and regulations.

(a) Developer shall timely pay any and all fees, charges, costs, expenses and other amounts properly due and payable by Developer under this Agreement. The City may elect to pay any fees, charges, costs, expenses directly to another public agency or public utility from Contract Sum, which amounts shall be Costs under the GMP.

(b) Developer shall supply qualified personnel necessary to perform its responsibilities under this Agreement, and all such persons shall be employees, agents, or Subcontractors of Developer and shall not be, or be deemed to be, employees of the City.

Developer shall employ such employees as shall be necessary or appropriate to enable Developer at all times to oversee, coordinate and provide the Developer Services as required under this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of such employees shall be the sole responsibility of Developer and Developer shall comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, prevailing wages, working conditions and safety and similar matters with respect to such employees. Should the City determine that Developer, or any agent or employee of Developer, is not performing the Developer Services in accordance with the requirements of this Agreement, the City shall provide Developer with written notice of such failure. Within five (5) business days of Developer's receipt of such notice, Developer shall take commercially reasonable efforts to remedy the deficiency. Notwithstanding the foregoing, if the City believes that an action of Developer, or any agent or employee of Developer, warrants immediate remedial action by Developer, the City shall contact Developer and provide Developer in writing with the reason for requesting such immediate action.

1.7 Project Contracts.

(a) Assignment. The term "Project Contracts" shall include the ~~Architect~~Architect's Contract, the General Contractor's Construction Contract, subcontracts entered into by the Architect or General Contractor, and various materials and equipment contracts with the suppliers. In the event this Agreement is terminated for any reason, Developer shall, if so directed by the City, immediately assign the Project Contracts to the City in accordance with the Contract Documents.

(b) Provisions in Project Contracts. Developer shall include or require inclusion of the contract provisions required under S.F. Administrative Code sections 6.22 and 6.61, including the provisions set forth in Exhibit G and Exhibit I in all Project Contracts, except as any requirements in those sections may be waived by the City's Board of Supervisors.

(c) Design Professional Services. In addition to the requirements in Exhibit G and Exhibit I, Developer shall include contract provisions required under S.F. Administrative Code section 6.42, including the provisions set forth in Exhibit H, in the Architect's Subcontract and all subconsultants to the Architect.

1.8 Project Coordinator. Developer shall cooperate with the City in order to perform the Developer Services to ensure compliance with applicable deadlines and to cause the expeditious and timely completion of the Project. Developer designates Laura Billings as its representative who will serve as the primary contact with the City (the "Project Coordinator"). The Project Coordinator shall attend regularly scheduled preconstruction, construction and related meetings relating to the Project and report to the City regarding the same. In addition, Developer shall organize, prepare agendas and lead construction progress meetings on a regular basis for the City's personnel assigned to the Project, no less than weekly. Developer shall keep

the City informed of all material matters relating to or affecting the Project. In such regard, the Project Coordinator shall communicate directly with the “City’s Representative” on a regular basis, informing such person of all material events relating to the Project. In addition, Developer shall promptly and in a timely manner answer all inquiries the City may have with respect to the Project. Developer may change the designated Project Coordinator during the term of this Agreement with City’s consent, which shall not be unreasonably withheld.

1.9 Communications with the City; Regularly Scheduled Meetings. Developer shall make its personnel available at reasonable times for communications with the City and will keep the City advised of all matters affecting the Project within the scope of Developer's Services and will provide updates regarding the status of the Project on a monthly basis. Developer shall designate representatives of its Architect and General Contractor, who are acceptable to the City, who shall be authorized by those entities as individuals with the authority, respectively, to bind the Architect or the General Contractor, and who shall attend construction project meetings. In addition to “regularly scheduled” construction progress meetings, appropriate personnel of Developer and its Subcontractors shall attend other meetings as reasonably requested by the City relating to the Project.

1.10 Procuring Project Development Approvals. Developer shall submit requests for regulatory and other approvals in a timely manner in order to obtain all required approvals that are necessary for the Project in accordance with the Project Schedule. Notwithstanding the foregoing, City acknowledges and agrees, conditioned upon Developer’s submittals to regulatory agencies being complete, accurate, and timely, that (i) the timeline for City’s review and approval of the Design Submittals and related documents, (ii) the timeline for public or regulatory agencies’ (including but not limited to the California Department of Transportation and the Pacific Gas and Electric Company) review and processing of approvals, and (iii) objections or appeals by unsuccessful bidders during the bid process, are outside the reasonable control of Developer. The Project Schedule contains reasonable assumptions about the anticipated time periods associated with City’s and regulatory agencies’ reviews and approvals and the bid process required by the Contract Documents. If the actual time periods for the foregoing causes a critical path delay on Developer’s most recent critical path schedule, Developer shall be entitled to a non-compensable time extension, and the parties shall make an equitable adjustment to the Project Schedule.

1.11 Standard of Performance. Developer covenants to the City that the Developer will perform or cause the applicable Subcontractor(s) to perform the Work with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time for construction managers, design professionals, and construction contractors. Without limiting the foregoing, Developer shall perform the Developer Services in a manner consistent with Developer’s work on the other similar projects. Developer understands and agrees that in entering into this Agreement, the City is relying on Developer’s experience and expertise and Developer’s commitment to take such actions as needed to manage the Project’s design and

construction consistent with other similar projects completed by Oryx, or by senior members of Oryx staff as completed by them prior to employment by Oryx. Under this Agreement, Developer shall, consistent with industry standards for similar projects, closely monitor and oversee the work of its Subcontractors throughout the construction of the Project, and promptly notify the City of any defaults, deficiencies or violations of which it becomes aware.

2. Contract Sum

2.1 Contract Sum. ~~The Contract Sum for Phase One is \$10,300,000 is guaranteed by the Developer not to exceed \$60,200,000, as set forth in Exhibit A, which consists of subject to additions and deductions as set forth in this Agreement and the General Conditions. Such maximum sum is referred to herein as the "Guaranteed Maximum Price" or the "GMP." The Contract Sum includes the following amounts for the specified portions of the Work:~~

~~(a) Design Fee. The amount of the Design Fee is \$3,526,225. Developer agrees that the amount of the Design Fee provides full compensation for the Project's design, including but not limited to all services of the Architect, Architect's subconsultants, General Contractor, and Core Lower Tier Trade Subcontractors as permitted under subsection 1.3(b) of this Agreement, necessary to Provide 100% Construction Drawings, all required regulatory approvals, and construction administration services for the Site Work, but excluding construction oversight and other construction administration services by the Architect and other design consultants to be included in the Phase Two Budget, and excluding any additional design services required of the Architect and other design consultants during Phase Two Construction Work (e.g., modifications to the Construction Documents required as a result of a Change Order).~~

~~(b) Site Work. Site Work construction in the amount of \$3,286,960, which shall constitute payment in full for abatement, demolition, grading, sitework and piles.~~

~~(a) (e) Management Fee: The Management Fee is a fee payable to Developer for Developer's project management services during Phase One in furtherance of the Project. The Management Fee shall comprise a "Base Fee" and a "Bonus Fee". The Management Fee shall include all of Developer's construction management fees and project management fees, (excluding third party, project specific costs) for Phase One the Work.~~

~~(i) City shall pay Developer a Base Fee, which shall be calculated as 3.5% of project costs excluding costs for insurance, bonds, Management Fee, Change Orders, and unused contingencies (the "Base Fee") a fixed fee of \$70,500 per month. The Base Fee for Phase One shall be paid in installments commencing with the first Application for Payment and monthly thereafter for a total of 429 payments of \$70,500 each (the "Monthly Payments"). In the event that Phase One is completed prior to the payment of all of the Monthly Payments.~~

~~referred to above and if the City has not issued a NTP with construction for Phase Two to Developer, then all of the remaining unpaid Monthly Payments shall be due and payable at the completion of Phase One. If the City issues a NTP for Phase Two, the City shall pay Developer Base Fee amounts applicable to Phase Two. The City will pay Developer the Base Fee for Phase Two in prorated equal monthly installments until Final Completion, subject to additions and deductions as set forth in this Agreement and the General Conditions.~~

(ii) ~~The Bonus Fee applicable to Phase One (the "Phase One Bonus Fee") shall be lump sum of \$393,000. The Phase One Bonus Fee shall be earned and payable only if Developer has completed all of its Phase One obligations hereunder within the Contract Time for Phase One and for an amount equal to or less than the \$10,300,000, which amount represents the original Contract Sum set forth in Section 2.1 herein for Phase One prior to the Amended and Restated version of this Agreement. The Bonus Fee applicable to Phase Two (the "Phase Two Bonus Fee") shall be equal to 1.5% of project costs excluding costs for insurance, bonds, Management Fee, Change Orders, and unused contingencies for the performance of the Work under the Contract Documents for Phase One and Phase Two, less the amount of the Bonus Fee actually paid in connection with Phase One, so long as \$432,000. The Phase Two Bonus Fee shall be earned and payable only if Developer has completed all of its Phase Two obligations within the Contract Time for Phase Two the Project and for an amount equal to or less than the GMP, as the same may have been adjusted pursuant to the Contract Sum for Phase Two Documents.~~

~~(d) Other costs: Other actual documented expenses in the total amount of \$2,106,814 incurred by Developer for consulting, legal, project insurance, permits and other Project specific costs (including a Contingency (as defined below) of \$941,340 applicable to all direct and indirect Phase One Costs as set forth in the Phase One Project Budget in Exhibit A). The Phase One Budget does not include all of the costs potentially attributable to the City's requirements in Exhibit F, Section 1.3.C which coverage is not required until the NTP for Site Work is issued. At the time the NTP for Site Work is issued, Developer and the City shall discuss the insurance requirements appropriate for the Site Work and any increase in Phase One costs resulting from the City's final requirements for insurance applicable to the Site Work pursuant to Exhibit F, Section 1.3.C shall give rise to an equitable adjustment in the Phase One Budget, and the Contract Sum for Phase One shall be adjusted by Change Order, accordingly. Any unspent balance shall be treated as contingency reserves as set forth in paragraph 2.3.~~

~~2.2 Conditioned upon agreement by the Parties to a budget for Phase Two, the Contract Sum shall be modified to include the agreed upon amount for Phase Two.~~

~~2.2 Reimbursable Expenses: The GMP includes and Developer shall be entitled to "Reimbursable Expenses" subject to the following conditions and limitations:~~

(a) Reimbursable Expenses shall include but shall not be limited to the travel expenses, printing costs, and similar direct, out-of-pocket costs of Developer and its team incurred in the performance of the Work and for which they are not otherwise compensated (e.

(b) Only the actual costs incurred by the Developer and its subcontractors and subconsultants shall be allowed and invoiced as Reimbursable Expenses. There shall be no mark-ups of any kind allowed on Reimbursable Expenses.

(c) Reimbursable Expenses shall include reproduction costs requested by the City, as well as six printed half-size copies of plans and six copies of the spec book at each milestone plan/spec issuance (100% SD, 100% DD, 50% CD, 100% CD and For-Construction Set) for record copies for the City Representative, Central Shops and Oryx Development I, LLC.

(d) All activities and work product resulting from the implementation of BIM are considered basic services and included in the Design Fee. Renderings and computer animated presentation models, that are not otherwise part of the BIM work product are considered reimbursable expenses when requested and approved by the City.

(e) Reimbursable Expenses shall include travel costs outside of 100 miles of San Francisco.

(i) Mileage shall be subject to the Internal Revenue Service (IRS) standard mileage rate for business use of an automobile, with no markup.

(ii) All travel within the continental United States is subject to the Project Manager's approval in writing in advance. Travel expenses will be reimbursed according to the federal maximum lodging and meals by locality rates. Any exceptions to the Federal rates must be approved in advance by the Project Manager. Federal rates for lodging and meals can be found at: <http://www.gsa.gov/> > Per Diem Rates. All travel expenses are subject to final approval by the Project Manager at the time of invoice submittal.

(iii) Air travel expenses shall be based on lowest available Economy Class ticket prices. Flight tickets shall be reserved as early as possible to ensure the most economical rate.

(iv) Taxi, shuttle, rail, and rental car fares will be reimbursed based on actual expenditures. Rental car expenses shall be based on the rate for either the Economy or Compact class of car or its equivalent. No upgrades on these forms of transportation will be reimbursed.

(v) Tolls and parking fees associated with approved travel will be reimbursed based on the actual cost.

(vi) The following items are considered normal project costs and a part of the Design Fee, and not Reimbursable Expenses: (a) phone calls, faxes, mail, express mail, courier delivery or overnight delivery services charges, or other communications charges between members of the Design Consultants' teams and/or the Developer and its team, regardless of location, (b) regional phone calls and faxes for all area codes having any geographical land areas within 100 miles of San Francisco, even though its outlying boundary exceeds the 100 mile limitation, (c) internet gateways, FTP sites or data file transfer or research services, (d) travel within 100 miles of San Francisco unless approved in writing in advance by the City, and e) all CAD and other computer-related time and expenses in support of those items specifically listed in the Agreement.

(vii) Food or beverages are not allowed except during travel as described in Section 2.2(e)(ii).

2.3 Contingency Reserves: The GMP, the Phase One and Phase Two Budgets contain contains the following contingency reserves: Contractor's Contingency, "Developer's Contingency and," "Indirect Costs Contingency," and "Contractor's Contingency," (collectively the, "Contingency," "Contingencies," or "Contingency Reserves") to cover unforeseeable changes in market conditions, cost the following categories of costs, and similar such costs:

(a) to repair defective work not recovered from subcontractors or suppliers contingent on first exhausting all other potential avenues for recovery such as insurance, Developer may use Developer's Contingency, subject to City's approval, which shall not be unreasonably withheld, to cover: (1) errors and omissions in plans and drawings, but only if, in the reasonable discretion of Developer, the Architect's performance of the Work of creating the plans and drawings does not fall below the standard of care for design professionals performing similar work in the San Francisco bay area, Bay Area, (2) purchasing gaps but only if Developer has first made diligent commercially reasonable efforts to resolve the problem with the supplier, overtime and schedule acceleration if required to maintain or recover schedule delays not associated with Owner changes, and (3) gaps in scope not identified by Developer in the Phase One budget, (4) non-compensable Unavoidable Delay, (5) compensable Unavoidable Delay, if Developer so elects in its sole discretion, (6) unanticipated costs arising from changes in circumstances that are beyond the reasonable control of and could not have been reasonably anticipated by Developer. The Developer's Contingency shall also include, and (7) reserves to cover unforeseen conditions discovered after the commencement of the Work; provided, however, that none of the Contingencies shall be used to cover additional costs associated with Differing Site Conditions. In addition, the Contingencies shall not be used to fund any increase in the cost of the Work associated with changes requested by the City to the Scope of Work or the Criteria Package, additional General Conditions, overtime and extended overhead, failures of subcontractors or supplier, subcontractor disputes directed at Developer, or losses beyond Developer's insurance coverage.

(b) Developer may use Indirect Costs Contingency, subject to City's approval, which shall not be unreasonably withheld, to cover indirect costs including (without limitation): (1) additional services of all architectural and engineering consultants and similar professional services consultants, and (2) costs of engaging consultants not contemplated as of the date the GMP was established.

(c) Developer may use Contractor's Contingency, at the request of Contractor and subject to City's approval, which shall not be unreasonably withheld, to cover (1) increased costs of the Work resulting from deficiencies, inconsistencies, errors or omissions in the Contract Documents that reasonably should have been identified by the Contractor in its review of the Contract Documents and included in the Schedule of Values as being reasonably necessary to complete the Work, but were not identified, (2) costs of the Work incurred as a result of, or to overcome excusable, non-compensable events of delay, (3) reimbursable cost overruns incurred for any line-item in the original Phase Two Budget, and (4) cost increases due to materials cost increases (that are not otherwise reimbursable under the Agreement). Developer may direct the Contractor to transfer funds from the Contractor's Contingency and prepare a revised Schedule of Values reflecting such transfers in the event that Developer determines that the line-item amounts in the current Phase Two Budget are not sufficient to cover anticipated costs of the Work or in the event that City determines that the subject of a proposed Change Order does not entitle Developer to an increase in the GMP under the terms of the Contract Documents.

(d) Without limitation, the Contingency Reserves shall not be used to cover costs associated with any of the following, which shall be covered by an increase in the GMP through a Change Order: (1) errors, omissions, and deficiencies in the Criteria Package, (2) changes requested by the City to the Scope of Work or the Criteria Package, (3) City-caused schedule delays, (4) Differing Site Conditions, (5) compensable Unavoidable Delay (unless Developer elects to apply Developer's Contingency to such costs, as permitted in Section 2.1(a), above, and (6) any other cost for which Developer is entitled to an increase in the GMP pursuant to the Contract Documents (unless Developer waives its right to seek such increase, in which case such amounts may, subject to City's approval which shall not be unreasonably withheld, be covered by Contingency Reserves).

(e) During the course of the Project, in the event that the actual or contracted cost of a line item or a Trade Package set is less than the corresponding budgeted amount for such line item, then, subject to the City's reasonable approval, Developer may re-allocate the unused or excess budget amount to the applicable Contingency Reserve, for application to any other line item in any budget category that may exceed its corresponding budget allocation.

(f) (a) Contingency Reserves may be used only upon Developer's submission of a Contingency Utilization Form, which shall include all necessary supporting documentation to back up the cost of the Contingency Work, describing the scope and approximate cost of the work requested as a draw from a Contingency reserve and City approval of the request. Any construction-related request shall first be applied to the Contractor's Contingency, while design

or other non-construction requests shall first be applied against the Indirect Costs Contingency. In the event that the Contractor's Contingency or the Indirect Costs Contingency are respectively exhausted, such requests may be applied to the Developer's Contingency conditioned on approval by the City. Once the Contingency Utilization Form has been approved by the City, which approval shall not be unreasonably denied, conditioned, or delayed, Developer may proceed with the subject work ("Contingency Work") and, ~~upon bill as part of the monthly progress payments.~~ Upon completion, Developer shall notify the City that the Contingency Work is complete. Developer's notification shall include a detailed description of the Contingency Work completed and all necessary supporting documentation to back up and shall confirm the final cost of the Contingency Work, which will then be billed as part of the monthly progress payments. Any savings shall be returned to the Contingency Reserves.

(g) (b) Upon Final Completion of the Work, any unused Contingency Reserves shall be divided among the parties as follows.

(i) Any unused amounts remaining in the Contractor's Contingency shall be shared equally between the City and Developer, with Developer further sharing its share with the General Contractor as set forth in the Subcontract agreement between Developer and the General Contractor.

(ii) Any unused amounts remaining in the Indirect Costs Contingency or the Developer's Contingency shall be shared equally between the City and Developer.

~~(c) In the event that, at completion of Phase One, the Phase One Budget has not been fully expended, the remaining funds shall transfer to the Phase Two budget. If the Parties do not proceed with Phase Two, the remaining funds, excluding Phase One Contingency Reserves, shall accrue to the City. In the event that, at Final Completion of Work, the Phase One and Phase Two Budgets (including the GMP contained therein) have not been fully expended, such "Cost Savings," excluding Contingency Reserves, shall accrue to the City.~~

~~2.4 Phase Two Budget, Authorized Not To Exceed Amount ("Guaranteed Maximum Price" or "GMP") and Contract Time for Phase Two. Prior to or upon City's approval of the 50% Construction Documents, the Developer shall prepare and submit for approval a proposal for the GMP (to be included with the Phase Two Budget proposal) and Contract Time for Phase Two. The Estimated GMP shall be prepared by the General Contractor on the basis of accepted bids for Trade Packages and the General Contractor's estimates for Trade Packages which have not completed the bid process at the time of the GMP proposal. If the Phase Two Budget and Phase Two Contract Time proposed by Developer is acceptable to the City, the City's Board of Supervisors may authorize a not to exceed Phase Two contract amount and Phase Two Contract Time. At no time, shall the Contract Sum exceed the Budget Limit.~~

2.4 ~~2.5~~ Trade Package Sets

(a) Trade Packages Sets are scopes of Work to be procured in conformance with Article 1.5 above and the General Conditions. Trade Package Sets will be issued by the Developer at various intervals throughout the Agreement for the purpose of soliciting bids, selecting and contracting with trade subcontractors.

(b) Each Trade Package Set contract price shall include any costs associated with errors and omissions, trade scope gaps, and schedule issues relating to the Work included in the Trade Packages. A Trade Package Set shall not include unanticipated costs for unforeseen conditions outside the control of Developer or design changes initiated by the City by Design Directive. Any costs associated with these items will be incorporated into the Agreement by Change Order.

(c) The total price for each Trade Package Set shall include the following pricing items:

(i) Trade Package Base Bid(s): The lowest responsive bid from a responsible bidder for the trade work or directly negotiated trade work as allowed by the Agreement. The Trade Package Base Bid shall not include any scopes of work for the trade that are part of any Trade Package Reserves.

(ii) Trade Package Allowances: Trade Package Allowances are amounts proposed by Developer and approved by the City to cover Work determined to be unquantifiable for a Trade Package. The amount shall be stated as an allowance for the Trade Package. The unquantifiable Work is to be clearly identified as a Trade Package Allowance item within the detailed line item construction budget and within the applicable Trade Package. Any unspent balance of any such allowance will accrue to the City.

(iii) ~~If the Developer and City agree on a GMP and to proceed with Phase Two, and after~~ After Developer delivers all bids and final cost estimates for Trade Package Sets to the City, if the sum of all of the Trade Package contract award amounts is lower than the approved GMP, then the GMP will be reduced by that lower amount. If the sum of all the Trade Package contract awards is greater than the GMP, the Developer is obligated by contract to complete the project without any increase in the Contract Sum.

(iv) During the construction phase after award of Trade Package subcontracts, costs savings from value engineering ideas proposed by Developer and its team and approved by the City will, at the reasonable discretion of Developer and subject to approval by the City Representative, be shared between the Parties as follows: (1) if the value engineering idea was proposed by Developer, then saving will be shared equally by the City and Developer; (2) if the value engineering idea was proposed by the General Contractor, then 50% of the savings shall accrue to the benefit of the City and 25% of the savings shall accrue to the benefit of the Developer and 25% of the savings shall accrue to the benefit of the General Contractor; or (3) if the value engineering idea was proposed by a Lower-Tier Subcontractor, then 40% of the

savings shall accrue to the benefit of the City, and the Developer, General Contractor, and Lower-Tier Subcontractor that proposed the value engineering idea shall each be credited with 20% of the savings amount.

~~2.5~~ ~~2.6~~ Change Orders. The Contract Sum may be increased or decreased by Change Orders. Change Orders are governed by General Conditions Article 6 – Clarification and Changes in the Work.

~~2.6~~ ~~2.7~~ Contract Closeout. Upon Final Completion of the Work, any unused Trade Package Allowances shall accrue to the benefit of the City, including the ~~Developer's~~ General Contractor's Fee associated with unused Trade Package Set Allowances, and the Contract Sum shall be adjusted by deductive Change Order. In the event that, at Final Completion of Work, the Phase One and Phase Two Budgets (including the GMP contained therein) have not been fully expended, such "Cost Savings," excluding Contingency Reserves, shall accrue to the City.

~~2.7~~ ~~2.8~~ Certification by the Controller. This Agreement is subject to the budget and fiscal provisions of the City. Charges will accrue only after prior written authorization certified by the City Controller, and the amount of the City's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

3. Contract Time and Liquidated Damages

3.1 Contract Duration. The Project will be accomplished in two phases: (1) the Design Phase ("Phase One"); and (2) the Construction Phase ("Phase Two"). ~~The phases of Work are, as more fully described in Exhibit C and Exhibit D hereto.~~

(a) ~~The Design Phase One shall include Site Work at either the Selby-Galvez~~ Selby-Galvez Site only or Toland Site, including abatement, demolition, grading, sitework and pile ~~the Work set forth in the first paragraph of Exhibit D below.~~ This work requires plans stamped by the appropriate design professional, approved by the regulatory authorities with jurisdiction, and the City's ~~issuance of a Notice to Proceed with~~ written approval to commence such Work. The Work must be performed by individuals or entities holding the appropriate license.

(b) ~~Developer shall commence Design Phase Two Work promptly after the Controller's Office certifies this Agreement and the City issuance of~~ issues a Notice to Proceed with Design Phase Two.

(b) ~~(e) The total contract duration for the Design Phase, including the City's approval of the 100% Construction Documents, receipt of all required regulatory approvals, and completion of the Site Work is 437~~ Developer to achieve Substantial Completion of the Phase

Two Work (the "Contract Time") is 400 consecutive calendar Days, subject to extensions of time resulting from Unavoidable Delays or other extensions permitted by the Contract Documents.

~~(c)~~ ~~(d)~~ If the City is delayed in its ability to deliver the Purchased Site to Developer and issuance of the NTP with Site Work in Phase One is delayed, City shall grant Developer a non-compensable time extension for completion of the Site Work portion of the Design Phase, which shall be Developer's sole remedy for any such delay in issuance of the NTP with Site Work. If there is such a delay in the issuance of the NTP with Site Work, the total contract duration for completion of 100% Construction Documents and receipt of all required regulatory approvals shall remain unchanged. City's commencement of the Site Work on the Purchased Site is delayed as a result thereof, then any such delay shall be considered compensable Unavoidable Delay. Compensation from the City to Developer for any such delay shall be limited to a mutually agreed upon amount equal to the actual increase in Developer's direct costs (including but not limited to hard construction costs as well as additional costs for design consultants) attributable solely to the delay without any markup. Developer shall provide documentary evidence of its actual increased costs to support any such claim for additional compensation attributable to delay in the City's delivery of the Purchased Site to Developer. City's progress payment obligations for Site Work shall not arise until Developer has completed/commenced the applicable portion of the Site Work as designated on the Schedule of Values.

~~(e)~~ Developer shall include with its GMP proposal for Phase Two the number of consecutive calendar Days to constitute the duration of the Construction Phase until achievement of Substantial Completion. If the Parties agree on the duration of the Construction Phase (and the GMP as discussed in Article 2), subject to the approval of the City's Board of Supervisors and certification of funds by the office of the City Controller, the agreed upon duration for the Construction Phase will be implemented by contract modification.

~~(d)~~ ~~(f)~~ The duration for Developer to achieve Final Completion is ninety (90) consecutive Calendar Days following the City's issuance of a Notice of Substantial Completion.

3.2 Liquidated Damages. The City and the Developer understand and agree that time is of the essence in all matters relating to the Contract Documents and that the City will suffer financial and other intangible but significant losses if the Work is not completed within the Contract Time, as may be extended in accordance with Article 7 of the General Conditions. The City and Developer further understand and agree that the actual cost to the City that would result from Developer's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, the City and Contractor agree that, as City's sole and exclusive remedy for delay, Developer will pay the City liquidated damages for delay (but not as a penalty) the following amounts for each day a phase of work remains uncompleted after expiration of the durations referenced above:

~~(a) Design Phase: \$5000 for each Day after the Design Phase Contract Time duration on which Developer has not accomplished completion and City approval of the 100% Construction Documents and completion of Site Work construction.~~

~~(a)~~ (b) Construction Phase Two: \$5000 for each Day after the Construction Phase Two duration on which the Developer has not accomplished Substantial Completion until the City issues a Notice of Substantial Completion.

(b) ~~(e)~~ Final Completion: \$500 for each Day after the 90-day duration following Substantial Completion on which the Developer has not accomplished Final Completion until the City issues a Certificate of Final Completion.

~~Notwithstanding anything to the contrary herein, in the event that the Board of Supervisors approves the Phase Two Budget (including the GMP) and the Contract Time is extended as provided in this Agreement, the Liquidated Damages for Phase One Work referred to above in Section 3.2 (a) shall be of no force or effect and shall be replaced by the Liquidated Damages applicable to the Construction Phase and the Final Completion referred to in Section 3.2 (b) and (e) above.~~

4. Obligations of the City

4.1 City Representative. The City will provide timely notice to the Developer (no later than the date of issuance of the NTP ~~with Design for Phase One~~) of the City employee designated as the City's representative for purposes of contact between the City and Developer in connection with the construction of the Project, including, without limitation, the giving of notices, consents and approvals ("City Representative"). The City representative may, in a signed written document, which he or she may withdraw at any time, designate another City employee as the City Representative's authorized designee. The City may at any time, by notice given to Developer, remove the City's Representative and appoint another individual to act as the City's Representative. Except as set forth in this Agreement to the contrary, the City's Representative or designee shall have the authority to bind the City with respect to all matters for which the consent or approval of the City is required or permitted pursuant to this Agreement and all consents, approvals and waivers given by the City's Representative shall bind the City and may be relied upon by Developer. The City Representative may delegate his or her authority to another individual by written notice to the Developer, which may be changed or withdrawn at any time.

4.2 City Cooperation. The City shall cooperate with Developer for the design and construction of the Project and shall promptly and in a timely manner (a) provide information regarding its requirements for the Project, (b) answer inquiries Developer may have with respect to such information, and (c) timely approve or disapprove (in accordance with the terms of this Agreement) any items and grant its approval for Developer to execute Project Contracts required for the development of the Project. The City shall provide responses to additional information or

decisions requested by Developer in a prompt and timely manner in accordance with the terms of this Agreement, and within the approval timeframes specified in the Contract Documents.

4.3 Access to Project Sites. The City shall make the Project Sites available to Developer. Without limiting the foregoing, City shall obtain and grant to Developer: (i) all necessary consents, licenses and/or approvals required for Developer and its Subcontractors to enter upon the Project Sites to conduct pre-construction testing and due diligence and to perform the Work, including but not limited to any consents required from existing tenants of any portion of the Project Sites; and (ii) any required approvals of the project design (e.g., consent from any tenant of existing buildings on the Project Sites and from the owner of the Toland site). If Developer is unable to access any portion of the Project Sites or proceed unimpeded with the Work due to lack of the foregoing consents or approvals, then any delay associated therewith shall be considered compensable Unavoidable Delay.

4.4 City Keeping Developer Informed. The City shall keep Developer promptly informed of all material matters that come to the City's attention relating to or affecting the project management, design or construction of the Project relevant to the Developer Services, including, without limitation, all agreements and discussions between the City and third parties relating to such matters, and the City shall promptly notify Developer of any developments necessitating or warranting a change in the Project Plan or the Plans and Specifications.

5. **Indemnity; Exculpation**

5.1 Developer Indemnity. Developer's indemnity obligations are set forth in sections 3.21 and 3.22 of the General Conditions.

5.2 City Exculpation. No board or commission of the City (and no officer, director, member, manager, employee or agent of the City) shall be personally liable for the performance of the City's obligations under this Agreement.

5.3 Developer Exculpation. No direct or indirect partner, employee, sub-consultant, shareholder or member in or of Developer (and no officer, director, managing director, manager, employee, sub-consultant or agent of such partner, shareholder or member) shall be personally liable for the performance of Developer's obligations under this Agreement.

5.4 Limitations. No insurance policy covering Developer's performance under this Agreement shall operate to limit Developer's liability under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such liability. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the Developer's performance of the Work.

5.5 Liability for Use of Equipment. The Developer shall be liable, and the City shall not be liable, for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Developer, or any of its Subcontractors, or by any of their employees, subcontractors, or agents, even though such equipment is furnished, rented or loaned by the City.

6. Dispute Resolution

6.1 Partnering. The Parties agree that they will in good faith engage in the partnering process set forth in Exhibit K as an avenue to work together to resolve questions and concerns as they arise.

6.2 Non-Binding Mediation.

(a) Upon an alleged default, either party may request non-binding mediation by delivering a written request for mediation (“Mediation Request”) to the other party. The Mediation Request must include a summary of the issue in dispute and the position of the parties, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding party may agree to meet and confer promptly with the requesting party to attempt to resolve the matter. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the party who requested mediation may submit the matter for mediation to a mediator acceptable to both parties. If the parties cannot agree on a mediator, the party may refer the matter for mediation with JAMS.

(b) The parties will cooperate with one another in selecting a mediator who is acceptable to both parties or selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. Neither party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions in sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation.

(c) The provisions of sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation.

(d) Upon the failure of any agreed-upon mediation to resolve the default in question, the Parties may pursue such rights and remedies as are available under this Agreement – the Parties agreeing that the aforementioned mediation process is a non-binding process.

7. Project Signage

Developer may maintain reasonable and customary signage at the Development Site specifying Developer's role in the Project.

8. Insurance

8.1 Developer Insurance. Developer shall procure and maintain, at its cost and expense, insurance relating to the Project in conformance with the requirements stated at Exhibit F attached hereto.

8.2 Developer Obligations to Submit Reports. Upon receipt of notice thereof, Developer shall promptly investigate and make a written report to any insurance company providing coverage to the City with respect to the Project, with a copy to the City, of all accidents, claims, or damage relating to the Project within the scope of the Developer Services, any damage or destruction to the Project and the estimated cost of repair thereof, and shall prepare such further reports required by any such insurance company in connection therewith.

9. Assignment

9.1 Developer Assignment. The services to be performed by Developer and its Subcontractors under this Agreement are personal to Developer and its Subcontractors and neither Developer nor its Subcontractors may not assign or transfer their obligations under this Agreement or any rights or benefits under this Agreement to any person or entity without the prior written approval of the City, which consent may be granted or withheld in the City's sole discretion.

9.2 Obligations Binding on Permitted Assigns. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of any respective permitted successors and assigns.

9.3 No Release of Liability. Notwithstanding any assignment by Developer or its Subcontractor(s) of rights under this Agreement, in no event shall Developer or its Subcontractor(s) be released from any obligations or liabilities hereunder, and if requested by the City, Developer shall covenant in writing to be jointly and severally liable with its assignee for all of its obligations and liabilities hereunder.

10. Rights in Deliverables

10.1 Ownership of Results. Any interest of Developer or its Subcontractors in the design documents, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files, media, other documents, or other documents referenced as Deliverables in paragraph 10.2, prepared by Developer or its Subcontractors (the "Deliverables"), shall become the property of and will be transmitted to the City upon the Final

Completion of the Project or earlier termination of this Agreement. However, unless expressly prohibited elsewhere in this Agreement, Developer and its Subcontractors may retain and use copies of the Deliverables for reference and as documentation of its experience and capabilities.

10.2 Works for Hire. If, in connection with the Work, Developer or its Subcontractors or lower-tier subcontractors create Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City effective upon the Final Completion of the Project or earlier termination of this Agreement. If any Deliverables created by Developer or its Subcontractors or their subcontractors under this Agreement are ever determined not to be works for hire under U.S. law, Developer and its Subcontractors, effective upon the Final Completion of the Project or earlier termination of this Agreement, hereby assign all Developer's and its Subcontractors' copyrights to such Deliverables to the City, agree to provide any material and execute any documents necessary to effectuate such assignment, and agree to a clause in every subcontract imposing the same duties upon subcontractors.

10.3 Assignment of Interest in Project Deliverables. Upon Final Completion of the Project or earlier termination of this Agreement and payment to Developer of all amounts to which it is entitled under this Agreement, Developer and its Subcontractors shall assign to the City all their rights, title and interest in and to the Deliverables. All of the Project Contracts including subcontractors or subconsultants of every tier shall require assignment of all Deliverables to the City, together with all warranties and guarantees, without the prior consent of the Developer and without any payment to the Developer.

10.4 City Use of Deliverables. The City may reproduce, distribute, and make any use of the Deliverables without further notice or compensation to Developer or any Subcontractor or subconsultants, provide that the City shall not use the Deliverables on other unrelated projects. If Developer's design Subcontractor or its subconsultants are not terminated for fault, the design Subcontractor or its subconsultants shall not be liable for any claim to the extent arising out of the use by or through the City of the Deliverables without Developer's design Subcontractor or its subconsultants' professional involvement.

11. Additional Requirements; Certain Requirements Incorporated by Reference

11.1 Laws Incorporated by Reference. The full text of the laws expressly listed in this Section 11, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions expressly incorporated by reference in this Section 11 and elsewhere in the Agreement are available at www.sfgov.org under "Government."

11.2 Additional Requirements – Subcontractor Agreements. It is hereby understood and agreed that Developer shall incorporate into all of its Project Subcontracts agreements all requirements of this Section 11, and all Subcontractors and their lower-tier subcontractors shall be bound the same as Developer for compliance with all requirements of this Section 11. Developer shall include a provision in each Subcontract requiring Subcontractors to incorporate into all lower-tier subcontractor agreements, if any, all requirements of this Section 11. Subcontractors and their lower-tier subcontractors providing Work on the Project shall all be bound the same as Developer for compliance with all requirements of this Section 11.

11.3 Conflict of Interest. By executing this Agreement, Developer certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

11.4 Prohibition on Use of Public Funds for Political Activity. In performing the Developer Services, Developer shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Developer is subject to the enforcement and penalty provisions in Chapter 12G.

11.5 Nondisclosure of Private, Proprietary or Confidential Information.

(a) If this Agreement requires the City to disclose "Private Information" to Developer within the meaning of San Francisco Administrative Code Chapter 12M, Developer shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Developer Services. Developer is subject to the enforcement and penalty provisions in Chapter 12M.

(b) In the performance of Developer Services, Developer may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to Developer, then, to the extent Developer is advised in writing that such information is proprietary or confidential, such information must be held by Developer in confidence and used only in performing this Agreement, subject to Developer's right to disclose such information as may be required by Court order or applicable law. Developer shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary or confidential information.

11.6 Nondiscrimination Requirements.

(a) Non Discrimination in Contracts. Developer shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C to the extent applicable to Developer.

(b) Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Developer does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

11.7 Minimum Compensation Ordinance. Developer shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Developer is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Developer certifies that it is in compliance with Chapter 12P.

11.8 Health Care Accountability Ordinance. Developer shall comply with San Francisco Administrative Code Chapter 12Q as applicable to Developer's work under this Agreement. To the extent applicable, (1) Developer shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3 and (2) Developer is subject to the enforcement and penalty provisions in Chapter 12Q.

11.9 Owner Contracting Requirements. Developer must comply with the Owner Contracting Requirements set forth in Exhibit G and Exhibit I hereto, and shall be subject to the enforcement and penalty provisions of such requirements.

11.10 Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require Developer to remove from, the City facilities personnel of any Subcontractor or lower-tier subcontractor who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of the City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, the City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

11.11 Limitations on Contributions. By executing this Agreement, Developer acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective Party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor retained by Developer to provide services for the Project; and any committee that is sponsored or controlled by Developer. Developer must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to the City.

11.12 Consideration of Criminal History in Hiring and Employment Decisions.

(a) Developer agrees to comply fully with and be bound by the provisions of Chapter 12T, "City Developer/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Developer shall comply with all of the applicable provisions of 12T. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to Developer's and its Subcontractors' operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees of Developer and its Subcontractors who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment by Developer and its Subcontractors of an individual wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

11.13 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Developer not to import, purchase, obtain, or

use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

11.14 Preservative Treated Wood Products. Developer shall comply with the applicable provisions of San Francisco Environment Code Chapter 13, which requires that contractors purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

11.15 Compliance with Laws. Developer shall use commercially reasonable efforts to cause each Subcontractor and all lower-tier subcontractors to become and remain fully informed of and comply with the applicable provisions of the Charter, ordinances, and regulations of the City and other local agencies having jurisdiction over their work, and all federal and state laws and regulations in any manner affecting the Project Contracts, the performance of the Work thereunder, or those persons engaged therein. Developer shall require compliance with, and shall use good faith efforts to ensure all construction and materials provided under the Project Contracts shall be in full accordance with, the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Codes specified in the Project Contracts, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. To the extent applicable to Developer, Developer shall comply with all laws including the applicable provisions of the Charter, ordinances and regulations of the City and local agencies having jurisdiction over it.

12. Notices

12.1 Any notice required or permitted to be given hereunder and any approval by the parties shall be in writing and shall be (as elected by the Party giving such notice or granting such approval): (1) personally delivered, (2) delivered by recognized overnight courier, (3) transmitted by postage prepaid certified mail, return receipt requested, or, (4) by facsimile or electronic mail with a hard copy sent by one of the other methods described in clauses (1) – (3) of this Section. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on the earlier to occur of: (a) the date of receipt if delivered personally; (b) on the next business day if sent by overnight courier; (c) five (5) days after the date of posting if transmitted by mail; or (d) the date of transmission with confirmed answerback

if transmitted by facsimile or electronic mail. Either Party may change its address for purposes hereof by notice given to the other Party. Notwithstanding the foregoing to the contrary, any notice of default must be sent by registered mail.

12.2 Notices, requests and approvals hereunder shall be directed as follows:

the City:

Public Works
The City and County of San Francisco
30 Van Ness, Suite 4100
San Francisco, California 94102
Attn: Patricia Solis
Re: Central Shops Project
Facsimile No.: (415)557-4701

with copy to:

Randy Parent
Deputy City Attorney
Office of the City Attorney
The City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: Central Shops Project
Facsimile No.: (415) 554-4755

Developer:

Oryx Development I, LLC
P.O. 14315
San Francisco, CA 94114
Attn: JC Wallace
Facsimile No.: (408) 693-3836

with a copies to:

Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94111
Attention: CJ Higley, Esq.
Telephone No.: (415) 954-4942
Fax No.: (415) 954-4480

13. Compliance with Americans with Disabilities Act

Developer shall provide the Developer Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

14. Modification of This Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as expressly provided herein. Any modification or waiver must be in writing. "Notices" regarding change in personnel or place must be communicated by written instrument executed and approved in the same manner as this Agreement.

15. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles of conflicts of laws. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

16. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Counterparts

This Agreement may be executed in one or more counterparts, and each of such counterparts shall, for all purposes, be deemed to be an original, but all of such counterparts shall constitute one and the same instrument. The parties agree that their respective signatures transmitted by facsimile or PDF electronic mail shall be deemed binding for all purposes.

18. Benefits and Obligations

The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, administrators, legal representatives and permitted successors and assigns. No provisions of this Agreement shall inure to the benefit of, or be enforceable by, any creditors or other third parties.

19. Integration

This Agreement represents the entire and integrated agreement between the City and Developer and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by the City and Developer.

20. Further Assurances

The City and Developer agree to execute and deliver such further instruments as may be necessary or desirable to effect this Agreement and the covenants and obligations of the parties hereto, subject to any necessary governmental approvals.

21. Headings

The headings in this Agreement are solely for convenience of reference and shall not affect its interpretation.

22. Survival

Notwithstanding anything stated to the contrary in this Agreement, none of the covenants, conditions or indemnities of the Developer or the City under this Agreement shall (a) survive the termination of this Agreement, except in connection with an action by such Party for termination of this Agreement and damages based on the alleged breach of such covenant, condition or indemnity, or (b) survive Final Completion, except that (1) the provisions of 3.2, 8.2, 10.3, 11.4, and Exhibit J shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of one year after either such event occurs, (2) the provisions of Sections 1.11, Article 5, 6.1, 11.2, 11.5, 11.11, 11.15, 12 and 13 shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of three (3) years after either such event occurs, or, such longer time as is necessary to resolve any issue for which indemnification is asserted under such sections provided a demand is made by the party asserting such indemnification obligations within such three (3) year period, and (3) the provisions of Sections 1.7(b), 1.7(c), 8.2, 9.3, 10.1, 10.2, 15, 16, 17 and 18 shall survive the termination of this Agreement, or Final Completion, as applicable, without limitation.

23. No Waiver

No failure or delay of either Party in the exercise of any right under this Agreement shall be deemed to be a waiver of such right. No waiver by either Party of any condition under this Agreement for its benefit or any breach under this Agreement shall constitute a waiver of any other or further right or subsequent breach.

24. Ownership of Work Product

Whether provided by the City or Developer or their respective agents, all of the data, notes, estimates, computations, sketches, photographs, presentations, reports, renderings, computer programs and all other materials relating to the Project and the Developer Services (collectively, the “Works”) are and shall remain, together with all copyright privileges, the property of the City whether or not the Project for which they are made is executed. To the extent Developer has any copyright in the Works, Developer hereby assigns any such copyright to the City. Developer may retain copies, including reproducible copies and intermediate drafts, of the same for information and reference only.

25. Sunshine Ordinance

Developer understands and agrees that under the City’s Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

26. City's Remedies for False Claims and Other Violations

Under San Francisco Administrative Code section 6.22(M), any Developer, Subcontractor, lower-tier subcontractor, or consultant who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of its agreement, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, any Developer, Subcontractor, lower-tier subcontractor, or consultant who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

27. MacBride Principles -Northern Ireland

The provisions of San Francisco Administrative Code section 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Developer confirms that Developer has read and understands that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year written above.

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a Charter City and County

By: _____
Name: John Updike
Title: Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

By: _____
Name: _____
Deputy the City Attorney

DEVELOPER

ORYX Development I, LLC,
a Nevada limited liability company

BY: ORYX Partners, LLC
a Delaware limited liability company

By: _____
Name: Juan Carlos Wallace
Title: Managing Member

EXHIBIT A
PROJECT BUDGET



CENTRAL SHOPS
100% DD GMP Budget
Prepared 2/15/17

	100% DD GMP
Direct Costs	
GC - Building Costs	\$46,564,000
GC - Contingency	\$3,130,000
Total Direct Costs	\$49,694,000
Indirect Costs:	
Acquisition & Due Diligence Costs	\$76,809
A&E	\$3,689,410
Development Management Fee - Base	\$2,044,500
Development Management Fee - Bonus	\$825,000
Permits and Fees	\$962,175
Testing and Inspection	\$161,857
Legal, Ins, Accounting and Misc	\$343,819
Reimbursables	\$180,000
Indirect Contingency	\$300,000
Total Indirect Costs	\$8,583,570
Developer's Contingency	\$1,922,430
GRAND TOTAL	\$60,200,000

~~EXHIBIT~~
AEXHIBIT A

EXHIBIT B

CRITERIA PACKAGE

This Exhibit B contains the Criteria Package provided by the City to Developer as of the date of this agreement and contains the following:

- (1) Conceptual drawings prepared by the Department of Public Works of the City and County of San Francisco's Building Design and Construction Division dated November 13, 2015 for the Development Sites (the "Drawings")
- (2) The attached memorandum dated January 11, 2016 prepared by Gannett Fleming Inc. providing comments and concerns regarding the Drawings, including an earlier version of the Drawings prepared on August 4, 2015 and June 24, 2015 (the "Gannett Fleming Memorandum").
- (3) City has also provided Developer with a copy of the Draft Geotechnical Data Report for CDD HD SIG SITES, 1975 Galvez Avenue and 555 Selby Street, San Francisco, California, prepared by AGS and dated December of 2015.

The City acknowledges that the Phase One Project Budget is based on the information contained in the Drawings and the Gannett Fleming Memorandum. The City further acknowledges that (i) the comments and concerns raised by the Gannett Fleming Memorandum will need to be jointly evaluated by the Developer, the Architect, the General Contractor and the City (after the issuance of the NTP for Phase One), as part of the Phase 1 Scope of Work, and (ii) such evaluation may lead to substantive changes to the Drawings, subject to City approval. Upon City's approval of the revised Drawings (the "Conceptual Design Documents") such Conceptual Design Documents shall be deemed to constitute the revised Criteria Package and attached to this Agreement for reference.

EXHIBIT B

EXHIBIT B

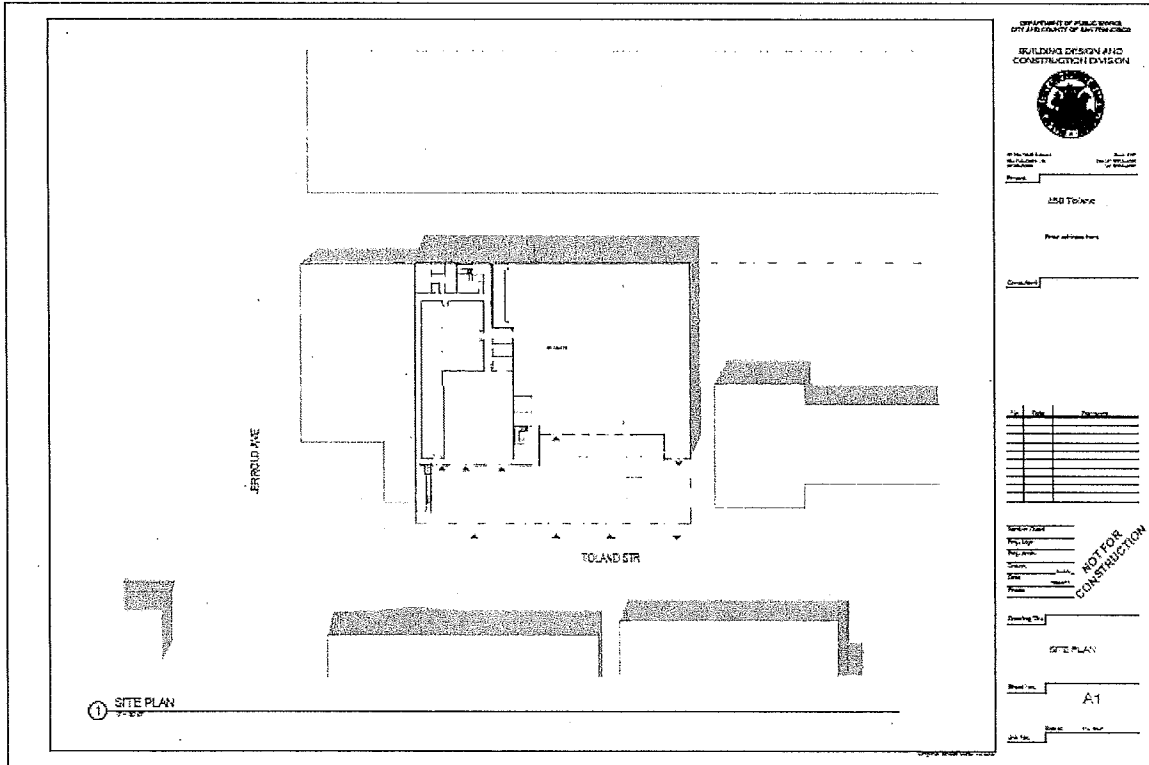


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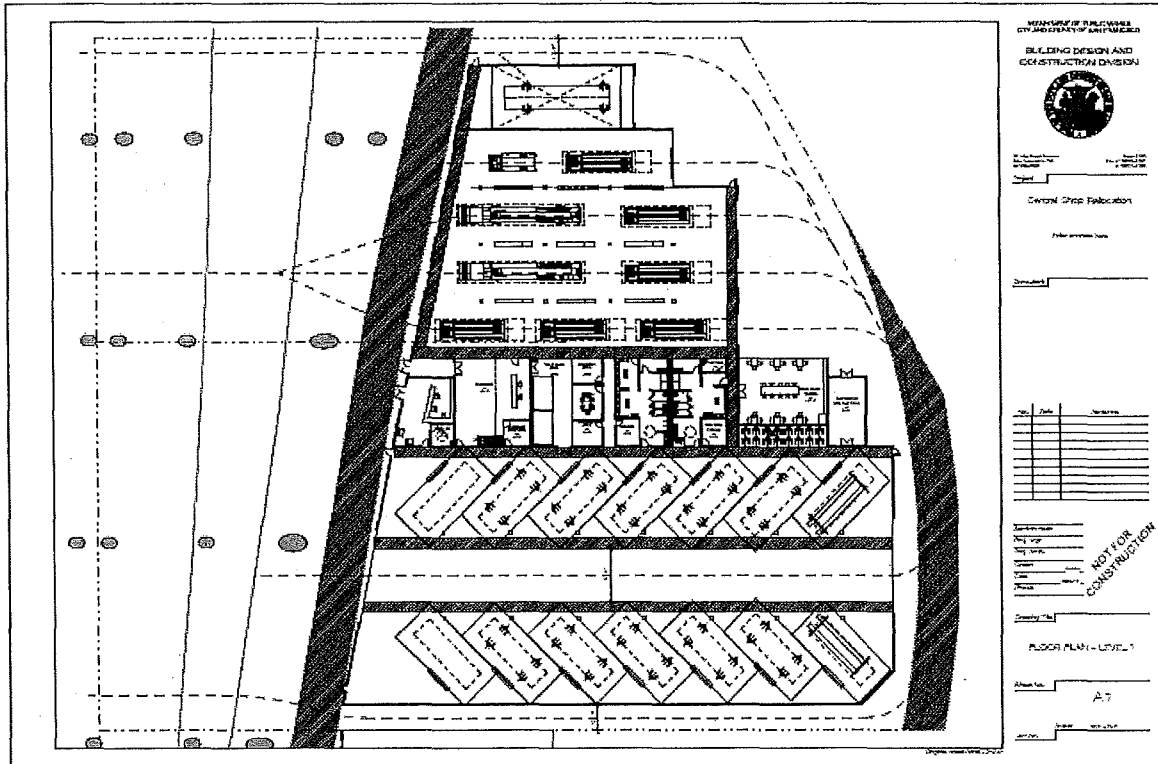


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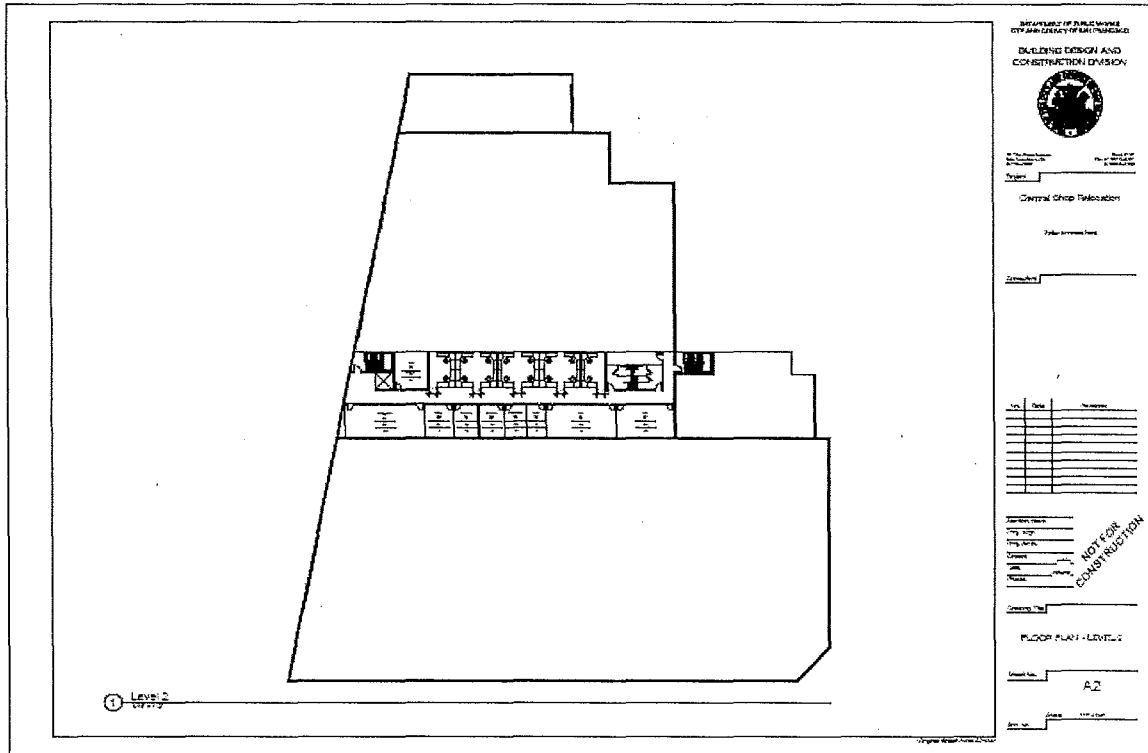


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GANNETT FLEMING, INC.
Suite 1900
3838 North Central Avenue
Phoenix, AZ 85012

Office: (602) 553-8817
Fax: (602) 553-8816
www.gannettfleming.com

TO: Dan McKenna
Special Projects, Fleet/Central Shops
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

FROM: Luigi Leone

DATE: January 11, 2016

SUBJECT: CCSF Selby/Galvez and Toland Sites Technical Review (Final Memorandum)

COPIES: Kam Shadan, Mark Wavering

GF PROJECT NO.: 60043 – Task A.1
Contract Number: 98000 – Task A.1 – A.2

Introduction:

The City and County of San Francisco (CCSF) is in the process of relocating their Central Shops currently servicing the City and County fleet to two new locations to satisfy the maintenance needs of their changing fleet. As part of the Task A.1 requirements, Gannett Fleming is supporting the CCSF with oversight and review of the design and construction process for the new facilities. The Department of Public Works, Building Design and Construction Division (SFDPW) is in the process of preparing design and construction documents addressing the CCSF fleet's needs.

The CCSF has recently acquired one parcel of land and leased a second parcel at two separate locations to satisfy the light, medium and large duty fleet vehicles that the CCSF serves. The Selby/Galvez site will house the maintenance operations with administrative support for the medium and large duty fleet. This site has been purchased by CCSF and the documents will support the construction of a new maintenance building for the assigned fleet. In addition, the CCSF is in the process of finalizing a 10 year lease agreement for the lease of an existing building located approximately two blocks from the Selby/Galvez site on Toland Street. The building will be renovated to support the light duty servicing of the CCSF fleet along with paint and body operations, carpentry shops for support of the Fire Department vehicle ladder assembly and support. The Toland site located at 450 Toland Street will be renovated with a small mezzanine area that will provide ancillary spaces in support of the staff while the main floor will house the light duty vehicle maintenance bays and support shops.

As part of the effort, Gannett Fleming was retained to provide design review efforts during the design process. This report addresses a functional review provided for the preliminary layouts of both sites. The review comments below are linked to specific concerns identified on the sites

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and are identified using an Index Drawing (See Appendix A) that supports the listed comments below.

Functional Review of Work Areas:

The following review comments are based on Industry Standards for the functional relationships and requirements for the CCSF. These comments are based on information acquired during the site visits and meetings with staff and the Validation Report generated by Gannett Fleming dated January 2015. The Validation Report took into consideration the original Mercury Report dated September 2013 and adjustments based on meetings with CCSF. In addition, CCSF has revised the new requirements due to the complexity of the sites which impact the programming document. These impacts have led CCSF staff to consider downsizing certain functions to satisfy the new sites. Dan McKenna's email dated October 8, 2015 as listed below, provided some consolidation or reprogramming of the original space program. This information was used to generate the first set of review comments that were submitted to Mr. McKenna on October 19, 2015 for his review and process. The following were the guidelines from Mr. McKenna:

We have gone through some significant changes since your last review of the project. First, I need to bring you up to speed. The project is now on two sites (555 Selby and 1976 Galvez to be considered as one site and 450 Toland as the second site).

Oryx will be the developer, and Pankow will be the GC. They have hired FME as their principle design firm, and I believe they will sub some of the design work to MDG. So that seems to the team. Our Real Estate Group has LOIs for each of the properties and is working on finalizing the Lease/PA and CAs as well. We are to be at the Board of Supervisors in November and have NIPs in January. The S/G sites will be purchased and the 450 Toland Site will be leased for 10 years. The project is now at Planning for CEQA and at Civic Design Review. I have attached the CDR package.

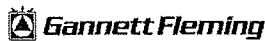
The two distinct properties are located approximately two blocks from each other. This was done to eliminate two story construction on the Selby/Galvez site. Geo-Tech draft report below, and Hazmat Phase II is underway. We should also have a survey of the S/G site completed this week as well. I will forward if you need that. You will also find attached the DPW design for the two sites, which is the focus of this task order. However, in order to complete your review of the design, you will need to account for Programming changes we will undertake prior to occupying the new facilities. They include the following:

- 1. A reduction in the number of LD vehicles in the fleet overall. We believe a conservative reduction of 10% will occur during the next several years.*
- 2. LD oil, lube and smog inspections will be conducted off site*
- 3. LD body/paint work will be conducted off site*
- 4. Small engine repair will be conducted off site*
- 5. Machine Shop will be located off site*
- 6. Electric Shop will be consolidated in the various shops and storeroom*

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7. *New Storeroom inventory practices will be implemented in order to reduce storage space and decrease inventory carryforward costs. (We will seek some guidance from you as we move forward on this issue)*
8. *Staging will be reduced dramatically, through new practices including an online reservation system, and off-site staging.*

As a follow up to the review submitted to Mr. McKenna, The Department of Public Works incorporated the comments and due to cost concerns on the entire building design, additional program reconfiguration was incorporated by the Department of Public Works. Mr. McKenna provided additional requirements to be considered in an e-mail dated November 16, 2015. These additional guidelines were as follows:

Good Morning Gentlemen

Please find attached the final program design prepared by the SFDPW design team.

You will immediately note that the program elements have continued to shrink and be repurposed based upon site constraints, budget and schedule. The Toland Site has presented the largest challenge due to its configuration and potential TI costs, which we estimate to be near \$400 sq. ft. So the following new program "concessions" along with those previously enumerated will become the baseline program evaluation criteria for your analysis:

Toland:

1. *No dedicated welding area*
2. *Ladder shop sq. ft. will be reduced and their spray booth will be partially located within the shop*
3. *Tire carousels will be located at ea. location*
4. *Secure Parts Rooms will be located at ea. location*
5. *Consolidated Training/Lunch/Break Rooms will be located at each location, but combined will not equal the recommended sq. ft. size as recommended.*

As we move the project forward, your comments to this design will be presented to the new Project Architect, Terri Emery of FME. Unless you note some large critical element to the program design, your comments should be submitted within 30 days. If that schedule cannot be met, please inform me so we can discuss what is doable.

A Technical Review conference call was held on January 7, 2016 and all discussion items and responses have been incorporated in this Final Memorandum.

The following review comments to the Department of Public Works Conceptual Design are based on common practices and functional requirements and are open to discussion. The Department's program changes have been taken into consideration for this review and recommendations. Please refer to attached Appendix A for comment location. Most the comments above referring to a specific location have a letter associated with comment that is shown on the attached drawings in Appendix A. These drawings serve as the index to further clarify location for each of the comments listed above.

Selby/Galvez Site Level 1 – Sheet No. A1:

- A. The Stores Area has now been programmed into both buildings. As per Mr. McKenna's direction above, each Facility will provide a standalone secured Stores. Although the area has decreased in size from the original Mercury Report (7,000 S.F.) and the Validation Report generated by Gannett Fleming (5,500 S.F.) There is a new

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Stores Room inventory practice that will be implemented in order to reduce storage capacity as listed in the planned reduction above. This new practice should take into consideration all components currently housed and controlled by the Stores Department. It is recommended that CCSF work with the Industrial Designer of record and Review Team to determine best practices to implement for the reduced Stores area.

- B. Tire Storage Area: Per the original review comments and recommendations by Gannett Fleming, the Department programmed tire carousels on each location to maximize the tire storage capacity for the rubber inventory stored at the facilities. Even though tire carousels is highly recommended for the light duty rubber tire inventory, larger tire storage still should be considered to be stored on two-tier heavy duty tire racks. Larger truck tires are too bulky and heavy and do not lend itself to be stored in carousels, so suggested storage is heavy duty tire racks with simple handling hoist for lowering upper rows of tires by personnel. Per Dan McKenna's comments. The Selby/Galvez site will utilize outside vendors for the mounting and dismounting of tires so there is no need for tire shop support for the larger heavier tires. Although storage of such tires will be performed on site and storage capacity is necessary, it is important to have a space to provide sufficient equipment for emergency situations. Verification on the tire function based on the latest drawings, tire service (mount/dismount) will not be available in the current space with the exception of emergency service. All heavy tire work will be outsourced.
- C. Confirm with the Architect on the type of elevator that will be specified. If a hydraulic elevator, a machine room adjacent to the elevator will be required; if a Machine Room Less (MRL) elevator, a control closet within a 100 feet of the motors is required; if a traditional overhead, then a large machine room required above the second floor.
- D. There are two large areas shown on the floor plan that are not identified. These spaces are adjacent to the Stores Area. Per Dan McKenna's December comments provided, these spaces are for Tire Storage and possibly a small Tire Shop for emergency situations since all heavy duty tire work is now planned to be outsourced.
- E. It is suggested that for the four post platform lifts shown on the Medium-Duty Truck Bays be specified as platform "Flush Mount" lifts to allow the bays to be flushed when platform is not in use without any obstructions. This provides multi-purpose capability at the bay. There are numerous manufacturers that provide this installation. It is not suggested that four post lifts or parallelogram style platform lift be used due to the space constraints at the bays. Gannett Fleming suggest the use of lift systems that will satisfy the various functions for the Central Shops. It is recommended that the Designer of Record discuss with the users the various types of lift systems available including in-ground scissor lifts, piston lifts, vertical platform lifts and portable column lifts to satisfy the requirements for the facility. With in-ground or platform lifts, it is suggested that all installations be flush to the finished floor. Suggested manufacturers to consider may include but not limited to Rotary Lift and Steril Koni who are the largest manufacturers of heavy duty lifts in the USA. It is recommended that CCSF consider the use of one manufacturer for all lift systems to simplify equipment maintenance and warranty issues.
- The use of portable column lifts gives the user the ability to introduce flexibility to the work bays. Portable columns should not be required in every bay since they utilize a large amount of storage area, column lifts may be shared between bays to minimize

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the number of units purchased. Suggest that the Designer of Record provide various sets jack stands.

In addition, due to the materials handling requirements along the bay areas in the medium duty and heavy duty bays, it is necessary to address the inclusion of overhead crane systems to support the removal and replacement of components on vehicles, work on hydraulic components on vehicles and overall assistance with maintenance work on the larger vehicle components. Designer of Record should consider introducing crane system covering the work bays. Coordinate with Maintenance Supervisor on the area of coverage.

Selby/Galvez Site Mezzanine – Sheet No. A2:

- F. There does not appear to be an IT/Server Room called out in this layout at Selby/Galvez Site. Per CCSF, IT Support will be provided off-site with minimal requirement in the Selby/Galvez site. Verify with IT Services for minimal equipment be housed in this building.
- G. There is no Break Room or Kitchenettes in the second floor to provide a user separation between the Administrative Staff and the Mechanics. There is a multi-purpose Room that will serve for this function. Per Dan McKenna's December 7, 2015 review comments, this area will satisfy the required purpose and serve as break room and coffee area. It is recommended that the space be provided with a counter and a sink for such functions.

General:

- H. Layout of the parking concept for the site was not provided. CCSF should provide adequate parking for the number of vehicles and equipment that will be stored at the facility, to include circulation patterns within the parking areas.

Toland Street Site – Level 1 – Sheet No. A2:

- I. It is suggested that the Designer assess the functional process for the relationship between the Carpentry Shop servicing the ladders and the ladder booth. Assume the booth entrance is from the Carpentry Shop, keeping in mind that ladders are 25 feet long and need to have means to move material within the two areas. In addition, verification of areas dedicated for raw stock and finished ladders should be considered. Additional consideration on the layout of the Carpentry Shop is stressed since large material will need to be moved within the Carpentry Shop. The shop will house a large number of heavy equipment including table saws, planers, cutting machines, dust collectors and workbenches. The layout should allow for proper circulation. It is suggested that the designer of record discuss shop functions with Carpentry/Ladder Shop Supervisor prior to starting design.

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- J. Carpentry Shop: Similar to comment above, need to clarify material circulation between the bays and the Carpentry Shop to move Fire Apparatus ladders in and out of the Carpentry Shop and the Ladder Paint Booth to the appropriate areas. Layout currently appears not to support this movement.
- K. Following concerns identified in Comment J above, suggest that a larger aisle between the Ladder Booth and the stair well be provided for material movement. This would allow ladders removed from the trucks to move directly into the Carpentry Shop. Daily movements should be coordinated with the Carpentry Shop Supervisor to assure proper access.
- L. Access to the Carpentry Shop and light Duty Body Shop: This circulation appears to have some concerns with the movement and delivery of existing ladders and wood supply (material) which comes in long lengths via truck delivery. In addition, means of entering the body shop is nonexistent and should be addressed. Verify the process for material handling for this area. In addition, address the entrance for light duty vehicle to this work bay.
- M. Body Shop: Per Mr. McKenna's e-mail dated November 16, 2015, there is to be no dedicated Welding Area in the building. It is assumed that replacement of panels and minor welding will be performed in this area. There appears to be two areas separated by the large Paint Booth. It has been verified by CCSF that the East Side of the Body Shop is dedicated for light duty vehicles, with medium and heavy duty vehicle body work dedicated on the west side of the shop. Required ventilation or fume collection to address any welding tasks in these areas should be incorporated during design.
- N. General Comment: It is understood from Mr. McKenna's e-mail from October 19, 2015 that all body and paint work for the light duty fleet is now being outsourced outside of this facility. Verify that this is still the case since area showing light duty vehicles is now being identified in this area. (Note: This is a General Note and is not depicted on sheets in Appendix A).
- O. Suggest planning an Overhead Crane span between the two heavy duty vehicle bays in these shop. This crane support system should be self-contained as to not impact the existing structural integrity of the building.
- P. The Meeting Room/Library area between Columns 1 and 4 is suggested to be removed and relocated. It is understood from Dan McKenna that it may not a viable option due to structural impacts, code compliance and budget concerns. The suggestion is provided to address a major concern with the functionality of the facility. The light duty body shop currently is shown without an access. It is recommended that an overhead door for access to the light duty bay be provided and without removal of the structure, some other alternatives will be necessary to allow vehicle access. Also, there is a secondary concern with delivery of larger stock to the carpentry Shop, See Comment L above. Currently only a 6 foot double door is shown in this area and will not support the functionality of the shop since there is no means for vehicles to enter the bay.
- Q. Since all material and components serviced by the booths and the Carpentry and Body Shop are coming from the Selby/Galvez site, there needs to be a functional means of receiving these vehicles and materials for work in these areas. Currently it appears that there is no means to stage larger vehicles outside the area nor access for deliveries without impacting the area. This needs to be coordinated.
- R. Large vehicle paint booth: The drawings does not appear to show proper booth size. The large vehicle booth should be approximately 22 feet wide to allow for scaffolding

EXHIBIT B



or man lifts on either side of the vehicle and the length should allow for work area for largest vehicles. Need to coordinate with Paint Supervisor as to largest vehicle to be painted and provide a minimal of 6 feet clear in front and rear. There is currently an area that will accommodate increasing the length of the booth. It is suggested that the booth be enlarged to support largest vehicles. Required path between booths to access the light duty and heavy duty bay to be a minimal of 10 feet for forklift aisle. It is strongly suggested that this 10 foot area be material and personnel movement only and not be considered as a light duty vehicle access to the bays. This concern should be coordinated with FME and the Designer of Record.

- S. There is a concern with the configuration of the support spaces between columns A6 and B on Grid 1A. The Compressor Room needs to have accessibility for the delivery, removal and maintenance of the compressor equipment. It is suggested that the Compressor Room be provided with double doors for equipment access. It is understood based on conversations with Dan McKenna that the area in front of the Compressor Room is open to the bay area for access into Compressor Room. This will provide sufficient means to move equipment and service compressor as required.
- T. Oil Storage Area: Per meeting with Tom Fung and Dan McKenna on January 7, 2016, it is understood that the oil storage area will support fluid distribution for reels at the light duty bays. Based on this information, Gannett Fleming suggests the area be programmed to house bulk storage tanks and 55 gallon drums associated with fluid distribution for the light duty bays. In addition, a waste oil tank and waste coolant tank will also be necessary to be located within the premises. Flexibility along the north wall may provide some space for location of aboveground tanks, this will need to be coordinated during design. Based on the assigned program for this space, the need for double doors to facilitate the delivery of drums and fluids to the area will be necessary. In addition, oil spill containment capacity for stored fluids needs to be planned in this area to meet codes having jurisdiction.

Gannett Fleming also recommends that the Oil Storage Room, which will serve as the Lube/Pump Room for the facility be expanded to the east wall of the building and eliminate the corridor between the building and the Oil Area. This will allow the increase of square footage for the Oil Room.

- U. The light duty bay at the northwestern most corner (Column grid G and 1A) might have difficulty getting in the bay due to the area allowed for the turning of vehicle into bay. Should be verified and adjusted accordingly.
- V. Up fit area: Although not identified on the plans, it is understood that the two bays located in the light duty area between Columns B and C / and 1A and 2A are assigned for the Up-Fit functions. This has been verified by Dan McKenna on his latest comments from December 7, 2015 e-mail.
- W. Per e-mail dated November 16, 2015, it is stated that the Storage space will be a secured storage serving this building and separate from the Selby/Galvez site. It is also stated that area is to be a secured space similar to the Selby site. If the area is going to house shelving and storage material storage racks, it appears that the 14 foot width might not be sufficient. Designer of Record should review clearances and consider storage mezzanine and/ or space saver storage systems for this area.
- X. Tire Storage Area: As covered in Item B above, in discussions with Dan McKenna and Tom Fong on January 7, 2016, although the heavy tire work will be outsourced and

EXHIBIT B



only minor storage of mounted tires will be kept in the shop, the Toland Facility will support tire shop and storage with all tire work being performed at the facility. This area needs to be accommodated with miscellaneous tire shop equipment to include, at minimum, tire mount and dismount unit and a tire balancer. In addition based on the facility's requirements consideration of support tire equipment should be discussed. To maximize the storage of rubber, it is suggested in Item B that for this site consideration of tire carousels be programmed into the design to minimize space while maximizing storage capacity. There appears to be sufficient area allocated to storage of tires.

Toland Street Site Mezzanine – Sheet No. A3:

- Y. The previous layout identified support shops such as Component Rebuilt, Electronics Repair and EOC Storage areas. It was confirmed by Dan McKenna that these support shops have been removed from the program.
- Z. Same as Comment C above for Selby/Galvez site: Confirm with the Designer of Record on the type of elevator that will be specified. If a hydraulic elevator, a machine room adjacent to the elevator will be required; if a Machine Room Less (MRL) elevator, a control closet within a 100 feet of the motors is required; if a traditional overhead, then there is a large machine room required above the second floor. These spaces are currently not shown on the drawings.
- AA. The Toland site no longer houses the Administrative staff on the mezzanine level, only on the shop floor. First floor houses two Supervisor Offices and all other administrative functions are now located in the mezzanine at the Selby site. A concern was identified during the January 7, 2016 meeting with CCSF staff. There is no supervision along the center area of the work bays and no visual supervision to the work bays along this row of vehicle bays thus creating a concern. Designer of record should address this concern during design and also verify that the two offices satisfy the space requirements for all supervisory personnel required at the Toland Street Site.
- BB. The mechanic's lockers and restrooms are now located on the mezzanine floor. This will generate a lot of vertical movement since all the functions are on the first floor. The unisex rest room will support some of this concern but its single usage only. With lockers and showers upstairs, and the Training/Lunch Room also upstairs, it can create a vast amount of vertical movement and no supervision on the mezzanine floor. Since IT only requires a small closet, it is suggested moving the IT function and Electrical Room upstairs and expanding restroom capability and possibly a small break room on the first floor to support the maintenance staff.

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Conclusion:

The comments listed above are suggested comments based on the revised layout provided for the two sites on November 16, 2015 (Drawings dated August 4th and June 24th) and the January 7, 2016 teleconference meeting with CCSF staff. The comments are based on a functional review of the sites looking for possible concerns that may impact functional operations. The suggested comments are provided for consideration by the designer of record. The mission critical comments are underlined above and should be addressed before conceptual design is finalized. It is strongly suggested that the SFDPW coordinate the suggested review comments with Central Shops staff and incorporate comments agreed upon into the conceptual plans prior to issuing the documents for design. This will allow the Designer of Record to have a document that incorporates all the required components for the facility.

EXHIBIT B



City and County of San Francisco
Selby/Galvez and Toland Sites Technical Review - Task A.1
January 11, 2016

**City and County of San Francisco
Selby/Galvez and Toland Street Sites
Technical Review**

Appendix

Appendix A:

Review comment index.

- Selby/Galvez Floor Plan – Level 1
- Selby/Galvez Floor Plan – Mezzanine
- Toland Street Floor Plan – Level 1
- Toland Street Floor Plan – Mezzanine

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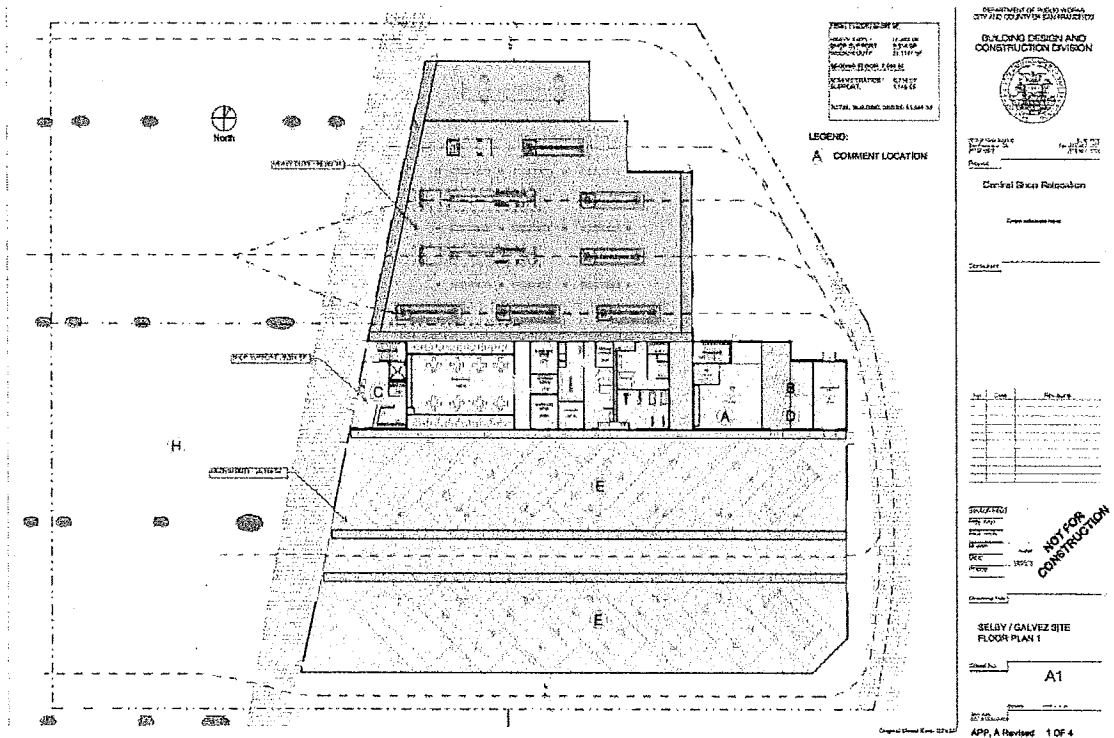


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Central Shops Replacement Facilities Project
PROJECT DELIVERY AGREEMENT
Contract No. 7994A
319225820947.2

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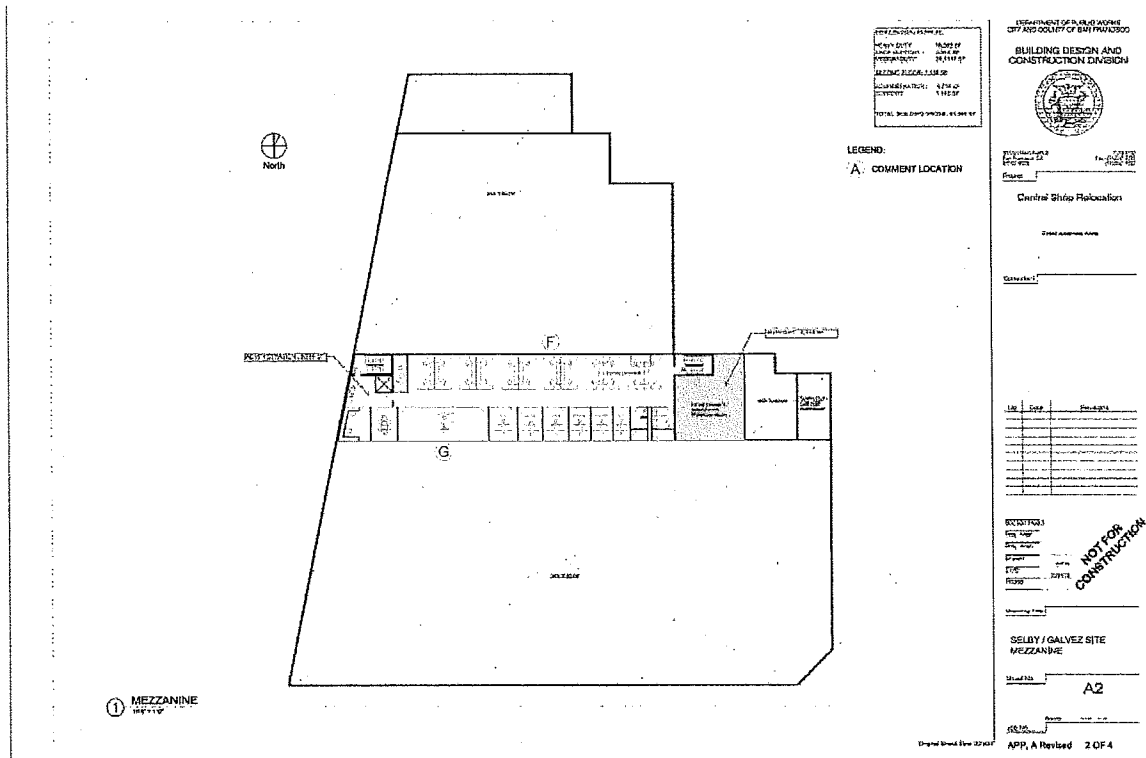


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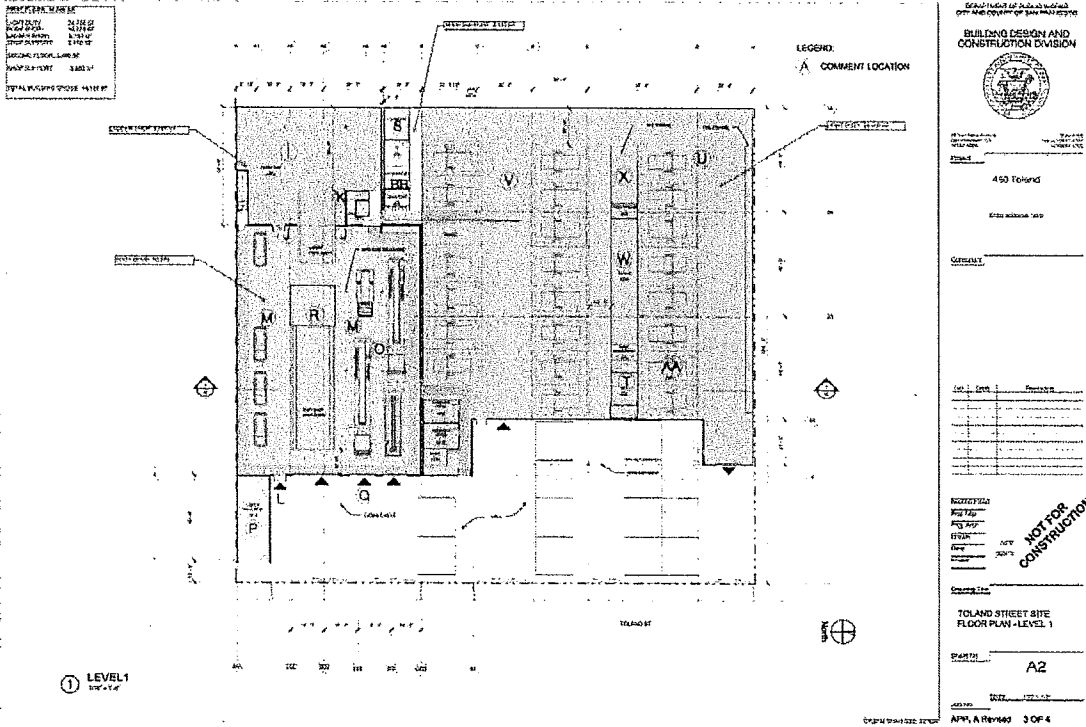


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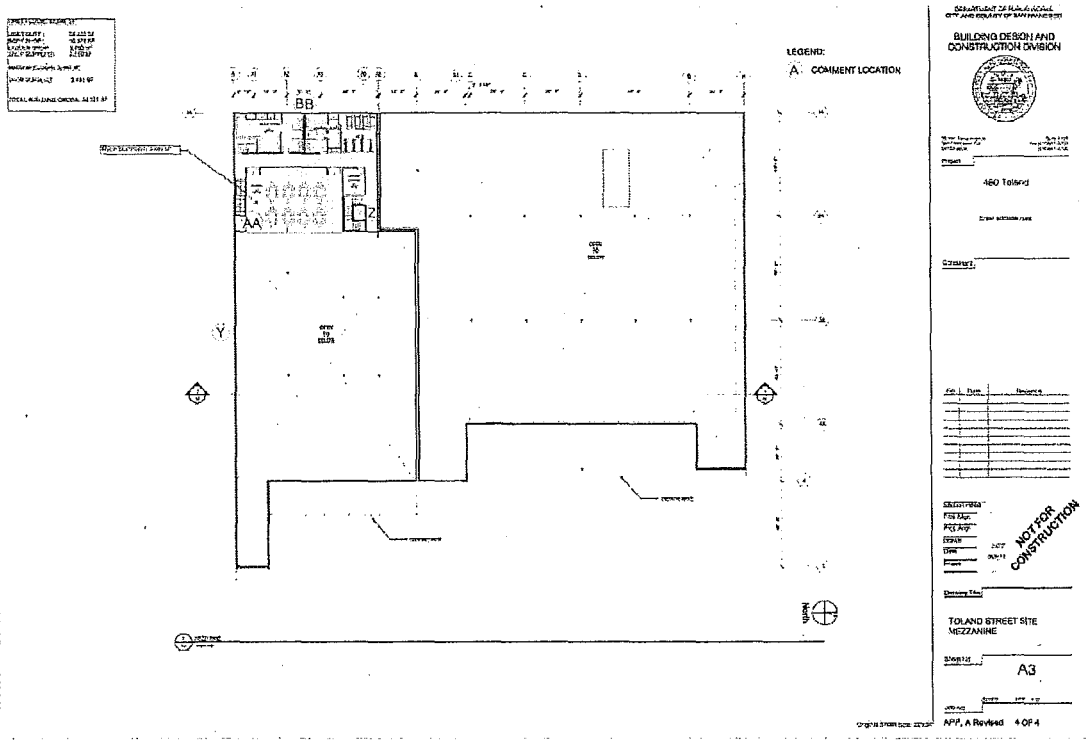


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EXHIBIT C

SCOPE OF DEVELOPER SERVICES

I. DESCRIPTION OF GENERAL SERVICES

A. General Services. Unless otherwise provided, the Developer Services identified below and in the Agreement shall extend to the design and construction of the Project. Developer shall oversee and monitor all aspects of the design and construction of the Project.

1. Administration and Coordination

- (i) In conjunction with the City, prepare the Project Plan for the City's approval. The Project Plan shall include, but not be limited to, Site logistics, measures to keep the Site secure, a defined Site perimeter, and progressive Site clean-up. Developer shall update or modify the Project Plan from time to time upon the request of the City or when Developer deems necessary, and all such revisions to the Project Plan shall be subject to the City's approval.
- (ii) Establish and implement procedures for coordination of all aspects of the Project between the City, Developer, and Developer's subcontractors of all tiers.
- (iii) Negotiate contracts and agreements for all contracted services, including site development, architectural, construction, engineering, testing and consulting services, and provide written recommendations to the City to approve contracts or agreements.
- (iv) Coordinate the services and activities of the General Contractor, Architect, and the Lower-Tier Subcontractors and Suppliers, to facilitate cooperative efforts in the development and implementation of the Project Plan.
- (v) Negotiate any documents, instruments or agreements or amendments thereto necessary or appropriate for the implementation of the Project and services related thereto, to the extent such documents, instruments or agreements, or amendments thereto, are consistent with the Project Plan. Except as otherwise provided in this Agreement, all material documents, instruments, agreements or amendments are subject to the reasonable approval of the City.

2. Management Control Procedures

- (i) Coordinate the performance of all budgeting, billing and payment application review/assimilation functions as necessary or appropriate for and in connection with the coordination of the design and construction activities being conducted pursuant to the Project Plan. Such functions shall include, without limitation, the preparation and submittal to the City of a monthly single, comprehensive application for payment in form and substance satisfactory to the City, representing work completed in accordance with Article 9 of the General Conditions. The form of application for payment shall include and incorporate, without limitation, the Developer's pay application for any period in which the Developer has submitted such application for payment for work performed. The form of application for payment shall also include (i) a statement of the Development Services Fee for such month, (ii) a statement of Developer's Reimbursable Expenses for such month, (iii) invoices establishing all other payables for such month, and (iv) such lien releases and other documentation as may be required for payment in accordance with the terms of the agreements with the Architect, General Contractor, Lower Tier Subcontractors, and any other Project team members.
- (ii) Establish and implement administration and reporting procedures for the Project, including finance, budget and cost controls, ~~as well as supervision of accounting.~~
- (iii) Coordinate the development and implementation of a procedure/system of Project cost control and track actual and projected costs.
- (iv) Oversee the activities of the Subcontractors regarding their performance in accordance with their respective agreements. Upon receipt of knowledge thereof, notify the City of all material deviations and coordinate the implementation of the necessary procedures to rectify the same.
- (v) Coordinate the scheduling of meetings on a regular basis, or more frequently as the City may reasonably elect, among the City, the Architect, the General Contractor and such other parties as the City may deem necessary or appropriate concerning the Project.
- (vi) Consistent with industry standards for similar projects, monitor, manage and oversee the Architect's work throughout design and construction of the Project.

EXHIBIT C

- (vii) Consistent with industry standards for similar projects, monitor, manage and oversee the General Contractor's work throughout design and construction of the Project.
- (viii) Review, monitor, and certify the correctness of the General Contractor's monthly construction cost report of expenditures for the Project on a monthly basis.
- (ix) Review the Project Budget, as compared to actual expenditures, throughout the construction of the Project and advise the City if Developer reasonably believes that the total Project Costs are likely to exceed the amounts set forth in the Project Budget and, if such is the case, Developer shall use commercially reasonable efforts to provide the City with proposed alternatives in order to keep the total costs below those set forth in the Project Budget.

3. Timing and Scheduling

- (i) Coordinate the development and updating of appropriate Project schedules, including a critical path analysis.
- (ii) Oversee the coordination of the individual timing schedules of all Project participants so as to conform to the overall Project Schedule and manage any necessary adjustments.
- (iii) Monitor the Project participants in order to confirm that their individual work capacities and performances continually conform to the overall Project Schedule.
- (iv) Endeavor to identify appropriate opportunities for "fast-tracking" the overall Project Schedule, evaluate the costs and benefits of such strategies and provide the City with Developer's recommendations. Endeavor to identify schedule impacts and prepare recovery strategies and budget of costs relating thereto.

4. Reporting

- (i) Conduct Project meetings; review and comment on reports delivered by others.
- (ii) Keep the City informed of all material internal and external Project related matters by initiating and distributing relevant information. The level and detail of such information will be mutually reviewed as the Project progresses.

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- (iii) Use good faith diligent efforts to inform the City of all upcoming meetings in a timely manner.

II. PHASES OF WORK

PART 1 - DESIGN PHASES

1.01 GENERAL REQUIREMENTS

- A. Developer shall not commence the Design Phases outlined below, ~~which includes Site Work (abatement, demolition, grading, sitework and piles), until the City issues a Notice to Proceed ("NTP") with Design.~~
- B. Developer shall not commence the Site Work until the City issues a Notice to Proceed ("NTP") ~~for~~ Representative provides written authorization to commence the Site Work.
- C. Throughout all design phases, Developer shall collaborate with the Project Team and shall update all submitted plans, schedules, and reports.
- D. Developer shall provide a schedule indicating the critical path for the Project duration and update this schedule throughout all design phases.

1.02 CONCEPTUAL DESIGN PHASE

A. Based on the Criteria Package, Developer shall develop the Conceptual Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% Conceptual Design Documents package will become the revised, final Criteria Package as provided in Exhibit B and shall include at a minimum:

- 1. Architectural site plans, floor plans with general blocking of uses showing target adjacencies, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), and pedestrian access/egress, in general conformance with the City's required Program.

1.03 SCHEMATIC DESIGN PHASE

- A. Based on the Criteria Package, Developer shall develop the 100% Schematic Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% SD package shall include at a minimum:
 - 1. Architectural site, floor plans, reflected ceiling, and equipment plans, exterior and interior elevations, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), pedestrian access/egress, etc.

EXHIBIT C

2. Interior design plans and other supporting documents to illustrate the graphic design layouts.
 3. Refined building systems, material, and products selections.
 4. Refined MEP, Special Systems, Fire Protection, and Exterior Skin and other systems floor plans, diagrams and text to describe these systems.
- B. Developer shall develop BIM Model for detailed MEP, Special Systems, and other systems floor plans, diagrams, and text to describe these systems
 - C. Prepare a Schematic Design phase report to document and summarize the Schematic Design phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.
 - D. Developer shall perform and document constructability review.
 - E. Prepare initial trade bid packages (BIM model (if applicable), drawings, specifications, instructions to bidders).

1.04 DESIGN DEVELOPMENT PHASE

- A. Developer shall refine the approved 100% Schematic Design Documents to fully integrate all required Project design elements and issue a ~~50% and 100%~~ Design Development Package, in order to provide sufficient information to develop the Construction Documents for the Trade Packages. The City shall approve the ~~50% and 100%~~ Design Development PackagesPackage within 10 working days of delivery of the respective ~~100%~~ Design Development PackagesPackage to the City. Additionally, the parties agree that Developer may re-allocate the time allowed for the City's review of the 50% Design Development Drawing Package (which is no longer required) to conducting a value engineering exercise (with the participation of the entire design team), for the purpose of achieving a reduction in projected Project costs.
- B. Update BIM Models.
- C. Document the constructability review, including an evaluation of the design documents to identify value engineering opportunities, identification of long lead items, availability of labor, and other factors affecting construction.
- D. Prepare a Design Development phase report to document and summarize the Design Development phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

1.05 CONSTRUCTION DOCUMENTS PHASE

- A. Based on the approved Design Development documents, Developer shall prepare 50% and 100% Construction Documents to fully describe the Work for each Trade Package that, at a minimum, should include drawings, diagrams, calculations, 3D models, renderings, schedules, and a Project Manual that includes the General and Supplementary Conditions, Divisions 00 and 01, and Technical Specifications. The

EXHIBIT C

City Representative shall provide all City comments on the 50% and 100% CD packages within 10 working days.

- B. In accordance with the provisions of Section 1.10, Developer shall ~~obtain and document all required approvals~~ apply for all primary permits for the Construction Documents from regulatory authorities having jurisdiction over the Project, which are necessary to obtain a Temporary Certificate of Occupancy. This includes the Site Permit, Demo Permit, Addenda 1-3 (foundation, structural, core-and-shell, interiors, MEP) and permits required by the San Francisco Public Utilities Commission (SFPUC) and the Bureau of Street Management (BSM) and the Bureau of Urban Forestry (BUF). All other permits, including deferred permit submittals, such as Fire Sprinkler, Fire Alarm and Emergency Generator, shall be applied for during the Construction Phase.
- C. Prepare a Construction Document phase report to document and summarize the Construction Document phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

PART 2 - CONSTRUCTION PHASE

2.01 GENERAL SCOPE OF WORK

- A. Developer shall not commence with the Construction Phase unless and until the city issues a Notice To Proceed with Construction.
- B. Developer shall furnish and install mock ups as identified and determined during Programming for performance, acceptance of size, circulation, and FF&E as determined in the approved Project Schedule. The mock-ups may be constructed in-place and/or off-site as determined during Programming.
- C. Construction Work activities will be authorized by the City upon award of each Trade Package Set. Developer shall perform all Work and construction administration services necessary to achieve an exceptional project outcome that meets the Programming Phase requirements with approved deviances; construct the Project in accordance with the design-build delivery method; and render the Project with all its components operational, functional, and usable.
- D. Developer shall plan for authorities with jurisdiction to inspect the Work. The City Representative has final authority over coordination, use of premises, and access to site.
- E. Developer shall provide qualified staff to manage construction as required by the Contract Documents, including:
 - 1. Administration: Developer shall provide required administrative services.
 - 2. Superintendence: Developer shall provide a qualified management team.
 - 3. Quality Control: Developer shall implement a Quality Control (QC) Program.
 - 4. Cost Control: Developer shall provide cost estimating, cost control, and cost management.

EXHIBIT C

5. Scheduling: Continuous updating of the critical path schedule in conformance with requirements in the Contract Documents.
 6. Reporting: Developer shall provide reporting services related to cost, schedule, and critical issues facing the Project.
 7. Document Control/Project Records: Developer shall provide Document Control services and maintain Project Records.
 8. Project Meetings: Developer shall schedule and attend weekly Project meetings.
 9. Security: Developer shall secure the Project site and Work.
- F. Developer shall perform the Work in phases and utilize Trade Packages as needed to achieve the Project schedule.
- G. Developer shall report on the progress of the Project including information on Developer and its Architect's and General Developer's Work, percentage of completion of the Work, current estimates, forecasted contract growth, subcontract buyouts, updated monthly schedules, including projected time to completion and estimated cost to complete the Work, digital progress photographs, logs for Requests for Information, submittals and shop drawings, pending and approved change orders, meetings minutes, and other project metrics as requested by the City.
- H. Developer shall develop and implement a process to procure Trade Packages in conformance with the Contract Documents:
1. Maximize both competition and the involvement of small businesses.
 2. Develop subcontractor and supplier interest for each division of the Work.
 3. Use best efforts to obtain bids for each Trade Package that are less than the final cost estimates.
 4. ~~Conduct~~If required by the City Representative, conduct bid openings in the presence of the City Representative. All bid documents shall be circulated and viewed by those present. Developer shall provide the City with a copy of its preliminary bid tabulation and, if requested, a copy of all bids.
 5. Determine final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items.
 6. Prepare and furnish to the City a final bid tabulation summary that includes by subcontract, trade and/or bid division, the applicable final estimated cost and the related final bid amount and the details of all scope clarifications for City's review and approval.
 7. Identify to the City in writing the subcontractors to which the Developer recommends award of subcontracts, and when authorized by the City, award and enter into subcontracts.

EXHIBIT C

- I. Developer shall maintain systems and equipment. Developer shall provide services and maintain all equipment in accordance with manufactures instructions until such time as the City receives and takes over the equipment in the activation phase.

2.02 ACTIVATION/COMMISSIONING /MAINTENANCE TRAINING PHASE

- A. Developer is responsible for performing the requirements of the commissioning process including those responsibilities assigned to subconsultants, subcontractors, vendors, manufacturers, or their representatives. The Developer shall insure that all subconsultants, subcontracts or purchase orders for systems, inclusive of all of the system components to be commissioned, include provisions for compliance with this Document.
- B. The requirements of this Document are additional to the requirements of the General Conditions. If this Document requires additional labor, coordination, or documentation, including submittal data, the Developer shall comply with this Document and if any requirement of this Document conflicts with other provisions of the Contract requirements, the Developer shall request formal clarification of the Contract requirements.
- C. Under the Direction of the City, Developer shall commission all systems and equipment in order to achieve the following specific objectives:
 1. Verify and document that the building enclosure, systems and equipment are documented in the Design and Construction Documents in accordance with the Criteria Package.
 2. Verify and document that equipment is designed, installed, started, and operates properly pursuant to the requirements of the Contract and manufacturer's specifications, instructions and recommendations.
 3. Verify and document building enclosure mockups and installation perform as designed and as intended.
 4. Identify deficient building enclosure, equipment, systems and installations as early as possible to facilitate timely corrective action minimizing schedule impact.
 5. Verify and document that the building enclosure, equipment, and systems receive complete operational checkout by installing subcontractors, vendors and manufacturers.
 6. Verify and document building enclosure, equipment and system performance.
 7. Verify and validate that the City's operating personnel are adequately trained on the Operation and Maintenance of building equipment and systems.
 8. Verify Operations and Maintenance Data for systems and equipment is complete and usable, and provided in the format as required by the City.
- D. The commissioning process does not reduce the responsibility of the Developer, its Architect or subconsultants, General Contractor or its subcontractors, or vendors to perform and complete all Work in accordance with the requirements of the Contract.

EXHIBIT C

2.03 SUBSTANTIAL COMPLETION

- A. Prior to Substantial Completion, Developer shall submit all Equipment Inventory Sheets
- B. In advance of Substantial Completion, Developer shall obtain the Temporary Certificate of Occupancy.
- C. Developer shall demobilize from the Project Site.

2.04 FINAL COMPLETION

In advance of Final Completion, Developer shall ~~complete all~~ assist with Central Shops' move in/fit out of the FF&E and for the entire Project and shall complete all Site work, and ~~shall complete all~~ equipment, hardware, and software training for maintenance staff. Developer shall obtain the Final Certificate of Occupancy.

EXHIBIT D

PROJECT SCHEDULE – WORK BY PHASE

The Project will be accomplished in two phases: (1) the Design-Phase One; and (2) the Construction-Phase Two. The Design-Phase shall One may include commencement of Site Work at the Selby-Galvez and/or 450 Toland Development Sites comprising abatement, demolition, grading, sitework and piles. At the time this Agreement is executed, only the Design Phase will have been approved by the City's Board of Supervisors, which shall continue in Phase Two. Site Work commencing in Phase One shall include a portion of:

Prior to or upon City's approval of the 50% Construction Documents, Developer shall propose a Guaranteed Maximum Price ("GMP") for Phase Two construction Work to the City which shall be incorporated into a Phase Two Budget proposal. The proposed Phase Two Budget shall include all costs necessary for the Developer to complete and Deliver the Project to the City in conformance with all requirements of the Agreement. The Parties agree to negotiate in good faith to reach agreement on the GMP and any other Phase Two Budget line items.

- (i) General Requirements,
- (ii) Preparation of shop drawings and submittals
- (iii) Procurement, fabrication and testing of materials and equipment
- (iv) Mobilize, fence and barricade sites
- (v) Site Utilities
- (vi) Demolition
- (vii) Abatement
- (viii) Grading
- (ix) Exterior envelope modifications
- (x) Structural Upgrades and Slab Modifications
- (xi) MEP Rough-In
- (xii) Wall Framing
- (xiii) Roofing

Proceeding with the Construction-Phase Two requires the approval of the City's Board of Supervisors of the Phase Two Budget and approval for the City to issue the NTP with construction for Phase Two. If the City does not issue a NTP with construction for Phase Two,

EXHIBIT D

the Agreement shall be terminated under the provisions authorizing Termination by the City for Convenience (General Conditions, Article 14.03).

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EXHIBIT D

EXHIBIT D

Line	Name	Duration	Start	Finish	2016												2017												2018											
					M	A	M	J	J	A	S	O	N	D	J	F	F	A	M	J	J	A	S	O	N	D	J	F	F	A	M	J	J	A						
162	Approve/Contract CMU	23d	03/31/17	04/26/17																																				
163	Approve/Contract Site Utilities	23d	03/31/17	04/24/17																																				
164	Approve/Contract Equipment & Specialties	26d	04/04/17	05/03/17																																				
165	Approve/Contract Tile	26d	04/04/17	05/03/17																																				
166	Approve/Contract Furnishings	26d	04/04/17	05/03/17																																				
167	Approve/Contract Site Fencing	26d	04/04/17	05/03/17																																				
168	Approve/Contract Flooring	26d	04/04/17	05/03/17																																				
169	Approve/Contract Painting	26d	04/04/17	05/03/17																																				
170	Approve/Contract Acoustic Ceiling	26d	04/04/17	05/03/17																																				
171	Approve/Contract Landscape & Hardscape	26d	04/04/17	05/03/17																																				
172	Approve/Contract Rough Carpentry	26d	04/04/17	05/03/17																																				
173	Submittals Procurement																																							
174	Design/Review Submittal/Review																																							
175	Design/Submit Precast Panels Calculations Package	5d	09/15/16	12/11/16																																				
176	Design/Submit Precast Panels Shop Drawings	45d	10/03/16	12/12/16																																				
177	Design/Submit Review Concrete Pile	5d	10/28/16	01/20/17																																				
178	Design/Submit Precast Panels Fabrication Drawings/Shop Tickets	57d	12/01/16	02/04/17																																				
179	Review Precast Panels Design/Calculations Package	16d	12/02/16	12/23/16																																				
180	Review Precast Panels Shop Drawings	5d	12/17/16	12/23/16																																				
181	Coordinate Precast Shop Drawings with MEPS Trades	8d	12/13/16	12/23/16																																				
182	Review Cases & Shop Drawings for Precast Panel Addendum Submittal	15d	12/27/16	01/10/17																																				
183	Review Concrete Piles	10d	01/12/17	02/03/17																																				
184	Submit/Review Mechanical & Plumbing Product Data	23d	01/27/17	02/20/17																																				
185	Submit/Review Electrical Product Data	23d	01/27/17	02/20/17																																				
186	Submit/Review Fire Sprinkler Product Data	23d	01/27/17	02/20/17																																				
187	Submit/Review Mechanical & Plumbing Equipment	23d	02/07/17	03/06/17																																				
188	Submit/Review Electrical Equipment	23d	02/07/17	03/06/17																																				
189	Submit/Review Fire Sprinkler Equipment	23d	02/07/17	03/06/17																																				

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Item	Name	Duration	Start	Finish	Floor	2016												2017												2018																								
						M	A	M	J	J	A	S	O	N	D	J	F	N	A	M	J	J	A	S	O	N	D	J	F	N	A	M	J	J	A																			
Foundations & Slab on Grade																																																						
276	Excavate Foundation area 1 - S/G	5d	08/12/17	08/22/17																																																		
277	Excavate Foundation area 2 - S/G	5d	08/23/17	08/29/17	5d																																																	
278	FRP Foundation Area 1 - S/G	15d	08/23/17	09/14/17																																																		
279	Excavate Foundation area 3 - S/G	5d	08/30/17	09/07/17	10d																																																	
280	FRP Foundation Area 2 - S/G	15d	09/08/17	10/02/17																																																		
281	FRP Foundation Area 3 - S/G	15d	09/22/17	10/17/17																																																		
Structure																																																						
Structure																																																						
283	Prep & Connections for Precast Panels - S/G	15d	06/29/17	11/01/17	5d																																																	
284	Erect Precast Panels Structure - S/G	15d	10/12/17	11/02/17																																																		
285	Align and Grout Precast Panels - S/G	15d	10/20/17	11/09/17	5d																																																	
286	Install Steel Columns and Beams Framing Structure - S/G	20d	11/02/17	12/04/17																																																		
287	Intermediate Framing & Sheathing - S/G	20d	11/17/17	12/18/17																																																		
288	FRP Mezzanine Slab on M/G Deck - S/G	15d	12/13/17	01/04/18																																																		
Roof Work																																																						
Roof Work																																																						
290	Complete Roof/PN Structures - S/G	10d	12/19/17	01/07/18	1d																																																	
291	Install Roof Membrane/Fishings - S/G	20d	12/27/17	01/22/18	2d																																																	
292	Install Roofing Equipment - S/G	20d	01/26/18	02/23/18	2d																																																	
Interior Finishes																																																						
Interior Finishes																																																						
294	Build out Elevator shaft - S/G	10d	01/04/18	01/18/18	27d																																																	
295	Interior Finishes Rough-in - S/G	25d	01/09/18	02/09/18																																																		
296	Interior Finishes Buildout - S/G	55d	01/30/18	04/17/18																																																		
Exterior Finishes																																																						
Exterior Finishes																																																						
298	Dry Finish Precast Panels Outside - S/G	20d	11/10/17	12/10/17	32d																																																	
299	Exterior Finishes - S/G	45d	12/17/17	02/06/18	32d																																																	
Vertical Transportation																																																						

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Line	Name	Duration	Start	Finish	Phas	2016												2017												2018											
						M	A	M	J	J	A	S	O	N	D	J	F	H	A	M	J	J	A	S	O	N	D	J	F	H	A	M	J	J	A						
329	Paint Walk Shop Spaces	150	08/24/17	08/24/17	930																																			<input type="checkbox"/>	
330	Framing Support for Mechanical Equipment	230	08/25/17	08/25/17	600																																	<input type="checkbox"/>			
330	Framing Supports for Skylights	100	08/24/17	10/01/17	600																																<input type="checkbox"/>				
332	Roof Work																																								
328	Install Roof Membrane/Fashings - Totl	230	10/01/17	11/06/17	850																																<input type="checkbox"/>				
329	Install Rooftop Equipment - Totl	50	11/07/17	11/21/17	850																																<input type="checkbox"/>				
330	Install Skylights	130	11/07/17	11/20/17	950																																<input type="checkbox"/>				
331	Connect Rooftop Equipment	150	11/14/17	12/04/17	850																																<input type="checkbox"/>				
332	Interior Finishes																																								
333	MDFPS Rough In Ceilings Non-Shop Spaces - Totl	100	08/29/17	09/11/17	730																																<input type="checkbox"/>				
334	Frame Interior Walls - Totl	190	09/12/17	09/23/17	730																																<input type="checkbox"/>				
335	MDFPS Rough In Interior Walls - Totl	150	10/20/17	10/10/17	730																																<input type="checkbox"/>				
336	Framing for Misc Metal Industrial Equipment Support	800	10/10/17	10/20/17	700																																<input type="checkbox"/>				
337	MDFPS Rough In Shop Ceilings	300	10/11/17	11/20/17	800																															<input type="checkbox"/>					
338	Close & Tape Interior Walls - Totl	150	10/11/17	11/06/17	730																															<input type="checkbox"/>					
339	Install Misc Metal for Industrial Equipment Support	100	10/24/17	11/06/17	730																																<input type="checkbox"/>				
340	Install Interior DFH	130	11/01/17	11/09/17	830																																<input type="checkbox"/>				
341	Install Industrial Equipment	230	11/21/17	12/21/17	600																																<input type="checkbox"/>				
342	Paint Walls & Ceilings Non-Shop Spaces - Totl	50	11/21/17	11/29/17	730																																<input type="checkbox"/>				
343	MDFPS Finishes	100	11/29/17	12/13/17	830																																<input type="checkbox"/>				
344	Install Misc Finishes	230	11/29/17	12/29/17	700																																<input type="checkbox"/>				
345	Install Interior Windows	100	11/30/17	12/13/17	830																																<input type="checkbox"/>				
346	Connect Industrial Equipment	150	12/21/17	01/12/18	600																																<input type="checkbox"/>				
347	Exterior Finishes																																								
348	Install Openings at South Elevation	150	10/10/17	10/31/17	750																																<input type="checkbox"/>				
349	Install Opening Framing at South Elevation	100	10/31/17	11/21/17	750																																<input type="checkbox"/>				
350	Sawcut Openings at South Elevation	50	11/14/17	11/20/17	750																																<input type="checkbox"/>				



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Reserved

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INSURANCE REQUIREMENTS

1.1 SUMMARY

- A. This Document includes insurance requirements, which amend Article 10 of the General Conditions.

1.2 DEVELOPER'S LIABILITY INSURANCE

- A. Developer shall maintain in full force and effect, for the period covered by the Contract (except for the Builder's Risk insurance described in Section 1.3, below), the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
 - 1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors of every tier.
 - 2. Commercial General Liability insurance with limits not less than \$2,000,000.00 each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage,, and completed operations.
 - 3. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.
- B. Approval of Developer's insurance by the City will not relieve or decrease the liability of Developer under this Agreement. The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase.

1.3 ADDITIONAL COVERAGES

- A. Builder's Risk Insurance: Developer shall provide "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis as follows:
 - 1. Amount of Coverage: The amount of coverage shall be equal to the Project's full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," such as but not limited to design and engineering fees, code updates,

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permits, bonds, insurances, and inspection costs caused by an insured peril; the policy may limit the amount for soft costs but such limit shall not be less than 5% of the coverage amount. The Builder's Risk Insurance shall also include the full replacement cost of all City-furnished equipment, if any.

2. Period of Coverage: Developer shall provide evidence of Builder's Risk Insurance coverage in accordance with the requirements set forth herein within five (5) days of City's issuance of the Notice to Proceed ~~written authorization to proceed with the Site Work (in Phase One).~~
3. Additional Premium: If, due to change orders or project term extensions authorized by the City, the Builder's Risk policy becomes subject to additional premium, the City will reimburse Developer the actual cost of such additional premium, without markup, provided that the Developer submits to the City proof of payment of such additional premium and either:
 - (a) copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk Policy is issued on a declared-project basis; or
 - (b) copy of Evidence of Property Insurance if the Builder's Risk policy is placed on a reporting form basis.
4. Parties Covered: The Builder's Risk policy shall identify the City and County of San Francisco as the sole loss payee. The policy shall name as insured the City and County of San Francisco, the Developer and its subcontractors of every tier.

Each insured shall waive all rights of subrogation against each of the other insured to the extent that the loss is covered by the Builder's Risk Insurance.

5. Included Coverage: The Builder's Risk Insurance shall include, but shall not be limited to, the following coverages:
 - (a) All damages or loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction Site and temporary structures.
 - (b) The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and water damage.
 - (c) The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and any applicable law, ordinance, or regulation. Limit for such coverage shall be no less than 25 per cent of full construction value.
 - (d) Start up and testing and machinery breakdown including electrical arcing.
 - (e) Consequential loss (lost revenues and costs of funding or financing when a covered risk causes delay in completing the Work). In the event the City receives coverage specifically for a consequential loss associated

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with delay to the completion of the Project, such specific amount shall be credited against any liquidated damages for delay for which the Developer would otherwise be responsible.

6. Deductibles: The Builder's Risk Insurance may have a deductible clause not to exceed the amounts below. Developer shall be responsible for paying any and all deductible costs. The deductible for coverage of All Perils shall not exceed the following:
 - (a) \$10,000 for projects valued up to \$25,000,000;
 - (b) \$25,000 deductible for projects valued in excess of \$25,000,000 and up to \$75,000,000; and
 - (c) \$50,000 deductible for projects valued in excess of \$75,000,000.

- B. Professional Liability Insurance: In the event that Developer employs professional architectural, engineering or land surveyor services for performing Project design, field engineering or preparing design calculations, plans and specifications, Developer shall require the retained architects, engineers and land surveyors to carry professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Developer's professional liability policy shall not have an exclusion for environmental compliance management or construction management professionals.

- C. During all phases of construction activities, Developer shall require Developer's contractor to maintain the following type of coverage with the limits specified as follows or coverages as required by laws and regulations, whichever is greater.
 1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors of every tier.

 2. Commercial General Liability insurance with limits not less than \$10,000,000.00 each occurrence, and not less than \$20,000,000 aggregate combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage,, and completed operations. If proximity to nearby rail lines generates a need for Railroad Protective Liability coverage, it shall be in the amounts required by owners/operators of the rail lines.

 3. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force,

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throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$2,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

4. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.
- D. The City reserves the right to require an increase in the Developer's contractor's insurance coverage in the event the City determines that conditions show cause for an increase.

1.4 INSURANCE FOR OTHERS

- A. For general liability and automobile liability insurance, Developer shall include as additional insured, the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
- B. General /Auto Liability policies shall:
1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees as well as others as required by contract and must include coverage for bodily injury and property damage.
 2. Developer agrees to waive subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation

1.5 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Developer's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. Developer will be allowed a maximum of 5 working days, after the date on which the Contract is awarded, in which to deliver appropriate bond and insurance certificates and endorsements.
- B. Approval of the insurance by the City shall not relieve or decrease the extent to which Developer or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Developer shall be responsible for all losses

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not covered by the policy, excluding damage caused by earthquake and flood consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.

- C. The Developer and its Subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Developer and all of its Subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- D. Liability insurance, with an allowable exception for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
- E. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
- F. Should any of the required insurance be provided under a claims-made form, Developer shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 5 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- G. Each such policy shall be endorsed to provide thirty (30) days advance written notice to the City of reduction or non-renewal of coverages or cancellation of coverages for any reason. All notices shall be made to:

City and County of San Francisco
San Francisco Public Works
1155 Market Street, 4th Floor
San Francisco, CA 94103
Attn: Contract Analyst
Re: Central Shops Project

- H. Developer, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the

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effective date of such cancellation, change or expiration, with a complete copy of the new or renewed policy.

- I. If, at any time during the life of this Contract, Developer fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until the Developer's notice is received by the City as provided in the immediately preceding Subparagraph "H" informing the City that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.
- J. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Contract.

1.6 QUALIFICATIONS

- A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

END OF DOCUMENT

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CITY REQUIREMENTS

1. Non Discrimination in the City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Agreement, Developer agrees not to discriminate against any employee of, any City employee working with Developer, or applicant for employment with Developer, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts

Developer shall include in all contracts and subcontracts relating to the Project a nondiscrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Developer shall incorporate by reference in all subcontracts the provisions of sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors and subcontractors of every tier to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits

Developer does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in section 12B.2(b) of the San Francisco Administrative Code.

(d) CMD Form

As a condition to this Agreement, Developer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting

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documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (the "CMD"). Developer hereby represents that before execution of the Agreement:

(a) Developer executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (b) the CMD approved such form.

2. Tropical Hardwood and Virgin Redwood Ban

(a) Except as expressly permitted by the application of sections 802(b) and 803(b) of the San Francisco Environment Code, neither Developer nor any of its Developers shall provide any items to the City in the construction of the Project or otherwise in the performance of this Agreement which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) In the event Developer fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Developer shall be liable for liquidated damages for each violation in an amount equal to Developer's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Developer acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Developer from any contract with the City and County of San Francisco.

3. Labor Requirements for Construction

(a) Applicable Labor Laws and Agreements. Compensation and working conditions for labor performed or services rendered (excluding professional design services) under the Project Contracts shall be in accordance with the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E). The requirements of this Section 3 (collectively, the "Labor Requirements") shall be included in all Project Contracts (as applicable), and subcontracts relating to the work, as applicable, unless otherwise agreed to by the City. The Project Contracts shall expressly acknowledge the City's right to monitor and enforce the Labor Requirements in all respects and at all times, and to the withhold payments when permitted under the provisions of the Labor Requirements.

(b) Prevailing Wages. The Project Contracts shall require payment of the latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors, as same may be changed during the term of this Agreement. Each Developer shall provide, and shall deliver to the City every month during any construction period, certified payroll reports with respect to all persons performing labor in the provision of the work. Copies of the latest prevailing wage rates are on file at the Department of Public Works, the City and County of San Francisco, Bureau Manager, Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, CA, 94103.

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(c) Penalties. The Construction Contract shall provide for payment to the City back wages due plus fifty dollars (\$50.00), for: (i) each laborer, workman, or mechanic employed in the provision of the work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or (ii) each laborer, mechanic or artisan employed in the provision of the work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

(d) Local Hire, First Source and LBE Requirements. The Construction Contract shall require compliance, as applicable, with the Local Hire, First Source and LBE requirements set forth in Exhibit I, unless otherwise agreed to by the City.

4. Rights and Remedies During Construction

(a) General. The provisions of the Project Contract shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the parties to the Project Contract, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Project Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

(b) No Waiver. No waiver of any breach of any provision of the Project Contract shall be held to be a waiver of any other or subsequent breach. The only waiver by the City shall be a waiver in writing that explicitly states the item or right being waived.

(c) City's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22(M), a Developer that fails to comply with the terms of the Project Contract, who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), submits false claims, or violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Project Contract, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, a Developer that submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

(d) Interpretation. The Project Contract shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code.

5. Sunshine Ordinance

Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code

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section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

6. MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

8. Conflicts of Interest

Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and section 87100 et seq. and section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Developer becomes aware of any such fact during the term of this Agreement, Developer shall immediately notify the City.

9. Notification of Limitations on Contributions

Through its execution of this Agreement, Developer acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a the City elective officer, the board on which that the City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each Developer; each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

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Developer further agrees to provide to the City the name of each person, entity or committee described above.

10. Compliance with Laws

Developer shall remain fully informed of and comply with the applicable provisions of the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the work, and all federal and state laws and regulations in any manner affecting the contract documents, the performance of the work, or those persons engaged therein. Developer shall require compliance with the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Code specified in the contract documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. Architect and General Developer shall comply with the applicable provisions of San Francisco Administrative Code Chapter 6 that are incorporated into the Architect Contract and the Construction Contract, respectively.

11. First Source Hiring Program

Developer must comply with the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, and as set forth in Exhibit I hereto, and Developer is subject to the enforcement and penalty provisions in Chapter 83.

12. Preservative-Treated Wood Containing Arsenic

Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

EXHIBIT G

13. Resource Efficient City Buildings and Pilot Projects

Developer acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Developer hereby agrees that it shall comply with all applicable provisions of such code sections.

14. Liability for Use of Equipment

The City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Developer, or any of its Subcontractors, or any Lower-Tier Subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by the City.

15. Copyright Infringement

Developer shall indemnify, defend and hold the City harmless from and against all claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City of the materials or work provided by Developer.

EXHIBIT G

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EXHIBIT H

DESIGN PROFESSIONAL CONTRACT PROVISIONS

Developer shall include the following terms and conditions in all Design Professional contracts that Developer enters into as part of the Project:

1. Design Professional Services

- A. This provision sets forth basic Design Professional services to be provided by Architect or other Design Professional for the Project. Refer to the Agreement and the Criteria Package for additional, project-specific requirements.
- B. The Design Professionals shall be licensed in the State of California and shall have the necessary expertise and experience required to prepare such design documents to permit the General Contractor to complete its Work in accordance with the requirements of the Contract Documents.
 - 1. All design work shall be performed and stamped by licensed architects or engineers, as appropriate.
- C. Design Professionals may be replaced only with the approval of the City.
- D. The standard of care for all design services performed or furnished under the Agreement will be the care and skill ordinarily used by members of the engineering or architectural professions practicing under similar conditions, for projects of similar size and complexity, at the same time and locality. Notwithstanding the above, in the event that the Contract Documents specify that portions of the work be performed in accordance with specific performance standards, the design services shall be performed so as to achieve such specific standards.
- E. Design Professionals to be responsible without limitation for the following:
 - 1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.
 - 2. Before undertaking each part of the work, review the Contract Documents, including the Criteria Package, and existing reference documents and studies of the proposed site and other data furnished to the Design Professional, and advise the City and Developer whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Architect shall notify the Developer in writing promptly upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect.
 - 3. Request additional surveys, studies, investigations, reports and information related to the site, which the Design Professional deems necessary for the performance of the work.
 - 4. Provide design-related services for preparing Schematic Design ("SD"), Design Development ("DD"), and Construction Documents necessary for the General

EXHIBIT H

Contractor to construct and interface the Item(s) in complete conformance with the intent and performance requirements of the Contract Documents.

- a. Architect shall submit SD, DD, and Construction Documents to the City for review and acceptance for conformance with the intent and performance requirements of the Contract Documents. Construction Documents shall be submitted to the City for review and acceptance before initiating permit or construction activities based on such Construction Documents.
 - b. The City's review, approval or acceptance of SD, DD, and Construction Documents submitted by Developer and its Architect shall neither release Developer from its responsibilities to coordinate the various portions of the design and to provide accurate and complete design documents to fulfill the intent and requirements of the Contract Documents, nor transfer any design liability from Developer to City.
 - c. All SD, DD and Construction Documents, including CADD and other computer discs prepared by Developer's Design Professionals, and all other documents prepared by Architect or its subconsultants in connection with Design Professional services, shall be made and remain the property of the City, except as otherwise provided in the Agreement. Developer will provide the City with software that will allow the City to view the electronic CADD files. The ability to view the files is required; the ability to alter the files is not intended.
 - d. The SD, DD and Construction Documents will be prepared for the Work of the Agreement only. Any unauthorized use of the SD, DD and Construction Documents is at the sole liability of the user. The City and Developer may make and retain copies of the SD, DD, and Construction Documents for information and reference in connection with the use and occupancy of the Project by the City.
5. Comply with requirements of codes, regulations, and written interpretation thereof, existing at the time permit application(s) are made with the local authorities having jurisdiction over the Project.
 6. Provide Design Professional's professional liability insurance policies and coverages as required.
 7. Provide assistance in connection with the commissioning, start-up, testing, refining and adjusting of equipment or system designed by the Design Professional for incorporation into the Project.
 8. Assist the City in training staff and developing processes and procedures for operation, maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.
- F. Developer shall be wholly responsible for all engineering and design of all Items required to be designed by Architect regardless of any contribution, input, review, participation, or

EXHIBIT H

coordination that the City, its agents, members, employees, and authorized representatives may have provided to Developer or its Architect or General Contractor.

G. At all times during the design of the Project, the City and its representatives shall have full access to design documents and design meetings.

H. If, in connection with the Design Professional services, Developer, General Contractor, Architect or their subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City (subject to Developer's rights under the Agreement). If it is ever determined that any such works are not works for hire under U.S. law, Developer hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. Developer shall include in its subcontracts with its Subcontractors provisions to make the Subcontractors subject to this paragraph. With the approval of the City, Developer, General Contractor and Architect, as applicable, may retain and use copies of such works for reference and as documentation of its experience and capabilities.

2. Insurance. Design Professional shall maintain in force, during the full term of its agreement, insurance in the amounts and coverages specified in the Contract Documents, and name as additional insureds the City and County of San Francisco, its Officers, Agents, and Employees.

3. Indemnification.

a. General. To the fullest extent permitted by law, Architect shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Architect or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Architect, any subconsultant to the Architect, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. Limitations. No insurance policy covering the Architect's performance under this Agreement shall operate to limit the Architect's liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Architect assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the subcontractor of any Indemnitee.

c. Copyright infringement. Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade

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secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Architect's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

EXHIBIT H

EXHIBIT I

LOCAL HIRE, FIRST SOURCE AND LOCAL BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS

1. Local Hiring Requirement.

1.1. General Provisions.

- 1.1.1. Developer shall comply with all applicable requirements of the San Francisco Local Hiring Policy for Construction (“Policy”) as set forth in section 6.22(G) of the San Francisco Administrative Code. The provisions of the Policy are incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the Policy.
- 1.1.2. Developer shall require the General Contractor and all subcontractors of every tier performing construction work on behalf of the Developer as part of the Project to comply with all applicable requirements of the Policy.
- 1.1.3. Developer agrees that the Office of Economic and Workforce Development (“OEWD”) will have the authority to enforce all terms of the Policy. Further information on the Policy and its implementation may be found at the OEWD website at: www.workforcedevelopmentsf.org.

1.2. Local Hire Requirements. Developer shall comply with the following:

- 1.2.1. Local Hire by Construction Trade: Mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.
- 1.2.2. Local Apprentices: At least 50% of the Project Work Hours performed by apprentices within each construction trade shall be performed by local residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Economically Disadvantaged Workers.
- 1.2.3. Construction Contracts: Developer, shall include the terms of this Policy in the contract with the General Contractor and in every construction contract and subcontract entered in to for construction of the Project. Developer shall notify OEWD immediately upon execution of all construction contracts.
- 1.2.4. Preconstruction Meeting: Prior to commencement of construction, Developer and all construction subcontractors shall attend a preconstruction meeting convened OEWD staff. Representatives from Developer and all construction subcontractors who attend the pre-construction meeting must have hiring authority.
- 1.2.5. Forms and Payroll Submittal: General Contractor and all construction subcontractors shall utilize the City’s web based payroll system to submit all of OEWD’s required Local Hiring Forms and Certified Payroll Reports. The General

EXHIBIT I

Contractor shall submit Local Hiring Forms prior to commencement of construction and within 15 calendars days from award of contract. The General Contractor must submit payroll information on all subcontractors who will perform construction work on the Project regardless of tier and contract amount. The General Contractor and all construction subcontractors shall submit Certified Payroll Reports on a weekly basis.

- 1.2.6. Recordkeeping: Developer and all construction subcontractors shall keep, or cause to be kept, for a period of four years from the date of completion of project work, payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the General Contractor or subcontractor hired or retained that worker for work on the project. Developer and all construction subcontractors may verify that a worker is a local resident by following OEWD's domicile policy. All records described in this subsection shall at all times be open to inspection and examination by OEWD.
- 1.2.7. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Developer and all construction subcontractors working on the Project. Developer shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of the Site. Developer and all subcontractors shall also allow representatives of OEWD to have access to employees of Developer and all construction subcontractors and the records required to be maintained under the Policy.
- 1.2.8. Noncompliance and Penalties. Failure of General Contractor and/or its construction subcontractors to comply with the requirements of the Policy may subject Developer to the consequences of noncompliance specified in Section 6.22(G)(7)(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 6.22(G)(7)(f)(ii). In the event the Developer fails to adhere to the penalties administered by OEWD, the Developer will be responsible for penalties for noncompliance. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 6.22(G)(7)(f)(iv) for a description of the recourse procedure applicable to penalty assessments under the Policy.

2. First Source Requirements

2.1. General Provisions and Definitions.

- 2.1.1. Developer shall participate in the Workforce System program managed by the Office of Economic and Workforce Development ("OEWD") as established by the City pursuant to Chapter 83 of the San Francisco Administrative Code ("First Source Hiring Policy"). The provisions of the First Source Hiring Policy are

EXHIBIT I

incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the First Source Hiring Policy.

- 2.1.2. Developer shall require the Architect and all Subcontractors or subcontractors performing professional services in excess of \$50,000 on behalf of the Design-Builder as part of the Project to comply with all applicable requirements of the First Source Hiring Policy.
- 2.2. Developer agrees that OEWD will have the authority to enforce all terms of the First Source Hiring Policy. Further information on the First Source Hiring Policy and its implementation may be found at the OEWD website at:
www.workforcedevelopmentsf.org.
- 2.3. Definitions. For purposes of this section, the following terms shall be defined as follows:
 - 2.3.1. "Entry Level Position" means any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
 - 2.3.2. "Workforce System" means the First Source Hiring Administrator established by the City and managed by OEWD.
 - 2.3.3. "Referral" means a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a specified Entry Level Position.
 - 2.3.4. OEWD Workforce System Participation Requirements. Architect and all professional services subcontractors shall notify OEWD's Business Team of every available Entry Level Position for work performed by the Architect and all professional services subcontractors in the City and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Architect and all professional services consultants and subconsultants shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Architect and all professional services consultants and subconsultants no later than 10 business days after date of interview or hire. Architect and all professional services consultants and subconsultants will also provide feedback on reasons as to why referrals were not hired. Architect and all professional services consultants and subconsultants shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Architect and all professional services consultants and subconsultants. Failure to comply with the terms of the First Source Hiring Policy may result in penalties as defined in Chapter 83 of the Administrative Code.

3. Local Business Enterprise Program Requirements

EXHIBIT I

- 3.1. Purpose. Developer agrees to partner with the Contract Monitoring Division (“CMD”) to provide Local Business Enterprises (“LBE”) with meaningful opportunities to participate in the construction of the Project.
- 3.2. LBE Participation Goal. Developer, on behalf of itself and its General Contractor and Architect, agrees to work with CMD on developing separate LBE Subconsulting and subcontracting goals and to perform good faith efforts (see attached) to award 20% of the cost of all professional services and 20% of the cost of all construction contracts awarded by Developer as part of the Project to small and/or micro LBE businesses certified by CMD pursuant to Chapter 14B of the Administrative Code.
- 3.3. Reporting. Beginning as of the PSA Ratification Date and every quarterly thereafter, Developer shall report in writing to the City Representative with a copy to the Director of CMD a summary of Developer’s attainment of the LBE Participation Goal.

EXHIBIT I

EXHIBIT J

ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES AND OTHER
INTANGIBLE PROPERTY

THIS ASSIGNMENT is made and entered into as of this _____ day of _____, 20_____, (the "Effective Date") by and between _____, a _____ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date, Assignor hereby assigns and transfers to Assignee, and Assignee assumes, all of Assignor's rights, obligations, claims, title, and interest in and under:

- A. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto (the "Parcel") including, without limitation, those warranties and guaranties listed in Schedule 1 attached hereto (collectively, "Warranties");
- B. any intangible personal property now or hereafter owned by Assignor and used in the ownership, use or operation of the Parcel, including the Assumed Contracts listed in Schedule 1.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

- 1. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.
- 3. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
- 4. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
- 5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

By: _____
[NAME]

Its: _____

ASSIGNEE:

CITY AND COUNTY OF SAN
FRANCISCO, a Charter city and county

By: _____
[NAME]

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[DEPUTY'S NAME]
Deputy City Attorney

EXHIBIT K

PARTNERING REQUIREMENTS

PART 1 - GENERAL

1.1 PARTNERING LEVEL

- A. This Project shall incorporate the required partnering elements for **Partnering Level 1**.

1.2 SUMMARY

- A. This Document specifies the requirements for establishing a collaborative partnering process. The partnering process will assist the City and Developer to develop a collaborative environment so that communication, coordination, and cooperation are the norm, and to encourage resolution of conflicts at the lowest responsible management level.
- B. The partnering process is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Developer.
- C. This specification does not supersede or modify any other provisions of the Contract, nor does it reduce or change the respective rights and duties of the City and Developer under the Contract, or supersede contractual procedures for the resolution of disputes.

1.3 DEFINITIONS

- A. **Partnering Charter ("Charter"):** The Charter is the guiding focus for the Project Team. It documents the team's vision and commitment to work openly and cooperatively together toward mutual success during the life of the project. The charter helps to maintain accountability and clarity of agreements made and allows for broader communication of the team's distinct goals and partnering process. The partnering charter includes the following elements:
1. Mutual goals
 2. Partnering maintenance and close-out plan
 3. Dispute resolution plan with Escalation Resolution Ladder
 4. Team commitment statement and signatures
- B. **Collaborative Partnering:** A structured and scalable process made up of elements that develop and grow a culture (value system) of trust among the parties of a construction contract. Together, the combination of elements including the Partnering Charter, Executive Sponsorship, partnering meetings, an accountability tool for the Project Team (Scorecards), and a Facilitator, if employed, create a collaborative atmosphere on each project.
- C. **Core Team Partnering:** On Level Four or greater construction projects, a core team is identified from those Project Team members who are a part of the project for its duration, including the following (not in order of hierarchy):

City:	Developer:
Resident Engineer	Building Superintendent
Project Manager	Project Executive
Construction Manager	Jobsite Supervisor
Engineer, Architect	Project Engineer
Division Manager	Subcontractors
Construction Engineer	Key suppliers
Inspectors	Senior Management (e.g. Area Manager, Operations Manager, VP, President, Owner)
Client Department representative	
Critical third parties: stakeholders, other agencies, utilities, etc., or anyone who could potentially stop or delay the project.	

- D. **Executive Partnering Team:** The senior leaders of the City and Developer who may form a project board of directors and are charged with steering the project to success.
- E. **Executive Sponsorship:** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.
- F. **Field-Level Decision Making:** Decisions made by those who are running the day-to-day work in the field – this is typically the inspector or resident engineer.
- G. **Internal Facilitator:** A trained employee or representative of the City who provides partnering facilitation services for Level 1, 2 or 3 projects.
- H. **Kick-off Partnering Workshop:** The initial partnering session where the team develops their initial partnering Charter and officially starts the partnering process.
- I. **Multi-Tiered Partnering (Executive - Core Team - Stakeholder):** Quarterly partnering workshops can be divided into multiple sessions including an Executive Session, Core Team Session and Stakeholder Session. For very large projects, a best practice is to use the Executive Team as a “project board of directors” who provide vision and steer the project. The Core Team is the central group of key individuals who are on the project throughout the duration.
- J. **Partnering Level:** The desired level of engagement in the partnering process may vary depending on a Contract's size or a construction project's complexity, location or other risk factor. If a project encounters any of the following risk factors, the City may consider elevating the partnering process to the next higher level.

Level	Estimated Construction Amount	Complexity	Political Significance	Relationships
5	\$200 million +	Highly technical and complex design & construction	High visibility/ oversight; significant strategic project	New project relationships; high potential for conflict (strained relationship, previous litigation, or high probability of claims)
4	\$50 - \$200 million	High complexity – schedule constraints, uncommon materials, etc.	Probable	New contractors or CM, new subs
3	\$20 - \$50 million	Increased complexity	Likely, depending on the location and other project characteristics	Established relationships; new CM, subs, or other key stakeholders
2	\$5 - \$20 million	Moderate complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders
1	\$100,000 - \$5 million	Standard complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders

EXHIBIT K

- K. **Partnering Meetings:** Formalized meetings focused on developing a collaborative culture among the Project Team. Teams use these meetings to, among other tasks, set project goals, define project commitments and attend joint training sessions.
- L. **Professional Neutral Facilitator:** The mutually agreed upon experienced professional neutral facilitator whose business is providing partnering services for construction projects.
- M. **Project Scorecards:** An accountability tool that allows project teams to measure how well they are doing at following through on commitments made to one another. Typically the scorecard is a confidential survey prepared and submitted to the team by the partnering facilitator, if any. The facilitator then compiles the responses into a report which is then sent out to the Project Team for review.
- N. **Project Stakeholders:** Any person or entity that has a stake in the outcome of a construction project. Examples include the end users, neighbors, vendors, special interest groups, those who must maintain the facility, those providing funding, and those who own one or more of the systems.
- O. **Project Team:** Key members from the City and Developer organizations responsible for the management, implementation, and execution of the Project, and will participate in the Partnering process.
- P. **Resolution Ladder:** A stepped process that formalizes the negotiation between the parties of a construction project. While actual titles may differ, the intent of this ladder is to provide a process that elevates issues up the chain of command between the parties involved in an issue. The objective is to resolve issues at the lowest practical level and to not allow individual project issues to disrupt project momentum. When an issue is escalated one level, it is expected that a special meeting focusing on the negotiated settlement for that issue will be called with the goal of settling as quickly as possible. A Sample escalation resolution ladder is shown below. A project resolution ladder will be developed during the Kick-off Partnering Workshop.

	Level	Awarding City Department	Contractor	Time to Elevate
Sample Resolution Ladder	I	Inspector or Resident Engineer	Foreman/ Superintendent	1 day
	II	Project Manager	Project Manager	1 week
	III	Program Manager	Area Manager	1 week
	IV	Division Manager	Operations Manager	2 weeks
	V	Deputy Department Director	Owner, President	2 weeks

- Q. **Self-Directed Partnering:** The Project Team leads themselves through all of the Collaborative Partnering elements.
- R. **Special Task Forces:** A subset of the Project Team that is assigned to take on a particular issue or opportunity for the good of the overall project.
- S. **Stakeholder Team (as in Multi-tiered Partnering):** Those people who have a stake in the outcome of a construction project.
- T. **Stakeholder on-boarding/off-boarding:** As a project progresses various systems and processes will be the focus. Stakeholders will participate when the systems or processes they are involved with are the focus. The stakeholders will step back when that system or process is no longer the focus. This on-boarding and off-boarding may occur throughout the duration of the Contract.

EXHIBIT K

- U. **Subcontractor on-boarding/off-boarding:** At the various stages of construction various key subcontractors (trades) as determined by City and Developer will roll in and roll out as their work comes available and is completed.
- V. **Third-Party Facilitator Agreement:** An agreement, appended to this Specification, to which the Professional Neutral Facilitator, the City and the Developer are parties, which establishes a budget for fees and expenses of the Facilitator and workshop site costs, if any, and the terms of the Facilitator's role for this Project consistent with the requirements of this Specification.

1.4 PURPOSE/GOALS

- A. The goals of project partnering are to:
 1. Use early and regular communication with involved parties;
 2. Establish and maintain a relationship of shared trust, equity and commitment;
 3. Identify, quantify, and support attainment of mutual goals;
 4. Develop strategies for using risk management concepts and identify potential project efficiencies;
 5. Implement timely communication and decision-making;
 6. Resolve potential problems at the lowest possible level to avoid negative impacts;
 7. Hold periodic partnering meetings and workshops throughout the life of the project to maintain the benefits of a partnered relationship;
 8. Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

1.5 COSTS

- A. The fees and expenses of the Facilitator and workshop site costs, if any, shall be shared equally by the City and the Developer as set forth in the Third Party Agreement. The Parties agree that both the City's and the Developer's share of all Partnering costs shall be paid as a Project cost included in the Project Budget; for the avoidance of doubt, Developer shall not be required to pay Partnering consultants out-of-pocket, but may submit consultant invoices for payment consistent with procedure for submitting invoices for other Project consultants.
- B. ~~The Developer shall pay the invoices of the Facilitator and/or workshop site costs after approval by both parties. Upon receipt of satisfactory evidence of payment of the invoices of the Facilitator by the Developer, the City will then reimburse the Developer for 50% of such invoices from a fixed cash allowance included as a bid item in the Bid Prices. No mark-up, overhead or other fees shall be added to the partnering costs. If the total cost of the partnering differs from the allowance amount, the Contract Sum shall be adjusted by Change Order for the difference between the total actual cost and the amount included in the Bid, as an additional amount due the Developer or a credit to the City, as appropriate. If the Developer fails or refuses to pay the Facilitator invoices, the City may~~

pay such invoices and deduct the Developer's portion from any amount that is due or may become due under the Contract.

- C. With the exception of the Facilitators fees and workshop site costs described in subparagraph A above, all costs associated with the Partnering workshops and sessions, partnering evaluation surveys, or partnering skills trainings are deemed to be included in the Bid Prices.

PART 2 - EXECUTION

2.1 PARTNERING INITIATION

- A. The City Representative after award of Contract, but in no case longer than 30 days following Notice to Proceed, shall send Developer a written invitation to enter into a partnering relationship. If a Professional Neutral Facilitator will be retained, the City and Developer shall cooperatively and in good faith select a Facilitator as specified in subparagraph 3.3 below.

2.2 PARTNERING ELEMENTS

- A. The required partnering elements for all levels of partnering include:
 - 1. **Internal or External Professional Neutral Facilitator.** City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.
 - 2. **Kick-off Partnering Workshop.** The City, Developer, and Facilitator if any, shall meet to mutually develop a strategy for a successful partnering process and to develop their initial partnering charter.
 - 3. **Partnering Charter and/or mission statement.** The City and Developer shall agree to create a partnering charter that includes:
 - (a) Mutual goals, including core project goals and may also include project-specific goals and mutually-supported individual goals. The required core project goals relate to project schedule, budget, quality, and safety.
 - (b) Partnering maintenance and close-out plan, including partnering session attendees and frequency of meetings.
 - (c) Dispute resolution plan that includes an Escalation Resolution Ladder.
 - (d) Team commitment statement and signatures.
 - 4. **Minimum Two Partnering Workshops or Sessions** (including Kick-off Workshop). The partnering team may participate in additional workshops or sessions during the life of the project as they mutually agree is necessary and appropriate.
 - 5. **Executive Sponsorship.** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.

EXHIBIT K

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6. **Resolution Ladder.** The City and Developer shall mutually develop a project resolution ladder.

B. For Level 2 Projects add the following elements:

1. **Internal or External Professional Neutral Facilitator.** City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.
2. **Minimum Two Project Scorecards.** City and Developer shall participate in periodic partnering evaluation surveys to measure progress on mutual goals and short-term key issues as they arise.

C. For Level 3 Projects add the following elements:

1. **Professional Neutral Facilitator for Kick-off and Quarterly Partnering Sessions.** City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the Kick-off partnering workshop and quarterly partnering meetings. Additional meetings, workshops, or sessions may be facilitated by a mutually agreed internal facilitator or may be self-directed.
2. **Quarterly Partnering Sessions.** The partnering team shall convene partnering sessions quarterly throughout the duration of Contract.
3. **Quarterly Project Scorecards.** City and Developer shall participate in minimum quarterly partnering evaluation surveys (monthly recommended).

D. For Level 4 Projects add the following elements:

1. **Professional Neutral Facilitator.** City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below.
2. **Multi-tiered Partnering (Executive – Core Team – Stakeholder).** Partnering team will divide into smaller groups and convene multiple sessions including an Executive Session, Core Team Session and Stakeholder Session.
3. **Monthly Project Scorecards.** City and Developer shall participate in monthly partnering evaluation surveys.
4. **Stakeholder On-Boarding/Off-Boarding.** Various key stakeholder groups will be invited to participate in partnering sessions as necessary throughout the duration of the project.
5. **Key Subcontractor On-Boarding/Off-Boarding.** Key subcontractors will be invited to participate in the partnering sessions as necessary as determined by City and Developer as their participation in the project work becomes relevant.

E. For Level 5 Projects add the following elements:

1. **Monthly Partnering Sessions.** The partnering team will hold professionally facilitated monthly partnering sessions throughout the duration of project.

EXHIBIT K

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2. **Special Task Forces.** The partnering team may task a subset of the team to work on a particular issue or opportunity for the good of the overall project.

2.3 SELECTION OF A PROFESSIONAL NEUTRAL FACILITATOR

- A. If a Professional Neutral Facilitator will be retained, the City and Developer shall meet as soon as practicable after award of Contract, but in no case later than 30 days after the Notice to Proceed (NTP), to mutually select a Facilitator. The City and Developer shall also schedule the Kick-off Workshop, determine the workshop site and duration, and agree to other administrative details.
- B. The City, the Developer, and the selected Facilitator shall execute a Third-Party Facilitator Agreement within 30 days of NTP.
- C. The Facilitator shall lead the Kick-Off Partnering Workshop and other partnering sessions as necessary or required.

2.4 FACILITATOR QUALIFICATIONS AND REQUIREMENTS; EVALUATIONS

- A. The Facilitator shall be trained in the recognized principles of partnering.
- B. The Facilitator shall have the following professional experience and qualifications:
 1. At least 3 years experience in partnering facilitation with a demonstrated track record, including public sector construction for a city or other municipal agency; and,
 2. Skill set that may include construction management, negotiations, labor-management mediation, and/or human relations.
- C. The Facilitator shall be evaluated by the partnering team: (1) at the end of the Kick-off Partnering Workshop; and (2) at the project close-out partnering session.

END OF SECTION

Summary report:	
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Intelligent Table Comparison: Active	
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Changes:	
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Delete	226
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Move To	75
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Embedded Excel	0
Format changes	0
Total Changes:	681

CENTRAL SHOPS REPLACEMENT FACILITIES PROJECT

CONTRACT NO. 7994A

PROJECT DELIVERY AGREEMENT

Between

CITY AND COUNTY OF SAN FRANCISCO,

a charter city and county,

as the City

and

ORYX DEVELOPMENT I, LLC,

a Nevada limited liability company,

as Developer

Dated as of March 21, 2016

Amended and Restated as of February __, 2017

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EXHIBITS AND SCHEDULES ATTACHED HERETO

- Exhibit A Project Budget
- Exhibit B Criteria Package
- Exhibit C Scope of Developer Services
- Exhibit D Project Schedule
- Exhibit E Reserved
- Exhibit F Developer's Insurance Requirements
- Exhibit G City Requirements
- Exhibit H Design Professional Contract Provisions
- Exhibit I Local Hire, First Source and LBE Requirements
- Exhibit J Form of Assignment of Intangibles
- Exhibit K Partnering Requirements

PROJECT DELIVERY AGREEMENT

THIS PROJECT DELIVERY AGREEMENT (“Agreement”), is made for the convenience of the parties this _____ day of _____, 2016, by and between Oryx Development I, LLC, located at 1001 Van Ness Avenue, San Francisco, California (“Developer”), and the City and County of San Francisco, State of California (the “City”), acting through its Director of Real Estate (“Director”).

RECITALS

WHEREAS, the City has acquired: (1) fee title to the real property located at 555 Selby Street and 1975 Galvez Street, San Francisco, CA (Lots 015 and 016, Block 5250) (the “Purchased Site”), and (2) a leasehold interest to the real property located at 450 Toland Street, San Francisco, CA (Lot 18, Block 5230) (the “Leased Site”) (collectively the “Development Sites”); and

WHEREAS, the City desires to develop: (1) the Purchased Site into a one-story vehicular repair facility with ancillary administrative office space containing approximately 53,000 gross square feet upon the Purchased Site for medium duty, heavy duty and ladder shops as well as administrative, amenity and support spaces, and (2) the Leased Site by making tenant improvements to modify the existing 45,000 square foot building to accommodate maintenance and repair of light duty vehicles, , body and paint shop, metal fabrication and welding shop, and administrative offices and amenities. The scope of work to be performed on the Development Sites is described in greater detail in the Criteria Package, an initial draft of which is attached as Exhibit B (the “Central Shops Replacement Facilities Project” or the “Project”); and

WHEREAS, the City wishes to retain Developer to Provide all services necessary to design and construct a complete and fully-functional Project, including but not limited to project management, design, and construction services. The City acknowledges that Developer does not hold any contractor, architect, or engineering licenses, and that Developer will retain Subcontractors holding such licenses to perform all Work under this Agreement that must be performed by a licensed entity or individual. Developer wishes to Provide the services sought by the City as described above, all on the terms and conditions hereinafter set forth.

WHEREAS, prior to the date this Agreement was amended and restated, Developer completed the following services in furtherance of the Project: 1) Completion of Concept Design, Schematic Design, Design Development and Construction Document plan and specifications issuances; 2) timely submittal of the Site Permit, Demo Permit and Addenda 1-3 (foundation, structural, core-and-shell, interiors and mechanical/electrical/plumbing as relevant for each building) per the dates in the schedule attached in Exhibit D; 3) completed budgeting exercises at 100% Schematic Design and 100% Design Development/GMP and was in progress on the 100% Construction Documents; budgeting exercise and 4) met obligations for budgeting, scheduling and reporting, as provided in Exhibit C, “Scope of Developer Services.”

NOW, THEREFORE, Developer, in consideration of the mutual covenants set forth in this Agreement, promises and agrees to Provide all services to design and construct the Project in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfactions of the Director, to prosecute the Work with diligence from day to day to Final Completion, to furnish all project management services, design services, and all construction work, labor and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of Developer's obligations under the Contract Documents, as and when required under the Contract Documents, to the satisfaction of the Director. Developer's execution of this Agreement signifies its acceptance of the Contract Time and the Contract Sum as being sufficient for completion of Phase One and Phase Two of the Work as hereinafter defined as well as acceptance of the other terms and conditions of the Contract Documents.

1. Developer's Responsibilities

1.1 Contract Documents. Developer shall Provide all Work according to the Contract Documents, which are incorporated into and made a part of this Agreement by this reference, and all labor, materials and services used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between Developer and the City concerning the Provision of the Work, are defined in the General Conditions. Defined terms used in this Agreement shall be given the definition set forth herein or as set forth in the Article 1.01 of the General Conditions.

1.2 General Responsibilities.

(a) Developer shall provide all "Developer Services" (as set forth in Exhibit C) required to design, construct, and Deliver the Project to the City.

(b) The Work of this Project is divided into two phases: (1) Phase One; and (2) Phase Two, as described in greater detail in Exhibits C and D hereto. As of the date of this Amended and Restated Agreement, Phase One has been completed, and City has approved the Construction Documents, Contract Sum, Contract Time, and Scope of Work applicable to Phase Two Work, all as set forth herein.

(c) Developer shall select and retain a Subcontractor that is a licensed design professional ("Architect), subject to City Approval, to design the Project in Phase One and obtain the regulatory approvals needed to complete the project in Phase One and to assist the General Contractor with design-related issues and project administration during Phase One and Phase Two. City has pre-approved Developer's request to approve FM&E Architecture & Design as a Subcontractor to Developer serving as the Project Architect.

(d) Developer shall select and retain a Subcontractor that is a licensed general contractor ("General Contractor"): (1) to provide input into the Architect's Project design and

construct the Site Work during Phase One and Phase Two; and (2) conditioned on the issuance of a Notice to Proceed for Phase Two as set forth above in Paragraph 1.2 (b) above), to construct the Project during Phase Two. City has pre-approved Developer's request to approve Charles Pankow Builders, Ltd., A California Limited Partnership, as a Subcontractor to Developer serving as the Project's General Contractor.

(e) Developer shall Provide the City with all Phase One Work as set forth herein (Project design and construction of approved pre-Construction Phase site work), including, but not limited to, all applicable investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

(f) In Phase Two, Developer shall Provide the City with a fully-functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

1.3 Design Services.

(a) Design. The City will issue a Notice to Proceed with Design within five (5) Days after execution of the Agreement. Developer shall perform the Design Requirements based on the scope of work contained in the initial draft of the Criteria Package (Exhibit B) and its commitment to assist the City in its efforts to meet the City's Project budget and schedule. The parties will work together in good faith to finalize the Criteria Package as soon as practicable after City's issuance of the Notice to Proceed. During Phase One, Developer will oversee and coordinate the work of the Architect and other design sub-consultants, including the General Contractor and Core Lower-Tier Trade Subcontractors, and work closely with the City Representative to facilitate discussion and design decisions and provide information, estimates, schemes, and recommendations to the City regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality, energy conserving and efficient building.

(b) Core Lower-Tier Subcontractors. At any time after the Notice to Proceed with Phase One, Developer may select Core Lower-Tier Subcontractors for design, preconstruction, or design-assist services for the disciplines listed below based on qualifications only. The selected Core Lower-Tier Subcontractors may also provide construction services as more fully described in Section 1.5(b).

(i) Mechanical,

- (ii) Electrical,
- (iii) Plumbing,
- (iv) Fire Protection/Fire Suppression,
- (v) Building Envelope/Curtain Wall,
- (vi) Steel/Rebar,
- (vii) Elevators,
- (viii) Earthwork & Grading,
- (ix) Site Utilities,
- (x) Deep Foundations,
- (xi) Abatement, and
- (xii) Demolition

1.4 Construction Services.

(a) General. Following the City's issuance of a Notice to Proceed with Phase Two, Developer's General Contractor and all of its subcontractors contracted for the construction of the Project will provide all construction services from mobilization through Final Completion necessary to construct the Project in accordance with the Contract Documents and to render the Project and all of its components operational and functionally and legally usable. Developer will furnish construction administration and management services and will perform the Project in an expeditious and economical manner consistent with the requirements of the Contract Documents.

(b) Standard. At a minimum, Developer and its General Contractor shall be responsible to perform construction services consistent with the standards reasonably expected from a general contractor who submits a competitive bid with its own list of subcontractors to perform all of the construction work under a contract, including, but not limited to, construction, value engineering/integration services, construction management, contract administration, cost control, subcontractor procurement, scheduling, coordination, testing, shop drawing development, processing/review, and distribution of product warranties/related documentation, commissioning and startup, and project closeout.

1.5 Procurement and Award of Trade Subcontracts.

(a) **Competitive Procurement.** Developer shall assure full and open competition for the procurement of all Trade Subcontractors except as otherwise permitted hereunder. In doing so, except as provided in this Article 1.5, Developer shall follow a two-step process: (1) pre-qualification and (2) competitive bid as follows:

(i) **Pre-Qualification:** Developer, with City's approval, will develop pre-qualification standards for all Trade Subcontractors. Developer will establish a pool of no fewer than three (3) pre-qualified bidders for each trade package, subject to the approval of the City. If Developer is unable to pre-qualify at least three (3) bidders for a trade package, Developer shall provide a written justification to the City for approval. The City, in its sole discretion, may require the Developer to take additional steps to pre-qualify bidders such as advertising the subcontracting opportunity on a publicly-accessible City website. Only pre-qualified bidders will be allowed to bid. Developer, with the assistance of the City, will resolve any protests or disputes relating to the pre-qualification process.

(ii) **Trade Packages:** Developer shall receive sealed bids from pre-qualified bidders. The bid security provisions of San Francisco Administrative Code Section 6.21 will not apply, unless expressly pre-approved by the City. The City Representative may, in its sole discretion, require that it be present at bid openings to ensure a fair and equitable process.. Developer will consult with the City Representative before rejecting any bids.

(iii) Developer shall award the Trade Package to the responsible bidder submitting the lowest responsive bid.

(b) **Limited Noncompetitive Procurement – Core Lower-Tier Trade Subcontractors.** Developer may procure design, preconstruction, or design-assist services from Core Lower-Tier Trade Subcontractors based on qualifications only. As soon as practical, Developer may seek from a Core Lower-Tier Trade Subcontractor a written cost proposal for construction of the related trade package and submit the cost proposal to the City Representative for consideration. The City may either approve Developer's request to award the trade subcontract to the Core Lower-Tier Trade Subcontractor based on the cost proposal or, at the City Representative's sole discretion, he or she may require the Developer to competitively procure the trade package by competitive bid in conformance with section 1.5(a), in which event the Developer may request a noncompensable extension of time. The City shall approve the request for a noncompensable time extension only if bidding the trade package will create a critical path delay on Developer's most recent critical path schedule.

(c) **Self-Performed Trade Work:** Developer through its General Contractor may self-perform Trade Work under the following conditions:

(i) **Eligible scopes of work:** Cast-In-Place Concrete, Rough Carpentry, Millwork, Demolition & Salvage.

(ii) The City, in its sole discretion, shall either authorize General Contractor to bid against pre-qualified Trade Subcontractors or accept a fair and reasonable price proposal for the Trade Package from the General Contractor.

(iii) In determining whether the General Contractor's price proposal is fair and reasonable, the City Representative may, at its sole discretion, make the determination by comparing the General Contractor's cost proposal against an independent cost estimate..

(d) Developer may negotiate subcontracts for trade work up to an amount not exceeding 7.5% of total estimated construction subcontract costs. The City Representative shall establish a maximum dollar value for each negotiated trade subcontract.

(e) The City acknowledges it is obligated to pay Developer the amount of funds certified by the Controller for conforming work actually performed, provided there is no offset by the City for liquidated damages, non-conforming work, or other circumstances preventing payment. Developer acknowledges that any work related to Trade Packages to the extent such work has not been added to the Agreement by written, properly authorized Trade Package Set is done at the sole risk of Developer.

1.6 Developer Services. During the term of this Agreement, Developer shall Provide all Developer Services necessary for the Project's management, design, construction, completion, and delivery of the completed Project to the City. Developer shall Provide all design and construction services necessary for receipt of all occupancy permits and authorizations (e.g., LEED requirements in Chapter 7 of the Administrative Code for municipal buildings, Civic Design Review approval by the San Francisco Arts Commission, regulatory approvals such as Building Permit and trade construction permits) to operate a facility that meets or exceeds all design and specification requirements that have been agreed upon between the City and Developer based on the criteria set forth herein and in the Criteria Package (Exhibit B), including, but not limited to, compliance with all industry standards and all applicable codes and regulations.

(a) Developer shall timely pay any and all fees, charges, costs, expenses and other amounts properly due and payable by Developer under this Agreement. The City may elect to pay any fees, charges, costs, expenses directly to another public agency or public utility from Contract Sum, which amounts shall be Costs under the GMP.

(b) Developer shall supply qualified personnel necessary to perform its responsibilities under this Agreement, and all such persons shall be employees, agents, or Subcontractors of Developer and shall not be, or be deemed to be, employees of the City. Developer shall employ such employees as shall be necessary or appropriate to enable Developer at all times to oversee, coordinate and provide the Developer Services as required under this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of such employees shall be the sole responsibility of

Developer and Developer shall comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, prevailing wages, working conditions and safety and similar matters with respect to such employees. Should the City determine that Developer, or any agent or employee of Developer, is not performing the Developer Services in accordance with the requirements of this Agreement, the City shall provide Developer with written notice of such failure. Within five (5) business days of Developer's receipt of such notice, Developer shall take commercially reasonable efforts to remedy the deficiency. Notwithstanding the foregoing, if the City believes that an action of Developer, or any agent or employee of Developer, warrants immediate remedial action by Developer, the City shall contact Developer and provide Developer in writing with the reason for requesting such immediate action.

1.7 Project Contracts.

(a) Assignment. The term "Project Contracts" shall include the Architect's Contract, the General Contractor's Construction Contract, subcontracts entered into by the Architect or General Contractor, and various materials and equipment contracts with the suppliers. In the event this Agreement is terminated for any reason, Developer shall, if so directed by the City, immediately assign the Project Contracts to the City in accordance with the Contract Documents.

(b) Provisions in Project Contracts. Developer shall include or require inclusion of the contract provisions required under S.F. Administrative Code sections 6.22 and 6.61, including the provisions set forth in Exhibit G and Exhibit I in all Project Contracts, except as any requirements in those sections may be waived by the City's Board of Supervisors.

(c) Design Professional Services. In addition to the requirements in Exhibit G and Exhibit I, Developer shall include contract provisions required under S.F. Administrative Code section 6.42, including the provisions set forth in Exhibit H, in the Architect's Subcontract and all subconsultants to the Architect.

1.8 Project Coordinator. Developer shall cooperate with the City in order to perform the Developer Services to ensure compliance with applicable deadlines and to cause the expeditious and timely completion of the Project. Developer designates Laura Billings as its representative who will serve as the primary contact with the City (the "Project Coordinator"). The Project Coordinator shall attend regularly scheduled preconstruction, construction and related meetings relating to the Project and report to the City regarding the same. In addition, Developer shall organize, prepare agendas and lead construction progress meetings on a regular basis for the City's personnel assigned to the Project, no less than weekly. Developer shall keep the City informed of all material matters relating to or affecting the Project. In such regard, the Project Coordinator shall communicate directly with the "City's Representative" on a regular basis, informing such person of all material events relating to the Project. In addition, Developer shall promptly and in a timely manner answer all inquiries the City may have with respect to the

Project. Developer may change the designated Project Coordinator during the term of this Agreement with City's consent, which shall not be unreasonably withheld.

1.9 Communications with the City; Regularly Scheduled Meetings. Developer shall make its personnel available at reasonable times for communications with the City and will keep the City advised of all matters affecting the Project within the scope of Developer's Services and will provide updates regarding the status of the Project on a monthly basis. Developer shall designate representatives of its Architect and General Contractor, who are acceptable to the City, who shall be authorized by those entities as individuals with the authority, respectively, to bind the Architect or the General Contractor, and who shall attend construction project meetings. In addition to "regularly scheduled" construction progress meetings, appropriate personnel of Developer and its Subcontractors shall attend other meetings as reasonably requested by the City relating to the Project.

1.10 Procuring Project Development Approvals. Developer shall submit requests for regulatory and other approvals in a timely manner in order to obtain all required approvals that are necessary for the Project in accordance with the Project Schedule. Notwithstanding the foregoing, City acknowledges and agrees, conditioned upon Developer's submittals to regulatory agencies being complete, accurate, and timely, that (i) the timeline for City's review and approval of the Design Submittals and related documents, (ii) the timeline for public or regulatory agencies' (including but not limited to the California Department of Transportation and the Pacific Gas and Electric Company) review and processing of approvals, and (iii) objections or appeals by unsuccessful bidders during the bid process, are outside the reasonable control of Developer. The Project Schedule contains reasonable assumptions about the anticipated time periods associated with City's and regulatory agencies' reviews and approvals and the bid process required by the Contract Documents. If the actual time periods for the foregoing causes a critical path delay on Developer's most recent critical path schedule, Developer shall be entitled to a non-compensable time extension, and the parties shall make an equitable adjustment to the Project Schedule.

1.11 Standard of Performance. Developer covenants to the City that the Developer will perform or cause the applicable Subcontractor(s) to perform the Work with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time for construction managers, design professionals, and construction contractors. Without limiting the foregoing, Developer shall perform the Developer Services in a manner consistent with Developer's work on other similar projects. Developer understands and agrees that in entering into this Agreement, the City is relying on Developer's experience and expertise and Developer's commitment to take such actions as needed to manage the Project's design and construction consistent with other similar projects completed by Oryx, or by senior members of Oryx staff as completed by them prior to employment by Oryx. Under this Agreement, Developer shall, consistent with industry standards for similar projects, closely monitor and oversee the work of

its Subcontractors throughout the construction of the Project, and promptly notify the City of any defaults, deficiencies or violations of which it becomes aware.

2. Contract Sum

2.1 Contract Sum. The Contract Sum is guaranteed by the Developer not to exceed \$60,200,000, as set forth in Exhibit A, subject to additions and deductions as set forth in this Agreement and the General Conditions. Such maximum sum is referred to herein as the “Guaranteed Maximum Price” or the “GMP.” The Contract Sum includes the following amounts for the specified portions of the Work:

(a) Management Fee: The Management Fee is a fee payable to Developer for Developer’s project management services in furtherance of the Project. The Management Fee shall comprise a “Base Fee” and a “Bonus Fee”. The Management Fee shall include all of Developer’s construction management fees and project management fees, (excluding third party, project specific costs) for the Work.

(i) City shall pay Developer a Base Fee, which shall be a fixed fee of \$70,500 per month. The Base Fee shall be paid in installments commencing with the first Application for Payment and monthly thereafter for a total of 29 payments of \$70,500 each (the “Monthly Payments”), subject to additions and deductions as set forth in this Agreement and the General Conditions.

(ii) The Bonus Fee applicable to Phase One (the “Phase One Bonus Fee”) shall be lump sum of \$393,000. The Phase One Bonus Fee shall be earned and payable only if Developer has completed all of its Phase One obligations hereunder within the Contract Time for Phase One and for an amount equal to or less than \$10,300,000, which amount represents the original Contract Sum for Phase One prior to the Amended and Restated version of this Agreement. The Bonus Fee applicable to Phase Two (the “Phase Two Bonus Fee”) shall be equal to \$432,000. The Phase Two Bonus Fee shall be earned and payable only if Developer has completed all of its Phase Two obligations within the Contract Time for the Project and for an amount equal to or less than the GMP, as the same may have been adjusted pursuant to the Contract Documents.

2.2 Reimbursable Expenses: The GMP includes and Developer shall be entitled to “Reimbursable Expenses” subject to the following conditions and limitations:

(a) Reimbursable Expenses shall include but shall not be limited to the travel expenses, printing costs, and similar direct, out-of-pocket costs of Developer and its team incurred in the performance of the Work and for which they are not otherwise compensated (e.

(b) Only the actual costs incurred by the Developer and its subcontractors and subconsultants shall be allowed and invoiced as Reimbursable Expenses. There shall be no mark-ups of any kind allowed on Reimbursable Expenses.

(c) Reimbursable Expenses shall include reproduction costs requested by the City, as well as six printed half-size copies of plans and six copies of the spec book at each milestone plan/spec issuance (100% SD, 100% DD, 50% CD, 100% CD and For-Construction Set) for record copies for the City Representative, Central Shops and Oryx Development I, LLC.

(d) All activities and work product resulting from the implementation of BIM are considered basic services and included in the Design Fee. Renderings and computer animated presentation models, that are not otherwise part of the BIM work product are considered reimbursable expenses when requested and approved by the City.

(e) Reimbursable Expenses shall include travel costs outside of 100 miles of San Francisco.

(i) Mileage shall be subject to the Internal Revenue Service (IRS) standard mileage rate for business use of an automobile, with no markup.

(ii) All travel within the continental United States is subject to the Project Manager's approval in writing in advance. Travel expenses will be reimbursed according to the federal maximum lodging and meals by locality rates. Any exceptions to the Federal rates must be approved in advance by the Project Manager. Federal rates for lodging and meals can be found at: <http://www.gsa.gov/> > Per Diem Rates. All travel expenses are subject to final approval by the Project Manager at the time of invoice submittal.

(iii) Air travel expenses shall be based on lowest available Economy Class ticket prices. Flight tickets shall be reserved as early as possible to ensure the most economical rate.

(iv) Taxi, shuttle, rail, and rental car fares will be reimbursed based on actual expenditures. Rental car expenses shall be based on the rate for either the Economy or Compact class of car or its equivalent. No upgrades on these forms of transportation will be reimbursed.

(v) Tolls and parking fees associated with approved travel will be reimbursed based on the actual cost.

(vi) The following items are considered normal project costs and a part of the Design Fee, and not Reimbursable Expenses: (a) phone calls, faxes, mail, express mail, courier delivery or overnight delivery services charges, or other communications charges between members of the Design Consultants' teams and/or the Developer and its team,

regardless of location, (b) regional phone calls and faxes for all area codes having any geographical land areas within 100 miles of San Francisco, even though its outlying boundary exceeds the 100 mile limitation, (c) internet gateways, FTP sites or data file transfer or research services, (d) travel within 100 miles of San Francisco unless approved in writing in advance by the City, and e) all CAD and other computer-related time and expenses in support of those items specifically listed in the Agreement.

(vii) Food or beverages are not allowed except during travel as described in Section 2.2(e)(ii).

2.3 Contingency Reserves: The GMP contains the following contingency reserves: “Developer’s Contingency,” “Indirect Costs Contingency,” and “Contractor’s Contingency,” (collectively, “Contingency,” “Contingencies,” or “Contingency Reserves”) to cover the following categories of costs, and similar such costs:

(a) Developer may use Developer’s Contingency, subject to City’s approval, which shall not be unreasonably withheld, to cover: (1) errors and omissions in plans and drawings, but only if, in the reasonable discretion of Developer, the Architect’s performance of the Work of creating the plans and drawings does not fall below the standard of care for design professionals performing similar work in the San Francisco Bay Area, (2) purchasing gaps but only if Developer has first made commercially reasonable efforts to resolve the problem with the supplier, (3) gaps in scope not identified by Developer in the Phase One budget, (4) non-compensable Unavoidable Delay, (5) compensable Unavoidable Delay, if Developer so elects in its sole discretion, (6) unanticipated costs arising from changes in circumstances that are beyond the reasonable control of and could not have been reasonably anticipated by Developer, and (7) reserves to cover unforeseen conditions discovered after the commencement of the Work.

(b) Developer may use Indirect Costs Contingency, subject to City’s approval, which shall not be unreasonably withheld, to cover indirect costs including (without limitation): (1) additional services of all architectural and engineering consultants and similar professional services consultants, and (2) costs of engaging consultants not contemplated as of the date the GMP was established.

(c) Developer may use Contractor’s Contingency, at the request of Contractor and subject to City’s approval, which shall not be unreasonably withheld, to cover (1) increased costs of the Work resulting from deficiencies, inconsistencies, errors or omissions in the Contract Documents that reasonably should have been identified by the Contractor in its review of the Contract Documents and included in the Schedule of Values as being reasonably necessary to complete the Work, but were not identified, (2) costs of the Work incurred as a result of, or to overcome excusable, non-compensable events of delay, (3) reimbursable cost overruns incurred for any line-item in the original Phase Two Budget, and (4) cost increases due to materials cost increases (that are not otherwise reimbursable under the Agreement). Developer may direct the Contractor to transfer funds from the Contractor’s Contingency and prepare a revised Schedule

of Values reflecting such transfers in the event that Developer determines that the line-item amounts in the current Phase Two Budget are not sufficient to cover anticipated costs of the Work or in the event that City determines that the subject of a proposed Change Order does not entitle Developer to an increase in the GMP under the terms of the Contract Documents.

(d) Without limitation, the Contingency Reserves shall not be used to cover costs associated with any of the following, which shall be covered by an increase in the GMP through a Change Order: (1) errors, omissions, and deficiencies in the Criteria Package, (2) changes requested by the City to the Scope of Work or the Criteria Package, (3) City-caused schedule delays, (4) Differing Site Conditions, (5) compensable Unavoidable Delay (unless Developer elects to apply Developer's Contingency to such costs, as permitted in Section 2.1(a), above, and (6) any other cost for which Developer is entitled to an increase in the GMP pursuant to the Contract Documents (unless Developer waives its right to seek such increase, in which case such amounts may, subject to City's approval which shall not be unreasonably withheld, be covered by Contingency Reserves).

(e) During the course of the Project, in the event that the actual or contracted cost of a line item or a Trade Package set is less than the corresponding budgeted amount for such line item, then, subject to the City's reasonable approval, Developer may re-allocate the unused or excess budget amount to the applicable Contingency Reserve, for application to any other line item in any budget category that may exceed its corresponding budget allocation.

(f) Contingency Reserves may be used only upon Developer's submission of a Contingency Utilization Form, which shall include all necessary supporting documentation to back up the cost of the Contingency Work, describing the scope and approximate cost of the work requested as a draw from a Contingency reserve and City approval of the request. Any construction-related request shall first be applied to the Contractor's Contingency, while design or other non-construction requests shall first be applied against the Indirect Costs Contingency. In the event that the Contractor's Contingency or the Indirect Costs Contingency are respectively exhausted, such requests may be applied to the Developer's Contingency conditioned on approval by the City. Once the Contingency Utilization Form has been approved by the City, which approval shall not be unreasonably denied, conditioned, or delayed, Developer may proceed with the subject work ("Contingency Work") and bill as part of the monthly progress payments. Upon completion, Developer shall notify the City that the Contingency Work is complete and shall confirm the final cost of the Contingency Work. Any savings shall be returned to the Contingency Reserves.

(g) Upon Final Completion of the Work, any unused Contingency Reserves shall be divided among the parties as follows.

(i) Any unused amounts remaining in the Contractor's Contingency shall be shared equally between the City and Developer, with Developer further sharing it's share with

the General Contractor as set forth in the Subcontract agreement between Developer and the General Contractor.

(ii) Any unused amounts remaining in the Indirect Costs Contingency or the Developer's Contingency shall be shared equally between the City and Developer.

2.4 Trade Package Sets

(a) Trade Package Sets are scopes of Work to be procured in conformance with Article 1.5 above and the General Conditions. Trade Package Sets will be issued by the Developer at various intervals throughout the Agreement for the purpose of soliciting bids, selecting and contracting with trade subcontractors.

(b) Each Trade Package Set contract price shall include any costs associated with errors and omissions, trade scope gaps, and schedule issues relating to the Work included in the Trade Packages. A Trade Package Set shall not include unanticipated costs for unforeseen conditions outside the control of Developer or design changes initiated by the City by Design Directive. Any costs associated with these items will be incorporated into the Agreement by Change Order.

(c) The total price for each Trade Package Set shall include the following pricing items:

(i) Trade Package Base Bid(s): The lowest responsive bid from a responsible bidder for the trade work or directly negotiated trade work as allowed by the Agreement. The Trade Package Base Bid shall not include any scopes of work for the trade that are part of any Trade Package Reserves.

(ii) Trade Package Allowances: Trade Package Allowances are amounts proposed by Developer and approved by the City to cover Work determined to be unquantifiable for a Trade Package. The amount shall be stated as an allowance for the Trade Package. The unquantifiable Work is to be clearly identified as a Trade Package Allowance item within the detailed line item construction budget and within the applicable Trade Package. Any unspent balance of any such allowance will accrue to the City.

(iii) After Developer delivers all bids and final cost estimates for Trade Package Sets to the City, if the sum of all of the Trade Package contract award amounts is lower than the approved GMP, then the GMP will be reduced by that lower amount. If the sum of all the Trade Package contract awards is greater than the GMP, the Developer is obligated by contract to complete the project without any increase in the Contract Sum.

(iv) During the construction phase after award of Trade Package subcontracts, costs savings from value engineering ideas proposed by Developer and its team and

approved by the City will, at the reasonable discretion of Developer and subject to approval by the City Representative, be shared between the Parties as follows: (1) if the value engineering idea was proposed by Developer, then saving will be shared equally by the City and Developer; (2) if the value engineering idea was proposed by the General Contractor, then 50% of the savings shall accrue to the benefit of the City and 25% of the savings shall accrue to the benefit of the Developer and 25% of the savings shall accrue to the benefit of the General Contractor; or (3) if the value engineering idea was proposed by a Lower-Tier Subcontractor, then 40% of the savings shall accrue to the benefit of the City, and the Developer, General Contractor, and Lower-Tier Subcontractor that proposed the value engineering idea shall each be credited with 20% of the savings amount.

2.5 Change Orders. The Contract Sum may be increased or decreased by Change Orders. Change Orders are governed by General Conditions Article 6 – Clarification and Changes in the Work.

2.6 Contract Closeout. Upon Final Completion of the Work, any unused Trade Package Allowances shall accrue to the benefit of the City, including the General Contractor's Fee associated with unused Trade Package Set Allowances, and the Contract Sum shall be adjusted by deductive Change Order. In the event that, at Final Completion of Work, the Phase One and Phase Two Budgets (including the GMP contained therein) have not been fully expended, such "Cost Savings," excluding Contingency Reserves, shall accrue to the City.

2.7 Certification by the Controller. This Agreement is subject to the budget and fiscal provisions of the City. Charges will accrue only after prior written authorization certified by the City Controller, and the amount of the City's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

3. Contract Time and Liquidated Damages

3.1 Contract Duration. The Project will be accomplished in two phases: (1) Phase One; and (2) Phase Two, as more fully described in Exhibit C and Exhibit D hereto.

(a) Phase One shall include Site Work at either the Selby-Galvez Site or Toland Site, including the Work set forth in the first paragraph of Exhibit D below. This work requires plans stamped by the appropriate design professional, approved by the regulatory authorities with jurisdiction, and the City's written approval to commence such Work. The Work must be performed by individuals or entities holding the appropriate license. Developer shall commence Phase Two Work promptly after the Controller's Office certifies this Agreement and the City issues a Notice to Proceed with Phase Two.

(b) The total contract duration for the Developer to achieve Substantial Completion of the Phase Two Work (the "Contract Time") is 400 consecutive calendar Days,

subject to extensions of time resulting from Unavoidable Delays or other extensions permitted by the Contract Documents.

(c) If the City is delayed in its ability to deliver the Purchased Site to Developer and commencement of the Site Work on the Purchased Site is delayed as a result thereof, then any such delay shall be considered compensable Unavoidable Delay. Compensation from the City to Developer for any such delay shall be limited to a mutually agreed upon amount equal to the actual increase in Developer's direct costs (including but not limited to hard construction costs as well as additional costs for design consultants) attributable solely to the delay without any markup. Developer shall provide documentary evidence of its actual increased costs to support any such claim for additional compensation attributable to delay in the City's delivery of the Purchased Site to Developer. City's progress payment obligations for Site Work shall not arise until Developer has commenced the applicable portion of the Site Work as designated on the Schedule of Values.

(d) The duration for Developer to achieve Final Completion is ninety (90) consecutive Calendar Days following the City's issuance of a Notice of Substantial Completion.

3.2 Liquidated Damages. The City and the Developer understand and agree that time is of the essence in all matters relating to the Contract Documents and that the City will suffer financial and other intangible but significant losses if the Work is not completed within the Contract Time, as may be extended in accordance with Article 7 of the General Conditions. The City and Developer further understand and agree that the actual cost to the City that would result from Developer's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, the City and Contractor agree that, as City's sole and exclusive remedy for delay, Developer will pay the City liquidated damages for delay (but not as a penalty) the following amounts for each day a phase of work remains uncompleted after expiration of the durations referenced above:

(a) Phase Two: \$5000 for each Day after the Phase Two duration on which the Developer has not accomplished Substantial Completion until the City issues a Notice of Substantial Completion.

(b) Final Completion: \$500 for each Day after the 90-day duration following Substantial Completion on which the Developer has not accomplished Final Completion until the City issues a Certificate of Final Completion.

4. Obligations of the City

4.1 City Representative. The City will provide timely notice to the Developer (no later than the date of issuance of the NTP for Phase One) of the City employee designated as the

City's representative for purposes of contact between the City and Developer in connection with the construction of the Project, including, without limitation, the giving of notices, consents and approvals ("City Representative"). The City representative may, in a signed written document, which he or she may withdraw at any time, designate another City employee as the City Representative's authorized designee. The City may at any time, by notice given to Developer, remove the City's Representative and appoint another individual to act as the City's Representative. Except as set forth in this Agreement to the contrary, the City's Representative or designee shall have the authority to bind the City with respect to all matters for which the consent or approval of the City is required or permitted pursuant to this Agreement and all consents, approvals and waivers given by the City's Representative shall bind the City and may be relied upon by Developer. The City Representative may delegate his or her authority to another individual by written notice to the Developer, which may be changed or withdrawn at any time.

4.2 City Cooperation. The City shall cooperate with Developer for the design and construction of the Project and shall promptly and in a timely manner (a) provide information regarding its requirements for the Project, (b) answer inquiries Developer may have with respect to such information, and (c) timely approve or disapprove (in accordance with the terms of this Agreement) any items and grant its approval for Developer to execute Project Contracts required for the development of the Project. The City shall provide responses to additional information or decisions requested by Developer in a prompt and timely manner in accordance with the terms of this Agreement, and within the approval timeframes specified in the Contract Documents.

4.3 Access to Project Sites. The City shall make the Project Sites available to Developer. Without limiting the foregoing, City shall obtain and grant to Developer: (i) all necessary consents, licenses and/or approvals required for Developer and its Subcontractors to enter upon the Project Sites to conduct pre-construction testing and due diligence and to perform the Work, including but not limited to any consents required from existing tenants of any portion of the Project Sites; and (ii) any required approvals of the project design (e.g., consent from any tenant of existing buildings on the Project Sites and from the owner of the Toland site). If Developer is unable to access any portion of the Project Sites or proceed unimpeded with the Work due to lack of the foregoing consents or approvals, then any delay associated therewith shall be considered compensable Unavoidable Delay.

4.4 City Keeping Developer Informed. The City shall keep Developer promptly informed of all material matters that come to the City's attention relating to or affecting the project management, design or construction of the Project relevant to the Developer Services, including, without limitation, all agreements and discussions between the City and third parties relating to such matters, and the City shall promptly notify Developer of any developments necessitating or warranting a change in the Project Plan or the Plans and Specifications.

5. Indemnity; Exculpation

5.1 Developer Indemnity. Developer's indemnity obligations are set forth in sections 3.21 and 3.22 of the General Conditions.

5.2 City Exculpation. No board or commission of the City (and no officer, director, member, manager, employee or agent of the City) shall be personally liable for the performance of the City's obligations under this Agreement.

5.3 Developer Exculpation. No direct or indirect partner, employee, sub-consultant, shareholder or member in or of Developer (and no officer, director, managing director, manager, employee, sub-consultant or agent of such partner, shareholder or member) shall be personally liable for the performance of Developer's obligations under this Agreement.

5.4 Limitations. No insurance policy covering Developer's performance under this Agreement shall operate to limit Developer's liability under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such liability. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the Developer's performance of the Work.

5.5 Liability for Use of Equipment. The Developer shall be liable, and the City shall not be liable, for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Developer, or any of its Subcontractors, or by any of their employees, subcontractors, or agents, even though such equipment is furnished, rented or loaned by the City.

6. Dispute Resolution

6.1 Partnering. The Parties agree that they will in good faith engage in the partnering process set forth in Exhibit K as an avenue to work together to resolve questions and concerns as they arise.

6.2 Non-Binding Mediation.

(a) Upon an alleged default, either party may request non-binding mediation by delivering a written request for mediation ("Mediation Request") to the other party. The Mediation Request must include a summary of the issue in dispute and the position of the parties, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding party may agree to meet and confer promptly with the requesting party to attempt to resolve the matter. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the party who requested meditation may submit the matter for mediation to a mediator acceptable to both

parties. If the parties cannot agree on a mediator, the party may refer the matter for mediation with JAMS.

(b) The parties will cooperate with one another in selecting a mediator who is acceptable to both parties or selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. Neither party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions in sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation.

(c) The provisions of sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation.

(d) Upon the failure of any agreed-upon mediation to resolve the default in question, the Parties may pursue such rights and remedies as are available under this Agreement – the Parties agreeing that the aforementioned mediation process is a non-binding process.

7. **Project Signage**

Developer may maintain reasonable and customary signage at the Development Site specifying Developer's role in the Project.

8. **Insurance**

8.1 Developer Insurance. Developer shall procure and maintain, at its cost and expense, insurance relating to the Project in conformance with the requirements stated at Exhibit F attached hereto.

8.2 Developer Obligations to Submit Reports. Upon receipt of notice thereof, Developer shall promptly investigate and make a written report to any insurance company providing coverage to the City with respect to the Project, with a copy to the City, of all accidents, claims, or damage relating to the Project within the scope of the Developer Services, any damage or destruction to the Project and the estimated cost of repair thereof, and shall prepare such further reports required by any such insurance company in connection therewith.

9. **Assignment**

9.1 Developer Assignment. The services to be performed by Developer and its Subcontractors under this Agreement are personal to Developer and its Subcontractors and neither Developer nor its Subcontractors may not assign or transfer their obligations under this

Agreement or any rights or benefits under this Agreement to any person or entity without the prior written approval of the City, which consent may be granted or withheld in the City's sole discretion.

9.2 Obligations Binding on Permitted Assigns. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of any respective permitted successors and assigns.

9.3 No Release of Liability. Notwithstanding any assignment by Developer or its Subcontractor(s) of rights under this Agreement, in no event shall Developer or its Subcontractor(s) be released from any obligations or liabilities hereunder, and if requested by the City, Developer shall covenant in writing to be jointly and severally liable with its assignee for all of its obligations and liabilities hereunder.

10. Rights in Deliverables

10.1 Ownership of Results. Any interest of Developer or its Subcontractors in the design documents, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files, media, other documents, or other documents referenced as Deliverables in paragraph 10.2, prepared by Developer or its Subcontractors (the "Deliverables"), shall become the property of and will be transmitted to the City upon the Final Completion of the Project or earlier termination of this Agreement. However, unless expressly prohibited elsewhere in this Agreement, Developer and its Subcontractors may retain and use copies of the Deliverables for reference and as documentation of its experience and capabilities.

10.2 Works for Hire. If, in connection with the Work, Developer or its Subcontractors or lower-tier subcontractors create Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City effective upon the Final Completion of the Project or earlier termination of this Agreement. If any Deliverables created by Developer or its Subcontractors or their subcontractors under this Agreement are ever determined not to be works for hire under U.S. law, Developer and its Subcontractors, effective upon the Final Completion of the Project or earlier termination of this Agreement, hereby assign all Developer's and its Subcontractors' copyrights to such Deliverables to the City, agree to provide any material and execute any documents necessary to effectuate such assignment, and agree to a clause in every subcontract imposing the same duties upon subcontractors.

10.3 Assignment of Interest in Project Deliverables. Upon Final Completion of the Project or earlier termination of this Agreement and payment to Developer of all amounts to which it is entitled under this Agreement, Developer and its Subcontractors shall assign to the

City all their rights, title and interest in and to the Deliverables. All of the Project Contracts including subcontractors or subconsultants of every tier shall require assignment of all Deliverables to the City, together with all warranties and guarantees, without the prior consent of the Developer and without any payment to the Developer.

10.4 City Use of Deliverables. The City may reproduce, distribute, and make any use of the Deliverables without further notice or compensation to Developer or any Subcontractor or subconsultants, provide that the City shall not use the Deliverables on other unrelated projects. If Developer's design Subcontractor or its subconsultants are not terminated for fault, the design Subcontractor or its subconsultants shall not be liable for any claim to the extent arising out of the use by or through the City of the Deliverables without Developer's design Subcontractor or its subconsultants' professional involvement.

11. Additional Requirements; Certain Requirements Incorporated by Reference

11.1 Laws Incorporated by Reference. The full text of the laws expressly listed in this Section 11, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions expressly incorporated by reference in this Section 11 and elsewhere in the Agreement are available at www.sfgov.org under "Government."

11.2 Additional Requirements – Subcontractor Agreements. It is hereby understood and agreed that Developer shall incorporate into all of its Project Subcontracts agreements all requirements of this Section 11, and all Subcontractors and their lower-tier subcontractors shall be bound the same as Developer for compliance with all requirements of this Section 11. Developer shall include a provision in each Subcontract requiring Subcontractors to incorporate into all lower-tier subcontractor agreements, if any, all requirements of this Section 11. Subcontractors and their lower-tier subcontractors providing Work on the Project shall all be bound the same as Developer for compliance with all requirements of this Section 11.

11.3 Conflict of Interest. By executing this Agreement, Developer certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

11.4 Prohibition on Use of Public Funds for Political Activity. In performing the Developer Services, Developer shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Developer is subject to the enforcement and penalty provisions in Chapter 12G.

11.5 Nondisclosure of Private, Proprietary or Confidential Information.

(a) If this Agreement requires the City to disclose “Private Information” to Developer within the meaning of San Francisco Administrative Code Chapter 12M, Developer shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Developer Services. Developer is subject to the enforcement and penalty provisions in Chapter 12M.

(b) In the performance of Developer Services, Developer may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to Developer, then, to the extent Developer is advised in writing that such information is proprietary or confidential, such information must be held by Developer in confidence and used only in performing this Agreement, subject to Developer's right to disclose such information as may be required by Court order or applicable law. Developer shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary or confidential information.

11.6 Nondiscrimination Requirements.

(a) Non Discrimination in Contracts. Developer shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C to the extent applicable to Developer.

(b) Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Developer does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

11.7 Minimum Compensation Ordinance. Developer shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Developer is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Developer certifies that it is in compliance with Chapter 12P.

11.8 Health Care Accountability Ordinance. Developer shall comply with San Francisco Administrative Code Chapter 12Q as applicable to Developer's work under this Agreement. To the extent applicable, (1) Developer shall choose and perform one of the Health

Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3 and (2) Developer is subject to the enforcement and penalty provisions in Chapter 12Q.

11.9 Owner Contracting Requirements. Developer must comply with the Owner Contracting Requirements set forth in Exhibit G and Exhibit I hereto, and shall be subject to the enforcement and penalty provisions of such requirements.

11.10 Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require Developer to remove from, the City facilities personnel of any Subcontractor or lower-tier subcontractor who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of the City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, the City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

11.11 Limitations on Contributions. By executing this Agreement, Developer acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective Party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor retained by Developer to provide services for the Project; and any committee that is sponsored or controlled by Developer. Developer must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to the City.

11.12 Consideration of Criminal History in Hiring and Employment Decisions.

(a) Developer agrees to comply fully with and be bound by the provisions of Chapter 12T, "City Developer/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including

the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Developer shall comply with all of the applicable provisions of 12T. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to Developer's and its Subcontractors' operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees of Developer and its Subcontractors who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment by Developer and its Subcontractors of an individual wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

11.13 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Developer not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

11.14 Preservative Treated Wood Products. Developer shall comply with the applicable provisions of San Francisco Environment Code Chapter 13, which requires that contractors purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

11.15 Compliance with Laws. Developer shall use commercially reasonable efforts to cause each Subcontractor and all lower-tier subcontractors to become and remain fully informed of and comply with the applicable provisions of the Charter, ordinances, and regulations of the City and other local agencies having jurisdiction over their work, and all federal and state laws and regulations in any manner affecting the Project Contracts, the performance of the Work thereunder, or those persons engaged therein. Developer shall require compliance with, and shall use good faith efforts to ensure all construction and materials provided under the Project Contracts shall be in full accordance with, the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Codes specified in the Project Contracts, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they

shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. To the extent applicable to Developer, Developer shall comply with all laws including the applicable provisions of the Charter, ordinances and regulations of the City and local agencies having jurisdiction over it.

12. Notices

12.1 Any notice required or permitted to be given hereunder and any approval by the parties shall be in writing and shall be (as elected by the Party giving such notice or granting such approval): (1) personally delivered, (2) delivered by recognized overnight courier, (3) transmitted by postage prepaid certified mail, return receipt requested, or, (4) by facsimile or electronic mail with a hard copy sent by one of the other methods described in clauses (1) – (3) of this Section. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on the earlier to occur of: (a) the date of receipt if delivered personally; (b) on the next business day if sent by overnight courier; (c) five (5) days after the date of posting if transmitted by mail; or (d) the date of transmission with confirmed answerback if transmitted by facsimile or electronic mail. Either Party may change its address for purposes hereof by notice given to the other Party. Notwithstanding the foregoing to the contrary, any notice of default must be sent by registered mail.

12.2 Notices, requests and approvals hereunder shall be directed as follows:

the City:

Public Works
The City and County of San Francisco
30 Van Ness, Suite 4100
San Francisco, California 94102
Attn: Patricia Solis
Re: Central Shops Project
Facsimile No.: (415)557-4701

with copy to:

Randy Parent
Deputy City Attorney
Office of the City Attorney
The City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: Central Shops Project
Facsimile No.: (415) 554-4755

Developer: Oryx Development I, LLC
P.O. 14315
San Francisco, CA 94114
Attn: JC Wallace
Facsimile No.: (408) 693-3836

with a copies to: Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94111
Attention: CJ Higley, Esq.
Telephone No.: (415) 954-4942
Fax No.: (415) 954-4480

13. Compliance with Americans with Disabilities Act

Developer shall provide the Developer Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

14. Modification of This Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as expressly provided herein. Any modification or waiver must be in writing. "Notices" regarding change in personnel or place must be communicated by written instrument executed and approved in the same manner as this Agreement.

15. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles of conflicts of laws. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

16. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Counterparts

This Agreement may be executed in one or more counterparts, and each of such counterparts shall, for all purposes, be deemed to be an original, but all of such counterparts shall constitute one and the same instrument. The parties agree that their respective signatures transmitted by facsimile or PDF electronic mail shall be deemed binding for all purposes.

18. Benefits and Obligations

The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, administrators, legal representatives and permitted successors and assigns. No provisions of this Agreement shall inure to the benefit of, or be enforceable by, any creditors or other third parties.

19. Integration

This Agreement represents the entire and integrated agreement between the City and Developer and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by the City and Developer.

20. Further Assurances

The City and Developer agree to execute and deliver such further instruments as may be necessary or desirable to effect this Agreement and the covenants and obligations of the parties hereto, subject to any necessary governmental approvals.

21. Headings

The headings in this Agreement are solely for convenience of reference and shall not affect its interpretation.

22. Survival

Notwithstanding anything stated to the contrary in this Agreement, none of the covenants, conditions or indemnities of the Developer or the City under this Agreement shall (a) survive the termination of this Agreement, except in connection with an action by such Party for termination of this Agreement and damages based on the alleged breach of such covenant, condition or indemnity, or (b) survive Final Completion, except that (1) the provisions of 3.2, 8.2, 10.3, 11.4, and Exhibit J shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of one year after either such event occurs, (2) the provisions of Sections 1.11, Article 5, 6.1, 11.2, 11.5, 11.11, 11.15, 12 and 13 shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of three (3) years after either such event occurs, or, such longer time as is necessary to resolve any issue for which indemnification is asserted under

such sections provided a demand is made by the party asserting such indemnification obligations within such three (3) year period, and (3) the provisions of Sections 1.7(b), 1.7(c), 8.2, 9.3, 10.1, 10.2, 15, 16, 17 and 18 shall survive the termination of this Agreement, or Final Completion, as applicable, without limitation.

23. No Waiver

No failure or delay of either Party in the exercise of any right under this Agreement shall be deemed to be a waiver of such right. No waiver by either Party of any condition under this Agreement for its benefit or any breach under this Agreement shall constitute a waiver of any other or further right or subsequent breach.

24. Ownership of Work Product

Whether provided by the City or Developer or their respective agents, all of the data, notes, estimates, computations, sketches, photographs, presentations, reports, renderings, computer programs and all other materials relating to the Project and the Developer Services (collectively, the "Works") are and shall remain, together with all copyright privileges, the property of the City whether or not the Project for which they are made is executed. To the extent Developer has any copyright in the Works, Developer hereby assigns any such copyright to the City. Developer may retain copies, including reproducible copies and intermediate drafts, of the same for information and reference only.

25. Sunshine Ordinance

Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

26. City's Remedies for False Claims and Other Violations

Under San Francisco Administrative Code section 6.22(M), any Developer, Subcontractor, lower-tier subcontractor, or consultant who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of its agreement, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, any Developer, Subcontractor, lower-tier subcontractor, or consultant who submits a false claim

may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

27. MacBride Principles -Northern Ireland

The provisions of San Francisco Administrative Code section 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Developer confirms that Developer has read and understands that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year written above.

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a Charter City and County

By: _____
Name: John Updike
Title: Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

By: _____
Name: _____
Deputy the City Attorney

DEVELOPER

ORYX Development I, LLC,
a Nevada limited liability company

BY: ORYX Partners, LLC
a Delaware limited liability company

By: _____
Name: Juan Carlos Wallace
Title: Managing Member

EXHIBIT A
PROJECT BUDGET



CENTRAL SHOPS
100% DD GMP Budget
Prepared 2/15/17

	100% DD GMP
Direct Costs	
GC - Building Costs	\$46,564,000
GC - Contingency	\$3,130,000
Total Direct Costs	\$49,694,000
Indirect Costs:	
Acquisition & Due Diligence Costs	\$76,809
A&E	\$3,689,410
Development Management Fee - Base	\$2,044,500
Development Management Fee - Bonus	\$825,000
Permits and Fees	\$962,175
Testing and Inspection	\$161,857
Legal, Ins, Accounting and Misc	\$343,819
Reimbursables	\$180,000
Indirect Contingency	\$300,000
Total Indirect Costs	\$8,583,570
Developer's Contingency	\$1,922,430
GRAND TOTAL	\$60,200,000

EXHIBIT B
CRITERIA PACKAGE

This Exhibit B contains the Criteria Package provided by the City to Developer as of the date of this agreement and contains the following:

- (1) Conceptual drawings prepared by the Department of Public Works of the City and County of San Francisco's Building Design and Construction Division dated November 13, 2015 for the Development Sites (the "Drawings")
- (2) The attached memorandum dated January 11, 2016 prepared by Gannett Fleming Inc. providing comments and concerns regarding the Drawings, including an earlier version of the Drawings prepared on August 4, 2015 and June 24, 2015 (the "Gannett Fleming Memorandum").
- (3) City has also provided Developer with a copy of the Draft Geotechnical Data Report for CDD HD SIG SITES, 1975 Galvez Avenue and 555 Selby Street, San Francisco, California, prepared by AGS and dated December of 2015.

The City acknowledges that the Phase One Project Budget is based on the information contained in the Drawings and the Gannett Fleming Memorandum. The City further acknowledges that (i) the comments and concerns raised by the Gannett Fleming Memorandum will need to be jointly evaluated by the Developer, the Architect, the General Contractor and the City (after the issuance of the NTP for Phase One), as part of the Phase 1 Scope of Work, and (ii) such evaluation may lead to substantive changes to the Drawings, subject to City approval. Upon City's approval of the revised Drawings (the "Conceptual Design Documents") such Conceptual Design Documents shall be deemed to constitute the revised Criteria Package and attached to this Agreement for reference.

EXHIBIT B

The site plan shows a central building footprint with a complex internal layout, including what appears to be a parking area or courtyard. To the left is LERCID AVE and to the bottom is TOLAND STR. A permit stamp is located in the bottom right corner of the plan area, containing the following information:

DEPARTMENT OF PUBLIC WORKS
CITY AND COUNTY OF SAN FRANCISCO
BUILDING DIVISION AND
CONSTRUCTION DIVISION

PERMIT FOR CONSTRUCTION

Project Name: _____
Project No.: _____
Address: _____
City: _____
State: _____
County: _____
District: _____
Parcel No.: _____
Drawing Title: _____
Scale: _____
Sheet No.: A-1
Date: _____

① SITE PLAN

EXHIBIT B

EXHIBIT B

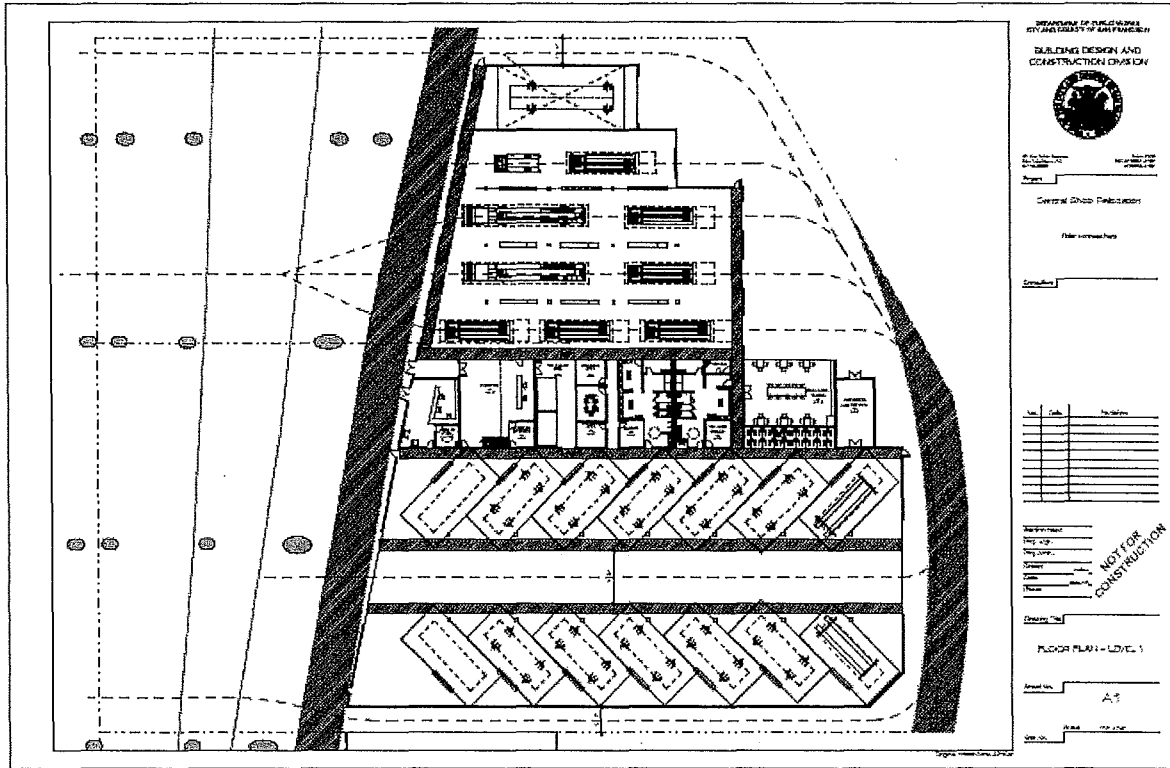


EXHIBIT B

EXHIBIT B

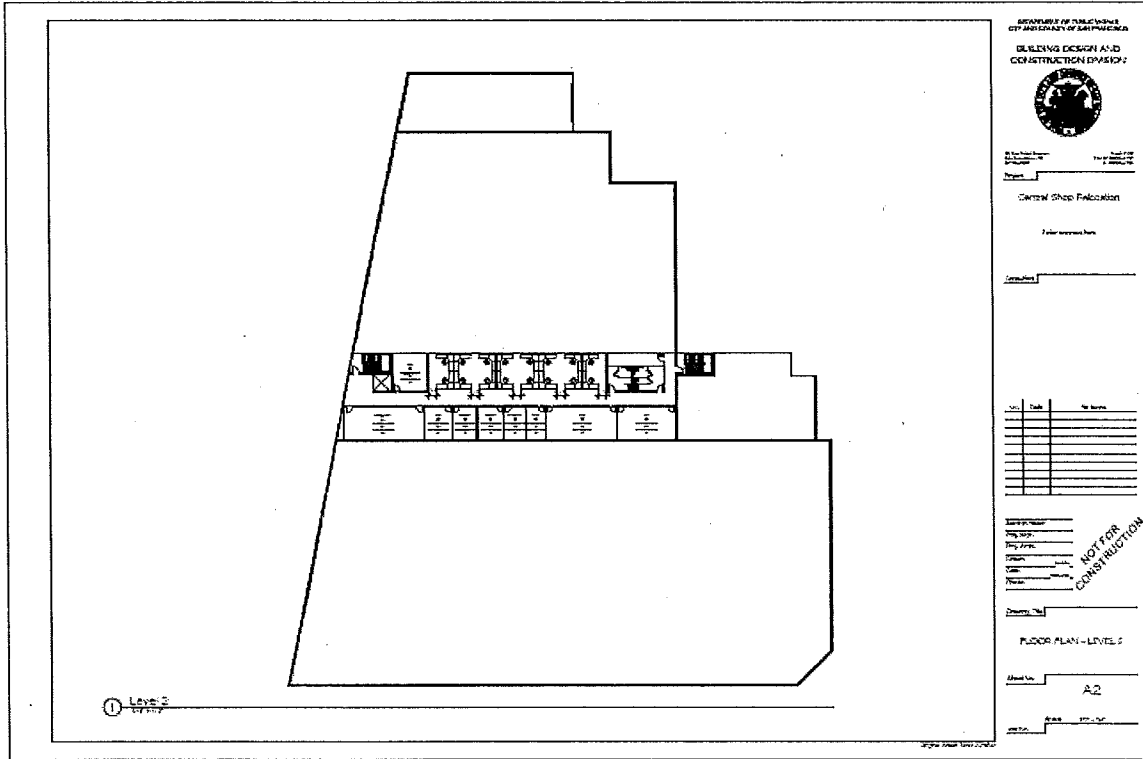


EXHIBIT B

EXHIBIT B

EXHIBIT B

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GANNETT FLEMING, INC.
Suite 1900
3838 North Central Avenue
Phoenix, AZ 85012

Office: (602) 553-8817
Fax: (602) 553-8816
www.gannettfleming.com

TO: Dan McKenna
Special Projects, Fleet/Central Shops
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

FROM: Luigi Leone

DATE: January 11, 2016

SUBJECT: CCSF Selby/Galvez and Toland Sites Technical Review (Final Memorandum)

COPIES: Kam Shadan, Mark Wavering

GF PROJECT NO.: 60043 – Task A.1
Contract Number: 98000 – Task A.1 – A.2

Introduction:

The City and County of San Francisco (CCSF) is in the process of relocating their Central Shops currently servicing the City and County fleet to two new locations to satisfy the maintenance needs of their changing fleet. As part of the Task A.1 requirements, Gannett Fleming is supporting the CCSF with oversight and review of the design and construction process for the new facilities. The Department of Public Works, Building Design and Construction Division (SFDPW) is in the process of preparing design and construction documents addressing the CCSF fleet's needs.

The CCSF has recently acquired one parcel of land and leased a second parcel at two separate locations to satisfy the light, medium and large duty fleet vehicles that the CCSF serves. The Selby/Galvez site will house the maintenance operations with administrative support for the medium and large duty fleet. This site has been purchased by CCSF and the documents will support the construction of a new maintenance building for the assigned fleet. In addition, the CCSF is in the process of finalizing a 10 year lease agreement for the lease of an existing building located approximately two blocks from the Selby/Galvez site on Toland Street. The building will be renovated to support the light duty servicing of the CCSF fleet along with paint and body operations, carpentry shops for support of the Fire Department vehicle ladder assembly and support. The Toland site located at 450 Toland Street will be renovated with a small mezzanine area that will provide ancillary spaces in support of the staff while the main floor will house the light duty vehicle maintenance bays and support shops.

As part of the effort, Gannett Fleming was retained to provide design review efforts during the design process. This report addresses a functional review provided for the preliminary layouts of both sites. The review comments below are linked to specific concerns identified on the sites

EXHIBIT B



and are identified using an Index Drawing (See Appendix A) that supports the listed comments below.

Functional Review of Work Areas:

The following review comments are based on Industry Standards for the functional relationships and requirements for the CCSF. These comments are based on information acquired during the site visits and meetings with staff and the Validation Report generated by Gannett Fleming dated January 2015. The Validation Report took into consideration the original Mercury Report dated September 2013 and adjustments based on meetings with CCSF. In addition, CCSF has revised the new requirements due to the complexity of the sites which impact the programming document. These impacts have led CCSF staff to consider downsizing certain functions to satisfy the new sites. Dan McKenna's email dated October 8, 2015 as listed below, provided some consolidation or reprogramming of the original space program. This information was used to generate the first set of review comments that were submitted to Mr. McKenna on October 19, 2015 for his review and process. The following were the guidelines from Mr. McKenna:

We have gone through some significant changes since your last review of the project. First, I need to bring you up to speed. The project is now on two sites (555 Selby and 1976 Galvez to be considered as one site and 450 Toland as the second site).

Oryx will be the developer, and Pankow will be the GC. They have hired FME as their principle design firm, and I believe they will sub some of the design work to MDG. So that seems to be the team. Our Real Estate Group has LOIs for each of the properties and is working on finalizing the Lease/PA and CAs as well. We are to be at the Board of Supervisors in November and have NTPs in January. The S/G sites will be purchased and the 450 Toland Site will be leased for 10 years. The project is now at Planning for CEQA and at Civic Design Review. I have attached the CDR package.

The two distinct properties are located approximately two blocks from each other. This was done to eliminate two story construction on the Selby/Galvez site. Geo-Tech draft report below, and Hazmat Phase II is underway. We should also have a survey of the S/G site completed this week as well. I will forward if you need that. You will also find attached the DPW design for the two sites, which is the focus of this task order. However, in order to complete your review of the design, you will need to account for Programming changes we will undertake prior to occupying the new facilities. They include the following:

- 1. A reduction in the number of LD vehicles in the fleet overall. We believe a conservative reduction of 10% will occur during the next several years.*
- 2. LD oil, lube and smog inspections will be conducted off site*
- 3. LD body/paint work will be conducted off site*
- 4. Small engine repair will be conducted off site*
- 5. Machine Shop will be located off site*
- 6. Electric Shop will be consolidated in the various shops and storeroom*

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7. *New Storeroom inventory practices will be implemented in order to reduce storage space and decrease inventory carryforward costs. (We will seek some guidance from you as we move forward on this issue)*
8. *Staging will be reduced dramatically, through new practices including an online reservation system, and off-site staging.*

As a follow up to the review submitted to Mr. McKenna, The Department of Public Works incorporated the comments and due to cost concerns on the entire building design, additional program reconfiguration was incorporated by the Department of Public Works. Mr. McKenna provided additional requirements to be considered in an e-mail dated November 16, 2015. These additional guidelines were as follows:

Good Morning Gentlemen

Please find attached the final program design prepared by the SFDPW design team.

You will immediately note that the program elements have continued to shrink and be repurposed based upon site constraints, budget and schedule. The Toland Site has presented the largest challenge due to its configuration and potential II costs, which we estimate to be near \$400 sq. ft. So the following new program "concessions" along with those previously enumerated will become the baseline program evaluation criteria for your analysis:

Toland:

1. *No dedicated welding area*
2. *Ladder shop sq. ft. will be reduced and their spray booth will be partially located within the shop*
3. *Five carousels will be located at ea. location*
4. *Secure Parts Rooms will be located at ea. location*
5. *Consolidated Training/Lunch/Break Rooms will be located at each location, but combined will not equal the recommended sq. ft. size as recommended.*

As we move the project forward, your comments to this design will be presented to the new Project Architect, Terri Emery of FME. Unless you note some large critical element to the program design, your comments should be submitted within 30 days. If that schedule cannot be met, please inform me so we can discuss what is doable.

A Technical Review conference call was held on January 7, 2016 and all discussion items and responses have been incorporated in this Final Memorandum.

The following review comments to the Department of Public Works Conceptual Design are based on common practices and functional requirements and are open to discussion. The Department's program changes have been taken into consideration for this review and recommendations. Please refer to attached Appendix A for comment location. Most the comments above referring to a specific location have a letter associated with comment that is shown on the attached drawings in Appendix A. These drawings serve as the index to further clarify location for each of the comments listed above.

Selby/Galvez Site Level 1 – Sheet No. A1:

- A. The Stores Area has now been programmed into both buildings. As per Mr. McKenna's direction above, each Facility will provide a standalone secured Stores. Although the area has decreased in size from the original Mercury Report (7,000 S.F.) and the Validation Report generated by Gannett Fleming (5,500 S.F.) There is a new,

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Stores Room inventory practice that will be implemented in order to reduce storage capacity as listed in the planned reduction above. This new practice should take into consideration all components currently housed and controlled by the Stores Department. It is recommended that CCSF work with the Industrial Designer of record and Review Team to determine best practices to implement for the reduced Stores area.

- B. Tire Storage Area: Per the original review comments and recommendations by Gannett Fleming, the Department programmed tire carousels on each location to maximize the tire storage capacity for the rubber inventory stored at the facilities. Even though tire carousels is highly recommended for the light duty rubber tire inventory, larger tire storage still should be considered to be stored on two-tier heavy duty tire racks. Larger truck tires are too bulky and heavy and do not lend itself to be stored in carousels, so suggested storage is heavy duty tire racks with simple handling hoist for lowering upper rows of tires by personnel. Per Dan McKenna's comments. The Selby/Galvez site will utilize outside vendors for the mounting and dismounting of tires so there is no need for tire shop support for the larger heavier tires. Although storage of such tires will be performed on site and storage capacity is necessary, it is important to have a space to provide sufficient equipment for emergency situations. Verification on the tire function based on the latest drawings, tire service (mount/dismount) will not be available in the current space with the exception of emergency service. All heavy tire work will be outsourced.
- C. Confirm with the Architect on the type of elevator that will be specified. If a hydraulic elevator, a machine room adjacent to the elevator will be required; if a Machine Room Less (MRL) elevator, a control closet within a 100 feet of the motors is required; if a traditional overhead, then a large machine room required above the second floor.
- D. There are two large areas shown on the floor plan that are not identified. These spaces are adjacent to the Stores Area. Per Dan McKenna's December comments provided, these spaces are for Tire Storage and possibly a small Tire Shop for emergency situations since all heavy duty tire work is now planned to be outsourced.
- E. It is suggested that for the four post platform lifts shown on the Medium-Duty Truck Bays be specified as platform "Flush Mount" lifts to allow the bays to be flushed when platform is not in use without any obstructions. This provides multi-purpose capability at the bay. There are numerous manufacturers that provide this installation. It is not suggested that four post lifts or parallelogram style platform lift be used due to the space constraints at the bays. Gannett Fleming suggest the use of lift systems that will satisfy the various functions for the Central Shops. It is recommended that the Designer of Record discuss with the users the various types of lift systems available including in-ground scissor lifts, piston lifts, vertical platform lifts and portable column lifts to satisfy the requirements for the facility. With in-ground or platform lifts, it is suggested that all installations be flush to the finished floor. Suggested manufacturers to consider may include but not limited to Rotary Lift and Steril Koni who are the largest manufacturers of heavy duty lifts in the USA. It is recommended that CCSF consider the use of one manufacturer for all lift systems to simplify equipment maintenance and warranty issues.
The use of portable column lifts gives the user the ability to introduce flexibility to the work bays. Portable columns should not be required in every bay since they utilize a large amount of storage area, column lifts may be shared between bays to minimize

EXHIBIT B



the number of units purchased. Suggest that the Designer of Record provide various sets jack stands.

In addition, due to the materials handling requirements along the bay areas in the medium duty and heavy duty bays, it is necessary to address the inclusion of overhead crane systems to support the removal and replacement of components on vehicles, work on hydraulic components on vehicles and overall assistance with maintenance work on the larger vehicle components. Designer of Record should consider introducing crane system covering the work bays. Coordinate with Maintenance Supervisor on the area of coverage.

Selby/Galvez Site Mezzanine – Sheet No. A2:

- F. There does not appear to be an IT/Server Room called out in this layout at Selby/Galvez Site. Per CCSF, IT Support will be provided off-site with minimal requirement in the Selby/Galvez site. Verify with IT Services for minimal equipment be housed in this building.
- G. There is no Break Room or Kitchenettes in the second floor to provide a user separation between the Administrative Staff and the Mechanics. There is a multi-purpose Room that will serve for this function. Per Dan McKenna's December 7, 2015 review comments, this area will satisfy the required purpose and serve as break room and coffee area. It is recommended that the space be provided with a counter and a sink for such functions.

General:

- H. Layout of the parking concept for the site was not provided. CCSF should provide adequate parking for the number of vehicles and equipment that will be stored at the facility, to include circulation patterns within the parking areas.

Toland Street Site – Level 1 – Sheet No. A2:

- I. It is suggested that the Designer assess the functional process for the relationship between the Carpentry Shop servicing the ladders and the ladder booth. Assume the booth entrance is from the Carpentry Shop, keeping in mind that ladders are 25 feet long and need to have means to move material within the two areas. In addition, verification of areas dedicated for raw stock and finished ladders should be considered. Additional consideration on the layout of the Carpentry Shop is stressed since large material will need to be moved within the Carpentry Shop. The shop will house a large number of heavy equipment including table saws, planers, cutting machines, dust collectors and workbenches. The layout should allow for proper circulation. It is suggested that the designer of record discuss shop functions with Carpentry/Ladder Shop Supervisor prior to starting design.

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- J. Carpentry Shop: Similar to comment above, need to clarify material circulation between the bays and the Carpentry Shop to move Fire Apparatus ladders in and out of the Carpentry Shop and the Ladder Paint Booth to the appropriate areas. Layout currently appears not to support this movement.
- K. Following concerns identified in Comment J above, suggest that a larger aisle between the Ladder Booth and the stair well be provided for material movement. This would allow ladders removed from the trucks to move directly into the Carpentry Shop. Daily movements should be coordinated with the Carpentry Shop Supervisor to assure proper access.
- L. Access to the Carpentry Shop and light Duty Body Shop: This circulation appears to have some concerns with the movement and delivery of existing ladders and wood supply (material) which comes in long lengths via truck delivery. In addition, means of entering the body shop is nonexistent and should be addressed. Verify the process for material handling for this area. In addition, address the entrance for light duty vehicle to this work bay.
- M. Body Shop: Per Mr. McKenna's e-mail dated November 16, 2015, there is to be no dedicated Welding Area in the building. It is assumed that replacement of panels and minor welding will be performed in this area. There appears to be two areas separated by the large Paint Booth. It has been verified by CCSF that the East Side of the Body Shop is dedicated for light duty vehicles, with medium and heavy duty vehicle body work dedicated on the west side of the shop. Required ventilation or fume collection to address any welding tasks in these areas should be incorporated during design.
- N. General Comment: It is understood from Mr. McKenna's e-mail from October 19, 2015 that all body and paint work for the light duty fleet is now being outsourced outside of this facility. Verify that this is still the case since area showing light duty vehicles is now being identified in this area. (Note: This is a General Note and is not depicted on sheets in Appendix A).
- O. Suggest planning an Overhead Crane span between the two heavy duty vehicle bays in these shop. This crane support system should be self-contained as to not impact the existing structural integrity of the building.
- P. The Meeting Room/Library area between Columns 1 and 4 is suggested to be removed and relocated. It is understood from Dan McKenna that it may not a viable option due to structural impacts, code compliance and budget concerns. The suggestion is provided to address a major concern with the functionality of the facility. The light duty body shop currently is shown without an access. It is recommended that an overhead door for access to the light duty bay be provided and without removal of the structure, some other alternatives will be necessary to allow vehicle access. Also, there is a secondary concern with delivery of larger stock to the carpentry Shop. See Comment L above. Currently only a 6 foot double door is shown in this area and will not support the functionality of the shop since there is no means for vehicles to enter the bay.
- Q. Since all material and components serviced by the booths and the Carpentry and Body Shop are coming from the Selby/Galvez site, there needs to be a functional means of receiving these vehicles and materials for work in these areas. Currently it appears that there is no means to stage larger vehicles outside the area nor access for deliveries without impacting the area. This needs to be coordinated.
- R. Large vehicle paint booth: The drawings does not appear to show proper booth size. The large vehicle booth should be approximately 22 feet wide to allow for scaffolding

EXHIBIT B



or man lifts on either side of the vehicle and the length should allow for work area for largest vehicles. Need to coordinate with Paint Supervisor as to largest vehicle to be painted and provide a minimal of 6 feet clear in front and rear. There is currently an area that will accommodate increasing the length of the booth. It is suggested that the booth be enlarged to support largest vehicles. Required path between booths to access the light duty and heavy duty bay to be a minimal of 10 feet for forklift aisle. It is strongly suggested that this 10 foot area be material and personnel movement only and not be considered as a light duty vehicle access to the bays. This concern should be coordinated with FME and the Designer of Record.

- S. There is a concern with the configuration of the support spaces between columns A6 and B on Grid 1A. The Compressor Room needs to have accessibility for the delivery, removal and maintenance of the compressor equipment. It is suggested that the Compressor Room be provided with double doors for equipment access. It is understood based on conversations with Dan McKenna that the area in front of the Compressor Room is open to the bay area for access into Compressor Room. This will provide sufficient means to move equipment and service compressor as required.
- T. Oil Storage Area: Per meeting with Tom Fung and Dan McKenna on January 7, 2016, it is understood that the oil storage area will support fluid distribution for reels at the light duty bays. Based on this information, Gannett Fleming suggests the area be programmed to house bulk storage tanks and 55 gallon drums associated with fluid distribution for the light duty bays. In addition, a waste oil tank and waste coolant tank will also be necessary to be located within the premises. Flexibility along the north wall may provide some space for location of aboveground tanks, this will need to be coordinated during design. Based on the assigned program for this space, the need for double doors to facilitate the delivery of drums and fluids to the area will be necessary. In addition, oil spill containment capacity for stored fluids needs to be planned in this area to meet codes having jurisdiction.

Gannett Fleming also recommends that the Oil Storage Room, which will serve as the Lube/Pump Room for the facility be expanded to the east wall of the building and eliminate the corridor between the building and the Oil Area. This will allow the increase of square footage for the Oil Room.

- U. The light duty bay at the northwestern most corner (Column grid G and 1A) might have difficulty getting in the bay due to the area allowed for the tuning of vehicle into bay. Should be verified and adjusted accordingly.
- V. Up fit area: Although not identified on the plans, it is understood that the two bays located in the light duty area between Columns B and C / and 1A and 2A are assigned for the Up-Fit functions. This has been verified by Dan McKenna on his latest comments from December 7, 2015 e-mail.
- W. Per e-mail dated November 16, 2015, it is stated that the Storage space will be a secured storage serving this building and separate from the Selby/Galvez site. It is also stated that area is to be a secured space similar to the Selby site. If the area is going to house shelving and storage material storage racks, it appears that the 14 foot width might not be sufficient. Designer of Record should review clearances and consider storage mezzanine and/ or space saver storage systems for this area.
- X. Tire Storage Area: As covered in Item B above, in discussions with Dan McKenna and Tom Fong on January 7, 2016, although the heavy tire work will be outsourced and

EXHIBIT B



only minor storage of mounted tires will be kept in the shop, the Toland Facility will support tire shop and storage with all tire work being performed at the facility. This area needs to be accommodated with miscellaneous tire shop equipment to include, at minimum, tire mount and dismount unit and a tire balancer. In addition based on the facility's requirements consideration of support tire equipment should be discussed. To maximize the storage of rubber, it is suggested in Item B that for this site consideration of tire carousels be programmed into the design to minimize space while maximizing storage capacity. There appears to be sufficient area allocated to storage of tires.

Toland Street Site Mezzanine – Sheet No. A3:

- Y. The previous layout identified support shops such as Component Rebuilt, Electronics Repair and EOC Storage areas. It was confirmed by Dan McKenna that these support shops have been removed from the program.
- Z. Same as Comment C above for Selby/Galvez site: Confirm with the Designer of Record on the type of elevator that will be specified. If a hydraulic elevator, a machine room adjacent to the elevator will be required; if a Machine Room Less (MRL) elevator, a control closet within a 100 feet of the motors is required; if a traditional overhead, then there is a large machine room required above the second floor. These spaces are currently not shown on the drawings.
- AA. The Toland site no longer houses the Administrative staff on the mezzanine level, only on the shop floor. First floor houses two Supervisor Offices and all other administrative functions are now located in the mezzanine at the Selby site. A concern was identified during the January 7, 2016 meeting with CCSF staff. There is no supervision along the center area of the work bays and no visual supervision to the work bays along this row of vehicle bays thus creating a concern. Designer of record should address this concern during design and also verify that the two offices satisfy the space requirements for all supervisory personnel required at the Toland Street Site.
- BB. The mechanic's lockers and restrooms are now located on the mezzanine floor. This will generate a lot of vertical movement since all the functions are on the first floor. The unisex rest room will support some of this concern but its single usage only. With lockers and showers upstairs, and the Training/Lunch Room also upstairs, it can create a vast amount of vertical movement and no supervision on the mezzanine floor. Since IT only requires a small closet, it is suggested moving the IT function and Electrical Room upstairs and expanding restroom capability and possibly a small break room on the first floor to support the maintenance staff.

EXHIBIT B



Conclusion:

The comments listed above are suggested comments based on the revised layout provided for the two sites on November 16, 2015 (Drawings dated August 4th and June 24th) and the January 7, 2016 teleconference meeting with CCSF staff. The comments are based on a functional review of the sites looking for possible concerns that may impact functional operations. The suggested comments are provided for consideration by the designer of record. The mission critical comments are underlined above and should be addressed before conceptual design is finalized. It is strongly suggested that the SFDPW coordinate the suggested review comments with Central Shops staff and incorporate comments agreed upon into the conceptual plans prior to issuing the documents for design. This will allow the Designer of Record to have a document that incorporates all the required components for the facility.

EXHIBIT B

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**City and County of San Francisco
Selby/Galvez and Toland Street Sites
Technical Review**

Appendix

Appendix A:

Review comment index.

- Selby/Galvez Floor Plan – Level 1
- Selby/Galvez Floor Plan – Mezzanine
- Toland Street Floor Plan – Level 1
- Toland Street Floor Plan – Mezzanine

EXHIBIT B

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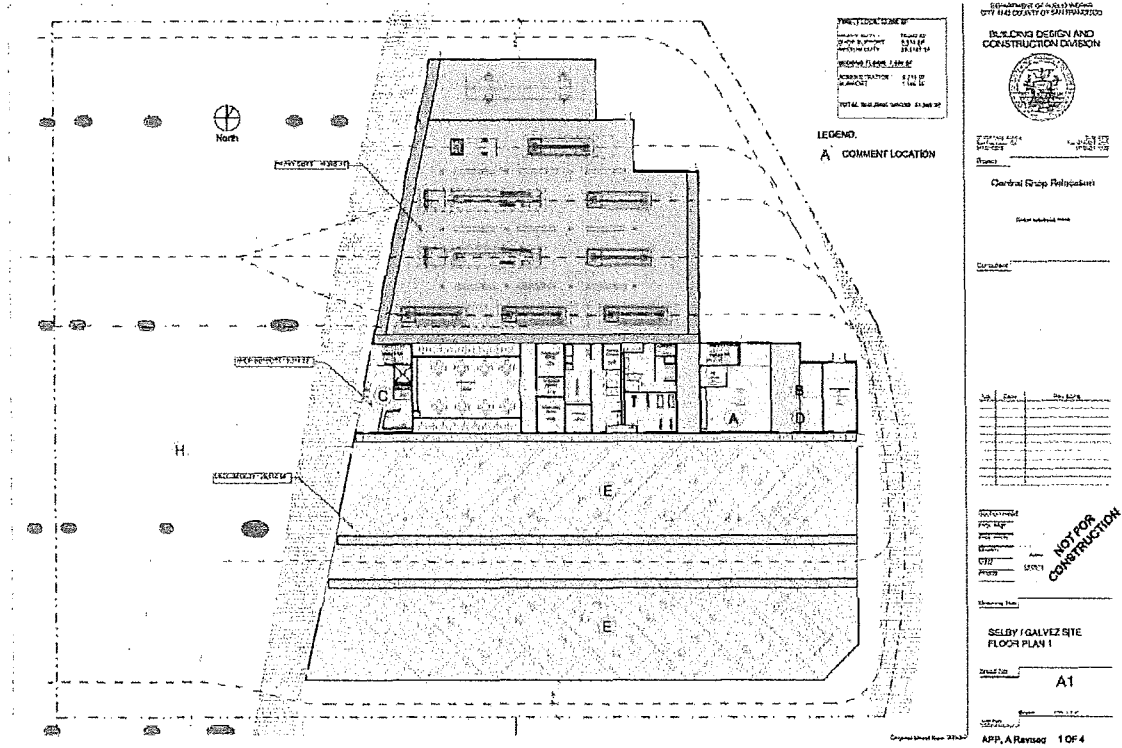


EXHIBIT B

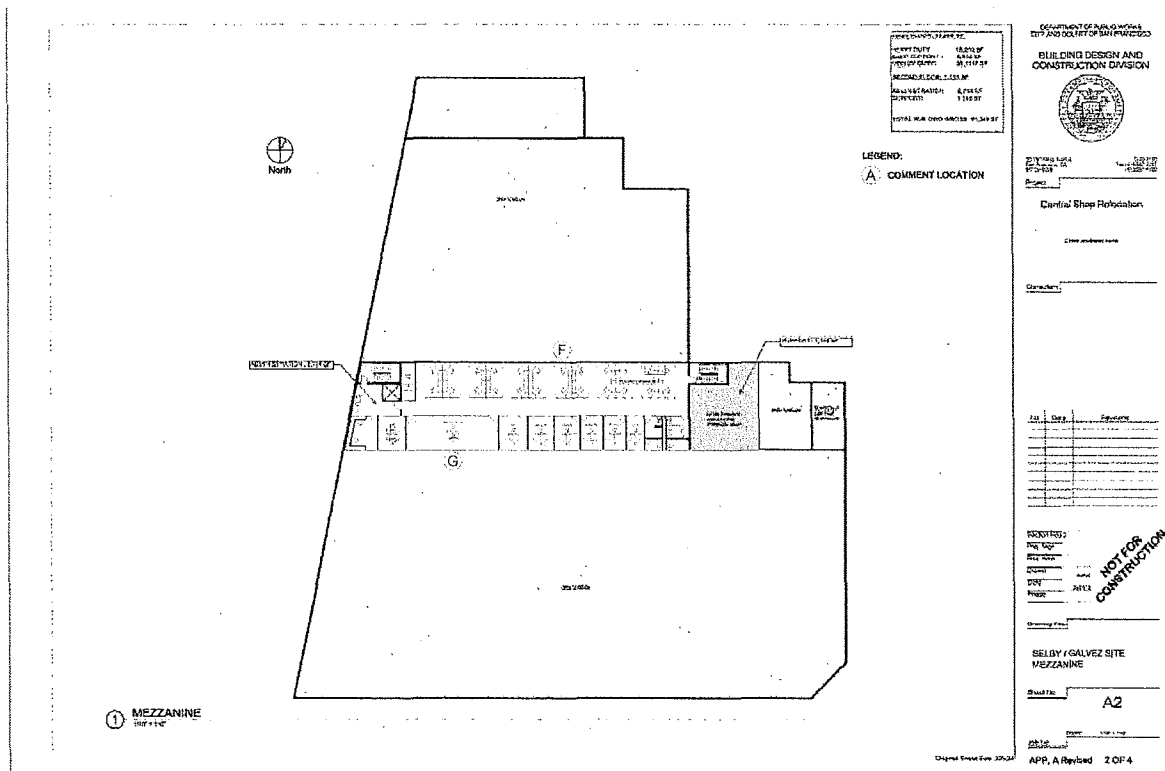


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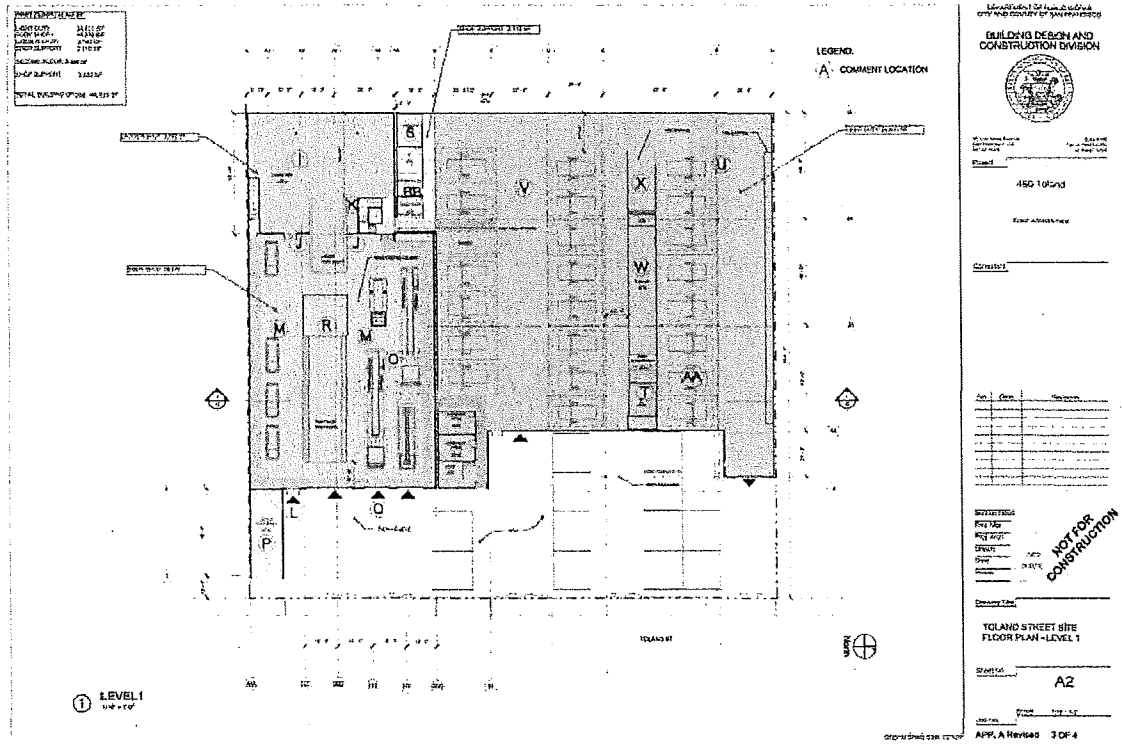


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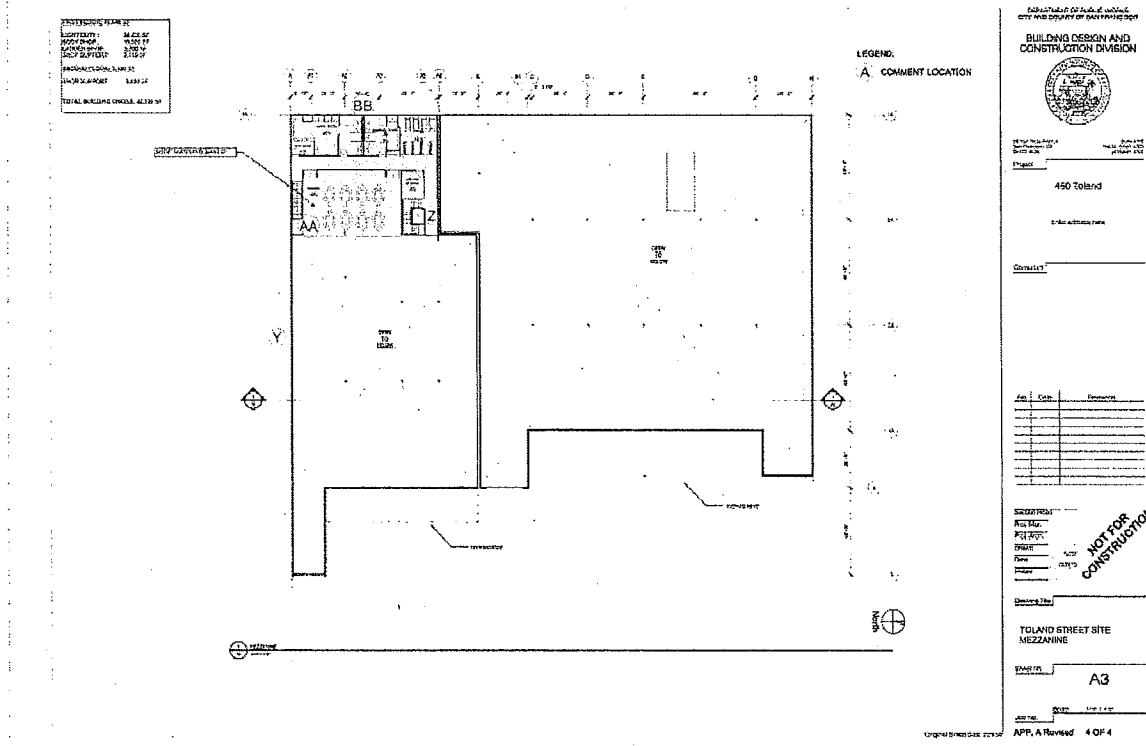


EXHIBIT B

EXHIBIT C

SCOPE OF DEVELOPER SERVICES

I. DESCRIPTION OF GENERAL SERVICES

A. General Services. Unless otherwise provided, the Developer Services identified below and in the Agreement shall extend to the design and construction of the Project. Developer shall oversee and monitor all aspects of the design and construction of the Project.

1. Administration and Coordination

- (i) In conjunction with the City, prepare the Project Plan for the City's approval. The Project Plan shall include, but not be limited to, Site logistics, measures to keep the Site secure, a defined Site perimeter, and progressive Site clean-up. Developer shall update or modify the Project Plan from time to time upon the request of the City or when Developer deems necessary, and all such revisions to the Project Plan shall be subject to the City's approval.
- (ii) Establish and implement procedures for coordination of all aspects of the Project between the City, Developer, and Developer's subcontractors of all tiers.
- (iii) Negotiate contracts and agreements for all contracted services, including site development, architectural, construction, engineering, testing and consulting services, and provide written recommendations to the City to approve contracts or agreements.
- (iv) Coordinate the services and activities of the General Contractor, Architect, and the Lower-Tier Subcontractors and Suppliers, to facilitate cooperative efforts in the development and implementation of the Project Plan.
- (v) Negotiate any documents, instruments or agreements or amendments thereto necessary or appropriate for the implementation of the Project and services related thereto, to the extent such documents, instruments or agreements, or amendments thereto, are consistent with the Project Plan. Except as otherwise provided in this Agreement, all material documents, instruments, agreements or amendments are subject to the reasonable approval of the City.

2. Management Control Procedures

- (i) Coordinate the performance of all budgeting, billing and payment application review/assimilation functions as necessary or appropriate for and in connection with the coordination of the design and construction activities being conducted pursuant to the Project Plan. Such functions shall include, without limitation, the preparation and submittal to the City of a monthly single, comprehensive application for payment in form and substance satisfactory to the City, representing work completed in accordance with Article 9 of the General Conditions. The form of application for payment shall include and incorporate, without limitation, the Developer's pay application for any period in which the Developer has submitted such application for payment for work performed. The form of application for payment shall also include (i) a statement of the Development Services Fee for such month, (ii) a statement of Developer's Reimbursable Expenses for such month, (iii) invoices establishing all other payables for such month, and (iv) such lien releases and other documentation as may be required for payment in accordance with the terms of the agreements with the Architect, General Contractor, Lower Tier Subcontractors, and any other Project team members.
- (ii) Establish and implement administration and reporting procedures for the Project, including finance, budget and cost controls.
- (iii) Coordinate the development and implementation of a procedure/system of Project cost control and track actual and projected costs.
- (iv) Oversee the activities of the Subcontractors regarding their performance in accordance with their respective agreements. Upon receipt of knowledge thereof, notify the City of all material deviations and coordinate the implementation of the necessary procedures to rectify the same.
- (v) Coordinate the scheduling of meetings on a regular basis, or more frequently as the City may reasonably elect, among the City, the Architect, the General Contractor and such other parties as the City may deem necessary or appropriate concerning the Project.
- (vi) Consistent with industry standards for similar projects, monitor, manage and oversee the Architect's work throughout design and construction of the Project.

EXHIBIT C

- (vii) Consistent with industry standards for similar projects, monitor, manage and oversee the General Contractor's work throughout design and construction of the Project.
- (viii) Review, monitor, and certify the correctness of the General Contractor's monthly construction cost report of expenditures for the Project on a monthly basis.
- (ix) Review the Project Budget, as compared to actual expenditures, throughout the construction of the Project and advise the City if Developer reasonably believes that the total Project Costs are likely to exceed the amounts set forth in the Project Budget and, if such is the case, Developer shall use commercially reasonable efforts to provide the City with proposed alternatives in order to keep the total costs below those set forth in the Project Budget.

3. Timing and Scheduling

- (i) Coordinate the development and updating of appropriate Project schedules, including a critical path analysis.
- (ii) Oversee the coordination of the individual timing schedules of all Project participants so as to conform to the overall Project Schedule and manage any necessary adjustments.
- (iii) Monitor the Project participants in order to confirm that their individual work capacities and performances continually conform to the overall Project Schedule.
- (iv) Endeavor to identify appropriate opportunities for "fast-tracking" the overall Project Schedule, evaluate the costs and benefits of such strategies and provide the City with Developer's recommendations. Endeavor to identify schedule impacts and prepare recovery strategies and budget of costs relating thereto.

4. Reporting

- (i) Conduct Project meetings; review and comment on reports delivered by others.
- (ii) Keep the City informed of all material internal and external Project related matters by initiating and distributing relevant information. The level and detail of such information will be mutually reviewed as the Project progresses.

EXHIBIT C

- (iii) Use good faith diligent efforts to inform the City of all upcoming meetings in a timely manner.

II. PHASES OF WORK

PART 1 - DESIGN PHASES

1.01 GENERAL REQUIREMENTS

- A. Developer shall not commence the Design Phases outlined below, until the City issues a Notice to Proceed (“NTP”) with Design.
- B. Developer shall not commence the Site Work until the City Representative provides written authorization to commence the Site Work.
- C. Throughout all design phases, Developer shall collaborate with the Project Team and shall update all submitted plans, schedules, and reports.
- D. Developer shall provide a schedule indicating the critical path for the Project duration and update this schedule throughout all design phases.

1.02 CONCEPTUAL DESIGN PHASE

A. Based on the Criteria Package, Developer shall develop the Conceptual Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% Conceptual Design Documents package will become the revised, final Criteria Package as provided in Exhibit B and shall include at a minimum:

- 1. Architectural site plans, floor plans with general blocking of uses showing target adjacencies, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), and pedestrian access/egress, in general conformance with the City’s required Program.

1.03 SCHEMATIC DESIGN PHASE

- A. Based on the Criteria Package, Developer shall develop the 100% Schematic Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% SD package shall include at a minimum:
 - 1. Architectural site, floor plans, reflected ceiling, and equipment plans, exterior and interior elevations, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), pedestrian access/egress, etc.
 - 2. Interior design plans and other supporting documents to illustrate the graphic design layouts.
 - 3. Refined building systems, material, and products selections.

EXHIBIT C

4. Refined MEP, Special Systems, Fire Protection, and Exterior Skin and other systems floor plans, diagrams and text to describe these systems.
- B. Developer shall develop BIM Model for detailed MEP, Special Systems, and other systems floor plans, diagrams, and text to describe these systems
- C. Prepare a Schematic Design phase report to document and summarize the Schematic Design phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.
- D. Developer shall perform and document constructability review.
- E. Prepare initial trade bid packages (BIM model (if applicable), drawings, specifications, instructions to bidders).

1.04 DESIGN DEVELOPMENT PHASE

- A. Developer shall refine the approved 100% Schematic Design Documents to fully integrate all required Project design elements and issue a 100% Design Development Package, in order to provide sufficient information to develop the Construction Documents for the Trade Packages. The City shall approve the Design Development Package within 10 working days of delivery of the 100% Design Development Package to the City. Additionally, the parties agree that Developer may re-allocate the time allowed for the City's review of the 50% Design Development Drawing Package (which is no longer required) to conducting a value engineering exercise (with the participation of the entire design team), for the purpose of achieving a reduction in projected Project costs.
- B. Update BIM Models.
- C. Document the constructability review, including an evaluation of the design documents to identify value engineering opportunities, identification of long lead items, availability of labor, and other factors affecting construction.
- D. Prepare a Design Development phase report to document and summarize the Design Development phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

1.05 CONSTRUCTION DOCUMENTS PHASE

- A. Based on the approved Design Development documents, Developer shall prepare 50% and 100% Construction Documents to fully describe the Work for each Trade Package that, at a minimum, should include drawings, diagrams, calculations, 3D models, renderings, schedules, and a Project Manual that includes the General and Supplementary Conditions, Divisions 00 and 01, and Technical Specifications. The City Representative shall provide all City comments on the 50% and 100% CD packages within 10 working days.
- B. In accordance with the provisions of Section 1.10, Developer shall apply for all primary permits for the Construction Documents from regulatory authorities having jurisdiction over the Project, which are necessary to obtain a Temporary Certificate of Occupancy. This includes the Site Permit, Demo Permit, Addenda 1-3 (foundation,

EXHIBIT C

structural, core-and-shell, interiors, MEP) and permits required by the San Francisco Public Utilities Commission (SFPUC) and the Bureau of Street Management (BSM) and the Bureau of Urban Forestry (BUF). All other permits, including deferred permit submittals, such as Fire Sprinkler, Fire Alarm and Emergency Generator, shall be applied for during the Construction Phase.

- C. Prepare a Construction Document phase report to document and summarize the Construction Document phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

PART 2 - CONSTRUCTION PHASE

2.01 GENERAL SCOPE OF WORK

- A. Developer shall not commence with the Construction Phase unless and until the city issues a Notice To Proceed with Construction.
- B. Developer shall furnish and install mock ups as identified and determined during Programming for performance, acceptance of size, circulation, and FF&E as determined in the approved Project Schedule. The mock-ups may be constructed in-place and/or off-site as determined during Programming.
- C. Construction Work activities will be authorized by the City upon award of each Trade Package Set. Developer shall perform all Work and construction administration services necessary to achieve an exceptional project outcome that meets the Programming Phase requirements with approved deviances; construct the Project in accordance with the design-build delivery method; and render the Project with all its components operational, functional, and usable.
- D. Developer shall plan for authorities with jurisdiction to inspect the Work. The City Representative has final authority over coordination, use of premises, and access to site.
- E. Developer shall provide qualified staff to manage construction as required by the Contract Documents, including:
 - 1. Administration: Developer shall provide required administrative services.
 - 2. Superintendence: Developer shall provide a qualified management team.
 - 3. Quality Control: Developer shall implement a Quality Control (QC) Program.
 - 4. Cost Control: Developer shall provide cost estimating, cost control, and cost management.
 - 5. Scheduling: Continuous updating of the critical path schedule in conformance with requirements in the Contract Documents.
 - 6. Reporting: Developer shall provide reporting services related to cost, schedule, and critical issues facing the Project.
 - 7. Document Control/Project Records: Developer shall provide Document Control services and maintain Project Records.

EXHIBIT C

8. Project Meetings: Developer shall schedule and attend weekly Project meetings.
9. Security: Developer shall secure the Project site and Work.
- F. Developer shall perform the Work in phases and utilize Trade Packages as needed to achieve the Project schedule.
- G. Developer shall report on the progress of the Project including information on Developer and its Architect's and General Developer's Work, percentage of completion of the Work, current estimates, forecasted contract growth, subcontract buyouts, updated monthly schedules, including projected time to completion and estimated cost to complete the Work, digital progress photographs, logs for Requests for Information, submittals and shop drawings, pending and approved change orders, meetings minutes, and other project metrics as requested by the City.
- H. Developer shall develop and implement a process to procure Trade Packages in conformance with the Contract Documents:
 1. Maximize both competition and the involvement of small businesses.
 2. Develop subcontractor and supplier interest for each division of the Work.
 3. Use best efforts to obtain bids for each Trade Package that are less than the final cost estimates.
 4. If required by the City Representative, conduct bid openings in the presence of the City Representative. All bid documents shall be circulated and viewed by those present. Developer shall provide the City with a copy of its preliminary bid tabulation and, if requested, a copy of all bids.
 5. Determine final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items.
 6. Prepare and furnish to the City a final bid tabulation summary that includes by subcontract, trade and/or bid division, the applicable final estimated cost and the related final bid amount and the details of all scope clarifications for City's review and approval.
 7. Identify to the City in writing the subcontractors to which the Developer recommends award of subcontracts, and when authorized by the City, award and enter into subcontracts.
- I. Developer shall maintain systems and equipment. Developer shall provide services and maintain all equipment in accordance with manufactures instructions until such time as the City receives and takes over the equipment in the activation phase.

2.02 ACTIVATION/COMMISSIONING /MAINTENANCE TRAINING PHASE

- A. Developer is responsible for performing the requirements of the commissioning process including those responsibilities assigned to subconsultants, subcontractors, vendors, manufacturers, or their representatives. The Developer shall insure that all subconsultants, subcontracts or purchase orders for systems, inclusive of all of the

EXHIBIT C

system components to be commissioned, include provisions for compliance with this Document.

- B. The requirements of this Document are additional to the requirements of the General Conditions. If this Document requires additional labor, coordination, or documentation, including submittal data, the Developer shall comply with this Document and if any requirement of this Document conflicts with other provisions of the Contract requirements, the Developer shall request formal clarification of the Contract requirements.
- C. Under the Direction of the City, Developer shall commission all systems and equipment in order to achieve the following specific objectives:
 - 1. Verify and document that the building enclosure, systems and equipment are documented in the Design and Construction Documents in accordance with the Criteria Package.
 - 2. Verify and document that equipment is designed, installed, started, and operates properly pursuant to the requirements of the Contract and manufacturer's specifications, instructions and recommendations.
 - 3. Verify and document building enclosure mockups and installation perform as designed and as intended.
 - 4. Identify deficient building enclosure, equipment, systems and installations as early as possible to facilitate timely corrective action minimizing schedule impact.
 - 5. Verify and document that the building enclosure, equipment, and systems receive complete operational checkout by installing subcontractors, vendors and manufacturers.
 - 6. Verify and document building enclosure, equipment and system performance.
 - 7. Verify and validate that the City's operating personnel are adequately trained on the Operation and Maintenance of building equipment and systems.
 - 8. Verify Operations and Maintenance Data for systems and equipment is complete and usable, and provided in the format as required by the City.
- D. The commissioning process does not reduce the responsibility of the Developer, its Architect or subconsultants, General Contractor or its subcontractors, or vendors to perform and complete all Work in accordance with the requirements of the Contract.

2.03 SUBSTANTIAL COMPLETION

- A. Prior to Substantial Completion, Developer shall submit all Equipment Inventory Sheets
- B. In advance of Substantial Completion, Developer shall obtain the Temporary Certificate of Occupancy.
- C. Developer shall demobilize from the Project Site.

2.04 FINAL COMPLETION

EXHIBIT C

In advance of Final Completion, Developer shall assist with Central Shops' move in/fit out of the FF&E and for the entire Project and shall complete all Site work, and equipment, hardware, and software training for maintenance staff. Developer shall obtain the Final Certificate of Occupancy.

EXHIBIT C

EXHIBIT D

PROJECT SCHEDULE – WORK BY PHASE

The Project will be accomplished in two phases: (1) Phase One ; and (2) Phase Two. Phase One may include commencement of Site Work at the Selby-Galvez and/or 450 Toland Development Sites, which shall continue in Phase Two. Site Work commencing in Phase One shall include a portion of:

- (i) General Requirements,
- (ii) Preparation of shop drawings and submittals
- (iii) Procurement, fabrication and testing of materials and equipment
- (iv) Mobilize, fence and barricade sites
- (v) Site Utilities
- (vi) Demolition
- (vii) Abatement
- (viii) Grading
- (ix) Exterior envelope modifications
- (x) Structural Upgrades and Slab Modifications
- (xi) MEP Rough-In
- (xii) Wall Framing
- (xiii) Roofing

Proceeding with Phase Two requires the approval of the City's Board of Supervisors of the Phase Two Budget and approval for the City to issue the NTP for Phase Two. If the City does not issue a NTP for Phase Two, the Agreement shall be terminated under the provisions authorizing Termination by the City for Convenience (General Conditions, Article 14.03).

EXHIBIT D

Line	Name	Duration	Start	Finish	Phase	2016	2017	2018																													
								M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
Owner Obligations																																					
25	Release Process Design		09/11/16	04/14/17																																	
26	Release Concrete Pile Design		10/27/16	10/27/16																																	
27	Tenants Relocated - Tol		10/26/16	11/28/16																																	
28	Tenants Relocated - SIG		04/14/17	04/14/17	110																																
29	Power Poles Relocated - SIG		04/28/17	04/28/17	125																																
30	Temp Power Installed - SIG		05/04/17	05/04/17	480																																
Design																																					
Construction Documents																																					
Construction Documents																																					
33	Conceptual Design Review		2/6	03/23/16	04/02/16																																
34	City Review/Approval of Conceptual Design Review		50	04/21/16	04/27/16																																
35	Schematic Design - 100% SD's		290	04/24/16	06/23/16	A																															
36	Issue MEPES Performance Specification		05/12/16	05/12/16																																	
37	City Review/Approval of 100% SD's		100	06/24/16	07/11/16																																
38	Design Development - 25% DD's		100	07/11/16	07/22/16																																
39	Value Engineering - 100% SD Pricing		200	07/25/16	08/19/16																																
40	Design Development - 100% DD's		200	08/22/16	09/09/16																																
41	City Review/Approval of 100% DD's		100	10/03/16	10/14/16																																
42	Construction Documents - 50% CD's		330	10/17/16	12/02/16																																
43	City Review/Approval of 50% CD's		110	12/09/16	12/23/16																																
44	Construction Documents - 100% CD's		330	12/19/16	02/06/17	620																															
45	City Review/Approval of 100% CD's		100	02/07/17	02/22/17	2000																															
Final Documents																																					
Final Documents																																					
47	Site Permit Submittal - SIG & Tol		400	04/28/16	04/27/16																																
48	Demo Permit Submittal - SIG		100	10/12/16	10/12/16																																
49	Add 1 Foundations (Piles, Fobs, Wall) Submittal - SIG			12/14/16	12/14/16																																
50	Add 1 Demo Foundation Structure - Tol			12/16/16	12/16/16																																

Pankow	Central Shops for Oryx Partners Charles Pankow Builders, Ltd.	Date Date: 1/27/2017	Rev Date : 2/16/2017
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		Filter: None	Page 2 of 14

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Table with columns: Name, Duration, Start, Finish, Float, and a monthly grid for 2016 (March-August) and 2017 (January-April). The table lists various project tasks such as '100% SD Pricing', 'Value Engineering', 'GMP Pricing', 'Developer Review/Approval of GMP Pricing', and 'City Review/Approval of GMP Pricing'. It also includes sections for 'Subcontractor Layoff' and 'Subcontractor Contact'.



Central Shops for Oryx Partners
Charles Pankow Builders, Ltd.

Data Date: 1/27/2017 Rev Date: 2/16/2017
View: Print Phase I & II Print Date: 2/16/2017
Filter: None Page 4 of 14

EXHIBIT D

EXHIBIT E

Reserved

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EXHIBIT F

INSURANCE REQUIREMENTS

1.1 SUMMARY

- A. This Document includes insurance requirements, which amend Article 10 of the General Conditions.

1.2 DEVELOPER'S LIABILITY INSURANCE

- A. Developer shall maintain in full force and effect, for the period covered by the Contract (except for the Builder's Risk insurance described in Section 1.3, below), the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:

1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors of every tier.
2. Commercial General Liability insurance with limits not less than \$2,000,000.00 each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage,, and completed operations.
3. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

- B. Approval of Developer's insurance by the City will not relieve or decrease the liability of Developer under this Agreement. The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase.

1.3 ADDITIONAL COVERAGES

- A. Builder's Risk Insurance: Developer shall provide "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis as follows:

1. Amount of Coverage: The amount of coverage shall be equal to the Project's full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," such as but not limited to design and engineering fees, code updates,

EXHIBIT F

permits, bonds, insurances, and inspection costs caused by an insured peril; the policy may limit the amount for soft costs but such limit shall not be less than 5% of the coverage amount. The Builder's Risk Insurance shall also include the full replacement cost of all City-furnished equipment, if any.

2. Period of Coverage: Developer shall provide evidence of Builder's Risk Insurance coverage in accordance with the requirements set forth herein within five (5) days of City's issuance of the written authorization to proceed with the Site Work.
3. Additional Premium: If, due to change orders or project term extensions authorized by the City, the Builder's Risk policy becomes subject to additional premium, the City will reimburse Developer the actual cost of such additional premium, without markup, provided that the Developer submits to the City proof of payment of such additional premium and either:
 - (a) copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk Policy is issued on a declared-project basis; or
 - (b) copy of Evidence of Property Insurance if the Builder's Risk policy is placed on a reporting form basis.
4. Parties Covered: The Builder's Risk policy shall identify the City and County of San Francisco as the sole loss payee. The policy shall name as insured the City and County of San Francisco, the Developer and its subcontractors of every tier.

Each insured shall waive all rights of subrogation against each of the other insured to the extent that the loss is covered by the Builder's Risk Insurance.

5. Included Coverage: The Builder's Risk Insurance shall include, but shall not be limited to, the following coverages:
 - (a) All damages or loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction Site and temporary structures.
 - (b) The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and water damage.
 - (c) The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and any applicable law, ordinance, or regulation. Limit for such coverage shall be no less than 25 per cent of full construction value.
 - (d) Start up and testing and machinery breakdown including electrical arcing.
 - (e) Consequential loss (lost revenues and costs of funding or financing when a covered risk causes delay in completing the Work). In the event the City receives coverage specifically for a consequential loss associated

EXHIBIT F

with delay to the completion of the Project, such specific amount shall be credited against any liquidated damages for delay for which the Developer would otherwise be responsible.

6. Deductibles: The Builder's Risk Insurance may have a deductible clause not to exceed the amounts below. Developer shall be responsible for paying any and all deductible costs. The deductible for coverage of All Perils shall not exceed the following:
 - (a) \$10,000 for projects valued up to \$25,000,000;
 - (b) \$25,000 deductible for projects valued in excess of \$25,000,000 and up to \$75,000,000; and
 - (c) \$50,000 deductible for projects valued in excess of \$75,000,000.

- B. Professional Liability Insurance: In the event that Developer employs professional architectural, engineering or land surveyor services for performing Project design, field engineering or preparing design calculations, plans and specifications, Developer shall require the retained architects, engineers and land surveyors to carry professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Developer's professional liability policy shall not have an exclusion for environmental compliance management or construction management professionals.

- C. During all phases of construction activities, Developer shall require Developer's contractor to maintain the following type of coverage with the limits specified as follows or coverages as required by laws and regulations, whichever is greater.
 1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors of every tier.

 2. Commercial General Liability insurance with limits not less than \$10,000,000.00 each occurrence, and not less than \$20,000,000 aggregate combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage,, and completed operations. If proximity to nearby rail lines generates a need for Railroad Protective Liability coverage, it shall be in the amounts required by owners/operators of the rail lines.

 3. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force,

EXHIBIT F

throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$2,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

4. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.
- D. The City reserves the right to require an increase in the Developer's contractor's insurance coverage in the event the City determines that conditions show cause for an increase.

1.4 INSURANCE FOR OTHERS

- A. For general liability and automobile liability insurance, Developer shall include as additional insured, the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
- B. General /Auto Liability policies shall:
 1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees as well as others as required by contract and must include coverage for bodily injury and property damage.
 2. Developer agrees to waive subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation

1.5 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Developer's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. Developer will be allowed a maximum of 5 working days, after the date on which the Contract is awarded, in which to deliver appropriate bond and insurance certificates and endorsements.
- B. Approval of the insurance by the City shall not relieve or decrease the extent to which Developer or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Developer shall be responsible for all losses

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not covered by the policy, excluding damage caused by earthquake and flood consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.

- C. The Developer and its Subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Developer and all of its Subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- D. Liability insurance, with an allowable exception for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
- E. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
- F. Should any of the required insurance be provided under a claims-made form, Developer shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 5 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- G. Each such policy shall be endorsed to provide thirty (30) days advance written notice to the City of reduction or non-renewal of coverages or cancellation of coverages for any reason. All notices shall be made to:

City and County of San Francisco
San Francisco Public Works
1155 Market Street, 4th Floor
San Francisco, CA 94103
Attn: Contract Analyst
Re: Central Shops Project

- H. Developer, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the

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effective date of such cancellation, change or expiration, with a complete copy of the new or renewed policy.

- I. If, at any time during the life of this Contract, Developer fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until the Developer's notice is received by the City as provided in the immediately preceding Subparagraph "H" informing the City that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.
- J. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Contract.

1.6 QUALIFICATIONS

- A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

END OF DOCUMENT

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CITY REQUIREMENTS

1. Non Discrimination in the City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Agreement, Developer agrees not to discriminate against any employee of, any City employee working with Developer , or applicant for employment with Developer , or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts

Developer shall include in all contracts and subcontracts relating to the Project a nondiscrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Developer shall incorporate by reference in all subcontracts the provisions of sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors and subcontractors of every tier to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits

Developer does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in section 12B.2(b) of the San Francisco Administrative Code.

(d) CMD Form

As a condition to this Agreement, Developer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting

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documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (the "CMD"). Developer hereby represents that before execution of the Agreement: (a) Developer executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (b) the CMD approved such form.

2. Tropical Hardwood and Virgin Redwood Ban

(a) Except as expressly permitted by the application of sections 802(b) and 803(b) of the San Francisco Environment Code, neither Developer nor any of its Developers shall provide any items to the City in the construction of the Project or otherwise in the performance of this Agreement which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) In the event Developer fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Developer shall be liable for liquidated damages for each violation in an amount equal to Developer's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Developer acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Developer from any contract with the City and County of San Francisco.

3. Labor Requirements for Construction

(a) Applicable Labor Laws and Agreements. Compensation and working conditions for labor performed or services rendered (excluding professional design services) under the Project Contracts shall be in accordance with the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E). The requirements of this Section 3 (collectively, the "Labor Requirements") shall be included in all Project Contracts (as applicable), and subcontracts relating to the work, as applicable, unless otherwise agreed to by the City. The Project Contracts shall expressly acknowledge the City's right to monitor and enforce the Labor Requirements in all respects and at all times, and to the withhold payments when permitted under the provisions of the Labor Requirements.

(b) Prevailing Wages. The Project Contracts shall require payment of the latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors, as same may be changed during the term of this Agreement. Each Developer shall provide, and shall deliver to the City every month during any construction period, certified payroll reports with respect to all persons performing labor in the provision of the work. Copies of the latest prevailing wage rates are on file at the Department of Public Works, the City and County of San Francisco, Bureau Manager, Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, CA, 94103.

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(c) Penalties. The Construction Contract shall provide for payment to the City back wages due plus fifty dollars (\$50.00), for: (i) each laborer, workman, or mechanic employed in the provision of the work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or (ii) each laborer, mechanic or artisan employed in the provision of the work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

(d) Local Hire, First Source and LBE Requirements. The Construction Contract shall require compliance, as applicable, with the Local Hire, First Source and LBE requirements set forth in Exhibit I, unless otherwise agreed to by the City.

4. Rights and Remedies During Construction

(a) General. The provisions of the Project Contract shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the parties to the Project Contract, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Project Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

(b) No Waiver. No waiver of any breach of any provision of the Project Contract shall be held to be a waiver of any other or subsequent breach. The only waiver by the City shall be a waiver in writing that explicitly states the item or right being waived.

(c) City's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22(M), a Developer that fails to comply with the terms of the Project Contract, who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), submits false claims, or violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Project Contract, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, a Developer that submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

(d) Interpretation. The Project Contract shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code.

5. Sunshine Ordinance

Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code

EXHIBIT G

section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

6. MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

8. Conflicts of Interest

Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and section 87100 et seq. and section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Developer becomes aware of any such fact during the term of this Agreement, Developer shall immediately notify the City.

9. Notification of Limitations on Contributions

Through its execution of this Agreement, Developer acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a the City elective officer, the board on which that the City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each Developer; each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

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Developer further agrees to provide to the City the name of each person, entity or committee described above.

10. Compliance with Laws

Developer shall remain fully informed of and comply with the applicable provisions of the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the work, and all federal and state laws and regulations in any manner affecting the contract documents, the performance of the work, or those persons engaged therein. Developer shall require compliance with the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Code specified in the contract documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. Architect and General Developer shall comply with the applicable provisions of San Francisco Administrative Code Chapter 6 that are incorporated into the Architect Contract and the Construction Contract, respectively.

11. First Source Hiring Program

Developer must comply with the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, and as set forth in Exhibit I hereto, and Developer is subject to the enforcement and penalty provisions in Chapter 83.

12. Preservative-Treated Wood Containing Arsenic

Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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13. Resource Efficient City Buildings and Pilot Projects

Developer acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Developer hereby agrees that it shall comply with all applicable provisions of such code sections.

14. Liability for Use of Equipment

The City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Developer, or any of its Subcontractors, or any Lower-Tier Subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by the City.

15. Copyright Infringement

Developer shall indemnify, defend and hold the City harmless from and against all claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City of the materials or work provided by Developer.

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DESIGN PROFESSIONAL CONTRACT PROVISIONS

Developer shall include the following terms and conditions in all Design Professional contracts that Developer enters into as part of the Project:

I. Design Professional Services

- A. This provision sets forth basic Design Professional services to be provided by Architect or other Design Professional for the Project. Refer to the Agreement and the Criteria Package for additional, project-specific requirements.
- B. The Design Professionals shall be licensed in the State of California and shall have the necessary expertise and experience required to prepare such design documents to permit the General Contractor to complete its Work in accordance with the requirements of the Contract Documents.
 - 1. All design work shall be performed and stamped by licensed architects or engineers, as appropriate.
- C. Design Professionals may be replaced only with the approval of the City.
- D. The standard of care for all design services performed or furnished under the Agreement will be the care and skill ordinarily used by members of the engineering or architectural professions practicing under similar conditions, for projects of similar size and complexity, at the same time and locality. Notwithstanding the above, in the event that the Contract Documents specify that portions of the work be performed in accordance with specific performance standards, the design services shall be performed so as to achieve such specific standards.
- E. Design Professionals to be responsible without limitation for the following:
 - 1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.
 - 2. Before undertaking each part of the work, review the Contract Documents, including the Criteria Package, and existing reference documents and studies of the proposed site and other data furnished to the Design Professional, and advise the City and Developer whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Architect shall notify the Developer in writing promptly upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect.
 - 3. Request additional surveys, studies, investigations, reports and information related to the site, which the Design Professional deems necessary for the performance of the work.
 - 4. Provide design-related services for preparing Schematic Design ("SD"), Design Development ("DD"), and Construction Documents necessary for the General

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Contractor to construct and interface the Item(s) in complete conformance with the intent and performance requirements of the Contract Documents.

- a. Architect shall submit SD, DD, and Construction Documents to the City for review and acceptance for conformance with the intent and performance requirements of the Contract Documents. Construction Documents shall be submitted to the City for review and acceptance before initiating permit or construction activities based on such Construction Documents.
 - b. The City's review, approval or acceptance of SD, DD, and Construction Documents submitted by Developer and its Architect shall neither release Developer from its responsibilities to coordinate the various portions of the design and to provide accurate and complete design documents to fulfill the intent and requirements of the Contract Documents, nor transfer any design liability from Developer to City.
 - c. All SD, DD and Construction Documents, including CADD and other computer discs prepared by Developer's Design Professionals, and all other documents prepared by Architect or its subconsultants in connection with Design Professional services, shall be made and remain the property of the City, except as otherwise provided in the Agreement. Developer will provide the City with software that will allow the City to view the electronic CADD files. The ability to view the files is required; the ability to alter the files is not intended.
 - d. The SD, DD and Construction Documents will be prepared for the Work of the Agreement only. Any unauthorized use of the SD, DD and Construction Documents is at the sole liability of the user. The City and Developer may make and retain copies of the SD, DD, and Construction Documents for information and reference in connection with the use and occupancy of the Project by the City.
5. Comply with requirements of codes, regulations, and written interpretation thereof, existing at the time permit application(s) are made with the local authorities having jurisdiction over the Project.
 6. Provide Design Professional's professional liability insurance policies and coverages as required.
 7. Provide assistance in connection with the commissioning, start-up, testing, refining and adjusting of equipment or system designed by the Design Professional for incorporation into the Project.
 8. Assist the City in training staff and developing processes and procedures for operation, maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.
- F. Developer shall be wholly responsible for all engineering and design of all Items required to be designed by Architect regardless of any contribution, input, review, participation, or

EXHIBIT H

coordination that the City, its agents, members, employees, and authorized representatives may have provided to Developer or its Architect or General Contractor.

- G. At all times during the design of the Project, the City and its representatives shall have full access to design documents and design meetings.
- H. If, in connection with the Design Professional services, Developer, General Contractor, Architect or their subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City (subject to Developer's rights under the Agreement). If it is ever determined that any such works are not works for hire under U.S. law, Developer hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. Developer shall include in its subcontracts with its Subcontractors provisions to make the Subcontractors subject to this paragraph. With the approval of the City, Developer, General Contractor and Architect, as applicable, may retain and use copies of such works for reference and as documentation of its experience and capabilities.
2. Insurance. Design Professional shall maintain in force, during the full term of its agreement, insurance in the amounts and coverages specified in the Contract Documents, and name as additional insureds the City and County of San Francisco, its Officers, Agents, and Employees.
3. Indemnification.
- a. General. To the fullest extent permitted by law, Architect shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Architect or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Architect, any subconsultant to the Architect, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").
- b. Limitations. No insurance policy covering the Architect's performance under this Agreement shall operate to limit the Architect's liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Architect assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the subcontractor of any Indemnitee.
- c. Copyright infringement. Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade

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secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Architect's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

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LOCAL HIRE, FIRST SOURCE AND LOCAL BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS

1. Local Hiring Requirement.

1.1. General Provisions.

- 1.1.1. Developer shall comply with all applicable requirements of the San Francisco Local Hiring Policy for Construction (“Policy”) as set forth in section 6.22(G) of the San Francisco Administrative Code. The provisions of the Policy are incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the Policy.
- 1.1.2. Developer shall require the General Contractor and all subcontractors of every tier performing construction work on behalf of the Developer as part of the Project to comply with all applicable requirements of the Policy.
- 1.1.3. Developer agrees that the Office of Economic and Workforce Development (“OEWD”) will have the authority to enforce all terms of the Policy. Further information on the Policy and its implementation may be found at the OEWD website at: www.workforcedevelopmentsf.org.

1.2. Local Hire Requirements. Developer shall comply with the following:

- 1.2.1. Local Hire by Construction Trade: Mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.
- 1.2.2. Local Apprentices: At least 50% of the Project Work Hours performed by apprentices within each construction trade shall be performed by local residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Economically Disadvantaged Workers.
- 1.2.3. Construction Contracts: Developer, shall include the terms of this Policy in the contract with the General Contractor and in every construction contract and subcontract entered in to for construction of the Project. Developer shall notify OEWD immediately upon execution of all construction contracts.
- 1.2.4. Preconstruction Meeting: Prior to commencement of construction, Developer and all construction subcontractors shall attend a preconstruction meeting convened OEWD staff. Representatives from Developer and all construction subcontractors who attend the pre-construction meeting must have hiring authority.
- 1.2.5. Forms and Payroll Submittal: General Contractor and all construction subcontractors shall utilize the City’s web based payroll system to submit all of OEWD’s required Local Hiring Forms and Certified Payroll Reports. The General

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Contractor shall submit Local Hiring Forms prior to commencement of construction and within 15 calendar days from award of contract. The General Contractor must submit payroll information on all subcontractors who will perform construction work on the Project regardless of tier and contract amount. The General Contractor and all construction subcontractors shall submit Certified Payroll Reports on a weekly basis.

- 1.2.6. Recordkeeping: Developer and all construction subcontractors shall keep, or cause to be kept, for a period of four years from the date of completion of project work, payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the General Contractor or subcontractor hired or retained that worker for work on the project. Developer and all construction subcontractors may verify that a worker is a local resident by following OEWD's domicile policy. All records described in this subsection shall at all times be open to inspection and examination by OEWD.
- 1.2.7. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Developer and all construction subcontractors working on the Project. Developer shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of the Site. Developer and all subcontractors shall also allow representatives of OEWD to have access to employees of Developer and all construction subcontractors and the records required to be maintained under the Policy.
- 1.2.8. Noncompliance and Penalties. Failure of General Contractor and/or its construction subcontractors to comply with the requirements of the Policy may subject Developer to the consequences of noncompliance specified in Section 6.22(G)(7)(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 6.22(G)(7)(f)(ii). In the event the Developer fails to adhere to the penalties administered by OEWD, the Developer will be responsible for penalties for noncompliance. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 6.22(G)(7)(f)(iv) for a description of the recourse procedure applicable to penalty assessments under the Policy.

2. First Source Requirements

2.1. General Provisions and Definitions.

- 2.1.1. Developer shall participate in the Workforce System program managed by the Office of Economic and Workforce Development ("OEWD") as established by the City pursuant to Chapter 83 of the San Francisco Administrative Code ("First Source Hiring Policy"). The provisions of the First Source Hiring Policy are

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incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the First Source Hiring Policy.

- 2.1.2. Developer shall require the Architect and all Subcontractors or subcontractors performing professional services in excess of \$50,000 on behalf of the Design-Builder as part of the Project to comply with all applicable requirements of the First Source Hiring Policy.
- 2.2. Developer agrees that OEWD will have the authority to enforce all terms of the First Source Hiring Policy. Further information on the First Source Hiring Policy and its implementation may be found at the OEWD website at:
www.workforcedevelopmentsf.org.
- 2.3. Definitions. For purposes of this section, the following terms shall be defined as follows:
 - 2.3.1. "Entry Level Position" means any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
 - 2.3.2. "Workforce System" means the First Source Hiring Administrator established by the City and managed by OEWD.
 - 2.3.3. "Referral" means a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a specified Entry Level Position.
 - 2.3.4. OEWD Workforce System Participation Requirements. Architect and all professional services subcontractors shall notify OEWD's Business Team of every available Entry Level Position for work performed by the Architect and all professional services subcontractors in the City and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Architect and all professional services consultants and subconsultants shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Architect and all professional services consultants and subconsultants no later than 10 business days after date of interview or hire. Architect and all professional services consultants and subconsultants will also provide feedback on reasons as to why referrals were not hired. Architect and all professional services consultants and subconsultants shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Architect and all professional services consultants and subconsultants. Failure to comply with the terms of the First Source Hiring Policy may result in penalties as defined in Chapter 83 of the Administrative Code.

3. Local Business Enterprise Program Requirements

EXHIBIT I

- 3.1. Purpose. Developer agrees to partner with the Contract Monitoring Division (“CMD”) to provide Local Business Enterprises (“LBE”) with meaningful opportunities to participate in the construction of the Project.
- 3.2. LBE Participation Goal. Developer, on behalf of itself and its General Contractor and Architect, agrees to work with CMD on developing separate LBE Subconsulting and subcontracting goals and to perform good faith efforts (see attached) to award 20% of the cost of all professional services and 20% of the cost of all construction contracts awarded by Developer as part of the Project to small and/or micro LBE businesses certified by CMD pursuant to Chapter 14B of the Administrative Code.
- 3.3. Reporting. Beginning as of the PSA Ratification Date and every quarterly thereafter, Developer shall report in writing to the City Representative with a copy to the Director of CMD a summary of Developer’s attainment of the LBE Participation Goal.

EXHIBIT J

ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES AND OTHER
INTANGIBLE PROPERTY

THIS ASSIGNMENT is made and entered into as of this _____ day of _____, 20_____, (the "Effective Date") by and between _____, a _____ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date, Assignor hereby assigns and transfers to Assignee, and Assignee assumes, all of Assignor's rights, obligations, claims, title, and interest in and under:

A. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto (the "Parcel") including, without limitation, those warranties and guaranties listed in Schedule 1 attached hereto (collectively, "Warranties");

B. any intangible personal property now or hereafter owned by Assignor and used in the ownership, use or operation of the Parcel, including the Assumed Contracts listed in Schedule 1.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.
3. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
4. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

By: _____

[NAME]

Its: _____

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county

By: _____

[NAME]

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

[DEPUTY'S NAME]

Deputy City Attorney

EXHIBIT K

PARTNERING REQUIREMENTS

PART 1 - GENERAL

1.1 PARTNERING LEVEL

- A. This Project shall incorporate the required partnering elements for **Partnering Level 1**.

1.2 SUMMARY

- A. This Document specifies the requirements for establishing a collaborative partnering process. The partnering process will assist the City and Developer to develop a collaborative environment so that communication, coordination, and cooperation are the norm, and to encourage resolution of conflicts at the lowest responsible management level.
- B. The partnering process is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Developer.
- C. This specification does not supersede or modify any other provisions of the Contract, nor does it reduce or change the respective rights and duties of the City and Developer under the Contract, or supersede contractual procedures for the resolution of disputes.

1.3 DEFINITIONS

- A. **Partnering Charter ("Charter"):** The Charter is the guiding focus for the Project Team. It documents the team's vision and commitment to work openly and cooperatively together toward mutual success during the life of the project. The charter helps to maintain accountability and clarity of agreements made and allows for broader communication of the team's distinct goals and partnering process. The partnering charter includes the following elements:
1. Mutual goals
 2. Partnering maintenance and close-out plan
 3. Dispute resolution plan with Escalation Resolution Ladder
 4. Team commitment statement and signatures
- B. **Collaborative Partnering:** A structured and scalable process made up of elements that develop and grow a culture (value system) of trust among the parties of a construction contract. Together, the combination of elements including the Partnering Charter, Executive Sponsorship, partnering meetings, an accountability tool for the Project Team (Scorecards), and a Facilitator, if employed, create a collaborative atmosphere on each project.
- C. **Core Team Partnering:** On Level Four or greater construction projects, a core team is identified from those Project Team members who are a part of the project for its duration, including the following (not in order of hierarchy):

City:	Developer:
Resident Engineer	Building Superintendent
Project Manager	Project Executive
Construction Manager	Jobsite Supervisor
Engineer, Architect	Project Engineer
Division Manager	Subcontractors
Construction Engineer	Key suppliers
Inspectors	Senior Management (e.g. Area Manager, Operations Manager, VP, President, Owner)
Client Department representative	
Critical third parties: stakeholders, other agencies, utilities, etc., or anyone who could potentially stop or delay the project.	

- D. **Executive Partnering Team:** The senior leaders of the City and Developer who may form a project board of directors and are charged with steering the project to success.
- E. **Executive Sponsorship:** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.
- F. **Field-Level Decision Making:** Decisions made by those who are running the day-to-day work in the field – this is typically the inspector or resident engineer.
- G. **Internal Facilitator:** A trained employee or representative of the City who provides partnering facilitation services for Level 1, 2 or 3 projects.
- H. **Kick-off Partnering Workshop:** The initial partnering session where the team develops their initial partnering Charter and officially starts the partnering process.
- I. **Multi-Tiered Partnering (Executive - Core Team - Stakeholder):** Quarterly partnering workshops can be divided into multiple sessions including an Executive Session, Core Team Session and Stakeholder Session. For very large projects, a best practice is to use the Executive Team as a “project board of directors” who provide vision and steer the project. The Core Team is the central group of key individuals who are on the project throughout the duration.
- J. **Partnering Level:** The desired level of engagement in the partnering process may vary depending on a Contract’s size or a construction project’s complexity, location or other risk factor. If a project encounters any of the following risk factors, the City may consider elevating the partnering process to the next higher level.

Level	Estimated Construction Amount	Complexity	Political Significance	Relationships
5	\$200 million +	Highly technical and complex design & construction	High visibility/ oversight; significant strategic project	New project relationships; high potential for conflict (strained relationship, previous litigation, or high probability of claims)
4	\$50 - \$200 million	High complexity – schedule constraints, uncommon materials, etc.	Probable	New contractors or CM, new subs
3	\$20 - \$50 million	Increased complexity	Likely, depending on the location and other project characteristics	Established relationships; new CM, subs, or other key stakeholders
2	\$5 - \$20 million	Moderate complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders
1	\$100,000 - \$5 million	Standard complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders

EXHIBIT K

- K. **Partnering Meetings:** Formalized meetings focused on developing a collaborative culture among the Project Team. Teams use these meetings to, among other tasks, set project goals, define project commitments and attend joint training sessions.
- L. **Professional Neutral Facilitator:** The mutually agreed upon experienced professional neutral facilitator whose business is providing partnering services for construction projects.
- M. **Project Scorecards:** An accountability tool that allows project teams to measure how well they are doing at following through on commitments made to one another. Typically the scorecard is a confidential survey prepared and submitted to the team by the partnering facilitator, if any. The facilitator then compiles the responses into a report which is then sent out to the Project Team for review.
- N. **Project Stakeholders:** Any person or entity that has a stake in the outcome of a construction project. Examples include the end users, neighbors, vendors, special interest groups, those who must maintain the facility, those providing funding, and those who own one or more of the systems.
- O. **Project Team:** Key members from the City and Developer organizations responsible for the management, implementation, and execution of the Project, and will participate in the Partnering process.
- P. **Resolution Ladder:** A stepped process that formalizes the negotiation between the parties of a construction project. While actual titles may differ, the intent of this ladder is to provide a process that elevates issues up the chain of command between the parties involved in an issue. The objective is to resolve issues at the lowest practical level and to not allow individual project issues to disrupt project momentum. When an issue is escalated one level, it is expected that a special meeting focusing on the negotiated settlement for that issue will be called with the goal of settling as quickly as possible. A Sample escalation resolution ladder is shown below. A project resolution ladder will be developed during the Kick-off Partnering Workshop.

	Level	Awarding City Department	Contractor	Time to Elevate
Sample Resolution Ladder	I	Inspector or Resident Engineer	Foreman/ Superintendent	1 day
	II	Project Manager	Project Manager	1 week
	III	Program Manager	Area Manager	1 week
	IV	Division Manager	Operations Manager	2 weeks
	V	Deputy Department Director	Owner, President	2 weeks

- Q. **Self-Directed Partnering:** The Project Team leads themselves through all of the Collaborative Partnering elements.
- R. **Special Task Forces:** A subset of the Project Team that is assigned to take on a particular issue or opportunity for the good of the overall project.
- S. **Stakeholder Team (as in Multi-tiered Partnering):** Those people who have a stake in the outcome of a construction project.
- T. **Stakeholder on-boarding/off-boarding:** As a project progresses various systems and processes will be the focus. Stakeholders will participate when the systems or processes they are involved with are the focus. The stakeholders will step back when that system or process is no longer the focus. This on-boarding and off-boarding may occur throughout the duration of the Contract.

EXHIBIT K

- U. **Subcontractor on-boarding/off-boarding:** At the various stages of construction various key subcontractors (trades) as determined by City and Developer will roll in and roll out as their work comes available and is completed.
- V. **Third-Party Facilitator Agreement:** An agreement, appended to this Specification, to which the Professional Neutral Facilitator, the City and the Developer are parties, which establishes a budget for fees and expenses of the Facilitator and workshop site costs, if any, and the terms of the Facilitator's role for this Project consistent with the requirements of this Specification.

1.4 PURPOSE/GOALS

- A. The goals of project partnering are to:
 1. Use early and regular communication with involved parties;
 2. Establish and maintain a relationship of shared trust, equity and commitment;
 3. Identify, quantify, and support attainment of mutual goals;
 4. Develop strategies for using risk management concepts and identify potential project efficiencies;
 5. Implement timely communication and decision-making;
 6. Resolve potential problems at the lowest possible level to avoid negative impacts;
 7. Hold periodic partnering meetings and workshops throughout the life of the project to maintain the benefits of a partnered relationship;
 8. Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

1.5 COSTS

- A. The fees and expenses of the Facilitator and workshop site costs, if any, shall be shared equally by the City and the Developer as set forth in the Third Party Agreement. The Parties agree that both the City's and the Developer's share of all Partnering costs shall be paid as a Project cost included in the Project Budget; for the avoidance of doubt, Developer shall not be required to pay Partnering consultants out-of-pocket, but may submit consultant invoices for payment consistent with procedure for submitting invoices for other Project consultants.
- B. No mark-up, overhead or other fees shall be added to the partnering costs. If the total cost of the partnering differs from the allowance amount, the Contract Sum shall be adjusted by Change Order for the difference between the total actual cost and the amount included in the Bid, as an additional amount due the Developer or a credit to the City, as appropriate. If the Developer fails or refuses to pay the Facilitator invoices, the City may pay such invoices and deduct the Developer's portion from any amount that is due or may become due under the Contract.
- C. With the exception of the Facilitators fees and workshop site costs described in subparagraph A above, all costs associated with the Partnering workshops and sessions,

partnering evaluation surveys, or partnering skills trainings are deemed to be included in the Bid Prices.

PART 2 - EXECUTION

2.1 PARTNERING INITIATION

- A. The City Representative after award of Contract, but in no case longer than 30 days following Notice to Proceed, shall send Developer a written invitation to enter into a partnering relationship. If a Professional Neutral Facilitator will be retained, the City and Developer shall cooperatively and in good faith select a Facilitator as specified in subparagraph 3.3 below.

2.2 PARTNERING ELEMENTS

- A. The required partnering elements for all levels of partnering include:
1. **Internal or External Professional Neutral Facilitator.** City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.
 2. **Kick-off Partnering Workshop.** The City, Developer, and Facilitator if any, shall meet to mutually develop a strategy for a successful partnering process and to develop their initial partnering charter.
 3. **Partnering Charter and/or mission statement.** The City and Developer shall agree to create a partnering charter that includes:
 - (a) Mutual goals, including core project goals and may also include project-specific goals and mutually-supported individual goals. The required core project goals relate to project schedule, budget, quality, and safety.
 - (b) Partnering maintenance and close-out plan, including partnering session attendees and frequency of meetings.
 - (c) Dispute resolution plan that includes an Escalation Resolution Ladder.
 - (d) Team commitment statement and signatures.
 4. **Minimum Two Partnering Workshops or Sessions** (including Kick-off Workshop). The partnering team may participate in additional workshops or sessions during the life of the project as they mutually agree is necessary and appropriate.
 5. **Executive Sponsorship.** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.
 6. **Resolution Ladder.** The City and Developer shall mutually develop a project resolution ladder.
- B. For Level 2 Projects add the following elements:

EXHIBIT K

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1. **Internal or External Professional Neutral Facilitator.** City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.
 2. **Minimum Two Project Scorecards.** City and Developer shall participate in periodic partnering evaluation surveys to measure progress on mutual goals and short-term key issues as they arise.
- C. For Level 3 Projects add the following elements:
1. **Professional Neutral Facilitator for Kick-off and Quarterly Partnering Sessions.** City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the Kick-off partnering workshop and quarterly partnering meetings. Additional meetings, workshops, or sessions may be facilitated by a mutually agreed internal facilitator or may be self-directed.
 2. **Quarterly Partnering Sessions.** The partnering team shall convene partnering sessions quarterly throughout the duration of Contract.
 3. **Quarterly Project Scorecards.** City and Developer shall participate in minimum quarterly partnering evaluation surveys (monthly recommended).
- D. For Level 4 Projects add the following elements:
1. **Professional Neutral Facilitator.** City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below.
 2. **Multi-tiered Partnering (Executive – Core Team – Stakeholder).** Partnering team will divide into smaller groups and convene multiple sessions including an Executive Session, Core Team Session and Stakeholder Session.
 3. **Monthly Project Scorecards.** City and Developer shall participate in monthly partnering evaluation surveys.
 4. **Stakeholder On-Boarding/Off-Boarding.** Various key stakeholder groups will be invited to participate in partnering sessions as necessary throughout the duration of the project.
 5. **Key Subcontractor On-Boarding/Off-Boarding.** Key subcontractors will be invited to participate in the partnering sessions as necessary as determined by City and Developer as their participation in the project work becomes relevant.
- E. For Level 5 Projects add the following elements:
1. **Monthly Partnering Sessions.** The partnering team will hold professionally facilitated monthly partnering sessions throughout the duration of project.
 2. **Special Task Forces.** The partnering team may task a subset of the team to work on a particular issue or opportunity for the good of the overall project.

2.3 SELECTION OF A PROFESSIONAL NEUTRAL FACILITATOR

- A. If a Professional Neutral Facilitator will be retained, the City and Developer shall meet as soon as practicable after award of Contract, but in no case later than 30 days after the Notice to Proceed (NTP), to mutually select a Facilitator. The City and Developer shall also schedule the Kick-off Workshop, determine the workshop site and duration, and agree to other administrative details.
- B. The City, the Developer, and the selected Facilitator shall execute a Third-Party Facilitator Agreement within 30 days of NTP.
- C. The Facilitator shall lead the Kick-Off Partnering Workshop and other partnering sessions as necessary or required.

2.4 FACILITATOR QUALIFICATIONS AND REQUIREMENTS; EVALUATIONS

- A. The Facilitator shall be trained in the recognized principles of partnering.
- B. The Facilitator shall have the following professional experience and qualifications:
 - 1. At least 3 years experience in partnering facilitation with a demonstrated track record, including public sector construction for a city or other municipal agency; and,
 - 2. Skill set that may include construction management, negotiations, labor-management mediation, and/or human relations.
- C. The Facilitator shall be evaluated by the partnering team: (1) at the end of the Kick-off Partnering Workshop; and (2) at the project close-out partnering session.

END OF SECTION

CENTRAL SHOPS REPLACEMENT FACILITIES PROJECT

CONTRACT NO. 7994A

PROJECT DELIVERY AGREEMENT

Between

CITY AND COUNTY OF SAN FRANCISCO,

a charter city and county,

as the City

and

ORYX DEVELOPMENT I, LLC,

a Nevada limited liability company,

as Developer

Dated as of March 21, 2016

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EXHIBITS AND SCHEDULES ATTACHED HERETO

Exhibit A	Project Budget
Exhibit B	Criteria Package
Exhibit C	Scope of Developer Services
Exhibit D	Project Schedule
Exhibit E	Reserved
Exhibit F	Developer's Insurance Requirements
Exhibit G	City Requirements
Exhibit H	Design Professional Contract Provisions
Exhibit I	Local Hire, First Source and LBE Requirements
Exhibit J	Form of Assignment of Intangibles
Exhibit K	Partnering Requirements

PROJECT DELIVERY AGREEMENT

THIS PROJECT DELIVERY AGREEMENT (“Agreement”), is made for the convenience of the parties this 22 day of March, 2016, by and between Oryx Development I, LLC, located at 1001 Van Ness Avenue, San Francisco, California (“Developer”), and the City and County of San Francisco, State of California (the “City”), acting through its Director of Real Estate (“Director”).

RECITALS

WHEREAS, the City intends to acquire: (1) fee title to the real property located at 555 Selby Street and 1975 Galvez Street, San Francisco, CA (Lots 015 and 016, Block 5250) (the “Purchased Site”), and (2) a leasehold interest to the real property located at 450 Toland Street, San Francisco, CA (Lot 18, Block 5230) (the “Leased Site”) (collectively the “Development Sites. This Agreement shall not take effect unless and until the City successfully completes its acquisition of the specified interests in real property for the Purchased Site and the Leased Site; and

WHEREAS, the City desires to develop: (1) the Purchased Site into a one-story vehicular repair facility with ancillary administrative office space containing approximately 53,000 gross square feet upon the Purchased Site, and (2) the Leased Site by making tenant improvements to modify the existing 45,000 square foot building to accommodate maintenance and repair of light duty vehicles, ladder shop, body and paint shop, metal fabrication and welding shop, and administrative offices and amenities. The scope of work to be performed on the Development Sites is described in greater detail in the Criteria Package, an initial draft of which is attached as Exhibit B (the “Central Shops Replacement Facilities Project” or the “Project”); and

WHEREAS, the City wishes to retain Developer to Provide all services necessary to design and construct a complete and fully-functional Project, including but not limited to project management, design, and construction services. The City acknowledges that Developer does not hold any contractor, architect, or engineering licenses, and that Developer will retain Subcontractors holding such licenses to perform all Work under this Agreement that must be performed by a licensed entity or individual. Developer wishes to Provide the services sought by the City as described above, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, Developer, in consideration of the mutual covenants set forth in this Agreement, promises and agrees to Provide all services to design and construct the Project in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfactions of the Director, to prosecute the Work with diligence from day to day to Final Completion, to furnish all project management services, design services, and all construction work, labor and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of Developer’s obligations under the Contract Documents, as and when required under the Contract Documents, to the satisfaction of the Director. Developer’s execution of this Agreement signifies its

acceptance of the Contract Time and the Contract Sum as being sufficient for completion of Phase One of the Work as hereinafter defined and development of proposals for Provision of Phase Two of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

1. Developer's Responsibilities

1.1 Contract Documents. Developer shall Provide all Work according to the Contract Documents, which are incorporated into and made a part of this Agreement by this reference, and all labor, materials and services used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between Developer and the City concerning the Provision of the Work, are defined in the General Conditions. Defined terms used in this Agreement shall be given the definition set forth herein or as set forth in the Article 1.01 of the General Conditions.

1.2 General Responsibilities.

(a) Developer shall provide all "Developer Services" (as set forth in Exhibit C) required to design, construct, and Deliver the Project to the City.

(b) The Work of this Project is divided into two phases: (1) Phase One -- the Design Phase; and (2) Phase Two -- the Construction Phase, as set forth in Exhibits C and D hereto. At the time of execution of this Agreement, the City is only proceeding with Phase One. The Contract Sum and Contract Time set forth herein apply only to Phase One Work. Proceeding with Phase Two is conditioned upon approval by the City of the Construction Documents and subsequent agreement by the Parties on the Contract Sum, Contract Time, and Scope of Work applicable to Phase Two Work.

(c) Developer shall select and retain a Subcontractor that is a licensed design professional ("Architect), subject to City Approval, to design the Project in Phase One and obtain the regulatory approvals needed to complete the project in Phase One and to assist the General Contractor with design-related issues and project administration during Phase Two. City has pre-approved Developer's request to approve FM&E Architecture & Design as a Subcontractor to Developer serving as the Project Architect.

(d) Developer shall select and retain a Subcontractor that is a licensed general contractor ("General Contractor"): (1) to provide input into the Architect's Project design and construct the Site Work during Phase One; and (2) conditioned on the issuance of a Notice to Proceed for Phase Two as set forth above in Paragraph 1.2 (b) above), to construct the Project during Phase Two. City has pre-approved Developer's request to approve Charles Pankow Builders, Ltd., A California Limited Partnership, as a Subcontractor to Developer serving as the Project's General Contractor.

(e) Developer shall Provide the City with all Phase One Work as set forth herein (Project design and construction of approved pre-Construction Phase site work),

including, but not limited to, all applicable investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

(f) Conditioned on agreement by the Parties to proceed with Phase Two (Construction) of the Project, Developer shall Provide the City with a fully-functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

(g) In the event that the City's Civil Service Commission hearing (currently scheduled for May 2nd 2016, does not approve the City's sole sourced contract with the Developer and / or Developer's contract with the Architect, the Parties will engage in good faith negotiations on adjustment permitting the Parties to proceed. If the Parties fail to agree on such an adjustment within a reasonable period of time, this Agreement shall terminate pursuant to the provisions authorizing Termination by the City for Convenience (General Conditions, Article 14.03) and the termination procedures shall be governed by said Article 14.03.

1.3 Design Services.

(a) Design. The City will issue a Notice to Proceed with Design within five (5) Days after execution of the Agreement. Developer shall perform the Design Requirements based on the scope of work contained in the initial draft of the Criteria Package (Exhibit B) and its commitment to assist the City in its efforts to meet the City's Project budget and schedule. The parties will work together in good faith to finalize the Criteria Package as soon as practicable after City's issuance of the Notice to Proceed. Developer acknowledges and agrees that the Developer is designing toward a budget limit set by the City for the Project ("Budget Limit") as set forth in Exhibit B for all Work necessary to Deliver the Project. Developer shall perform all reviews, estimates, and other Design Requirements in conformance with the Budget Limit and timelines set by the City pursuant to the terms of this Agreement; provided however, that (i) the City acknowledges that the construction costs reflected in the Project Budget are merely estimates and that the actual cost of Phase Two will be determined only upon the acceptance by the City of the Phase Two Budget (defined below), (ii) modifications to the Criteria Package by the City may result in cost increase above the Budget Limit, (iii) the discovery of latent, concealed, or otherwise differing conditions in the Development Sites unknown at the date of this Agreement, including but not limited to the discovery of hazardous materials, may result in cost increases above the Budget Limit

(i) The City's total Phase One Project Limit, which is that portion of the Budget Limit for all Phase One services by Developer under this Agreement, is \$10,300,000.

(ii) Developer shall provide all Design Requirements in conformance with the Project Schedule and shall provide timely comment, input, reports, or responses as appropriate. Failure by Developer to provide timely services may result in termination of this Agreement for cause.

(iii) During the Design Phase, Developer will oversee and coordinate the work of the Architect and other design sub-consultants, including the General Contractor and Core Lower-Tier Trade Subcontractors, and work closely with the City Representative to facilitate discussion and design decisions and provide information, estimates, schemes, and recommendations to the City regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality, energy conserving and efficient building within the Budget Limit and schedule for the Project.

(b) Core Lower-Tier Subcontractors. At any time after the Notice to Proceed with Phase One (Design), Developer may select Core Lower-Tier Subcontractors for design, preconstruction, or design-assist services for the disciplines listed below based on qualifications only. The selected Core Lower-Tier Subcontractors may also provide construction services as more fully described in Section 1.5(b).

- (i) Mechanical,
- (ii) Electrical,
- (iii) Plumbing,
- (iv) Fire Protection/Fire Suppression,
- (v) Building Envelope/Curtain Wall,
- (vi) Steel/Rebar,
- (vii) Elevators,
- (viii) Earthwork & Grading,
- (ix) Site Utilities,
- (x) Deep Foundations,
- (xi) Abatement, and
- (xii) Demolition

1.4 Construction Services.

(a) General. Following the City's issuance of a Notice to Proceed with Phase Two Construction, Developer's General Contractor and all of its subcontractors contracted for the construction of the Project will provide all construction services from mobilization through Final Completion necessary to construct the Project in accordance with the Contract Documents and to render the Project and all of its components operational and functionally and legally usable. Developer will furnish construction administration and management services and will perform the Project in an expeditious and economical manner consistent with the requirements of the Contract Documents.

(b) Standard. At a minimum, Developer and its General Contractor shall be responsible to perform construction services consistent with the standards reasonably expected from a general contractor who submits a competitive bid with its own list of subcontractors to perform all of the construction work under a contract, including, but not limited to, construction, value engineering/integration services, construction management, contract administration, cost control, subcontractor procurement, scheduling, coordination, testing, shop drawing development, processing/review, and distribution of product warranties/related documentation, commissioning and startup, and project closeout.

1.5 Procurement and Award of Trade Subcontracts.

(a) Competitive Procurement. Developer shall assure full and open competition for the procurement of all Trade Subcontractors except as otherwise permitted hereunder. In doing so, except as provided in this Article 1.5, Developer shall follow a two-step process: (1) pre-qualification and (2) competitive bid as follows:

(i) Pre-Qualification: Developer, with City's approval, will develop pre-qualification standards for all Trade Subcontractors. Developer will establish a pool of no fewer than three (3) pre-qualified bidders for each trade package, subject to the approval of the City. If Developer is unable to pre-qualify at least three (3) bidders for a trade package, Developer shall provide a written justification to the City for approval. The City, in its sole discretion, may require the Developer to take additional steps to pre-qualify bidders such as advertising the subcontracting opportunity on a publicly-accessible City website. Only pre-qualified bidders will be allowed to bid. Developer, with the assistance of the City, will resolve any protests or disputes relating to the pre-qualification process.

(ii) Trade Packages: Developer shall receive sealed bids from pre-qualified bidders. The bid security provisions of San Francisco Administrative Code Section 6.21 will not apply, unless expressly pre-approved by the City. The City Representative will be present at bid opening to ensure a fair and equitable process. Developer will consult with the City Representative before rejecting any bids.

(iii) Developer shall award the Trade Package to the responsible bidder submitting the lowest responsive bid.

(b) Limited Noncompetitive Procurement – Core Lower-Tier Trade Subcontractors. Developer may procure design, preconstruction, or design-assist services from Core Lower-Tier Trade Subcontractors based on qualifications only. As soon as practical, Developer may seek from a Core Lower-Tier Trade Subcontractor a written cost proposal for construction of the related trade package and submit the cost proposal to the City Representative for consideration. The City may either approve Developer's request to award the trade subcontract to the Core Lower-Tier Trade Subcontractor based on the cost proposal or, at the City Representative's sole discretion, he or she may require the Developer to competitively procure the trade package by competitive bid in conformance with section 1.5(a), in which event the Developer may request a noncompensable extension of time. The City shall approve the request for a noncompensable time extension only if bidding the trade package will create a critical path delay on Developer's most recent critical path schedule.

(c) Self-Performed Trade Work: Developer through its General Contractor may self-perform Trade Work under the following conditions:

(i) Eligible scopes of work: Cast-In-Place Concrete, Rough Carpentry, Millwork, Demolition & Salvage.

(ii) The City, in its sole discretion, shall either authorize General Contractor to bid against pre-qualified Trade Subcontractors or accept a fair and reasonable price proposal for the Trade Package from the General Contractor.

(iii) In determining whether the General Contractor's price proposal is fair and reasonable, the City Representative will make the determination by comparing the General Contractor's cost proposal against an independent cost estimate.

(d) Developer may negotiate subcontracts for trade work up to an amount not exceeding 7.5% of total estimated construction subcontract costs. The City Representative shall establish a maximum dollar value for each negotiated trade subcontract.

(e) Contingent upon the Parties' agreement on a budget for Phase Two (the "Phase Two Budget"), the City will modify this Agreement thereby increasing Developer's scope of Work and the Contract Sum by the amount of the Phase Two Budget. Once the Phase Two Budget is added to the Agreement, the City acknowledges it will be obligated to pay Developer the amount of funds certified by the Controller for conforming work actually performed, provided there is no offset by the City for liquidated damages, non-conforming work, or other circumstances preventing payment. Developer acknowledges that any work related to Trade Packages to the extent such work has not been added to the Agreement by written, properly authorized Trade Package Set is done at the sole risk of Developer.

1.6 Developer Services. During the term of this Agreement, Developer shall Provide all Developer Services necessary for the Project's management, design, construction, completion, and delivery of the completed Project to the City. Developer shall Provide all design and construction services necessary for receipt of all occupancy permits and

authorizations (e.g., LEED requirements in Chapter 7 of the Administrative Code for municipal buildings, Civic Design Review approval by the San Francisco Arts Commission, regulatory approvals such as Building Permit and trade construction permits) to operate a facility that meets or exceeds all design and specification requirements that have been agreed upon between the City and Developer based on the criteria set forth herein and in the Criteria Package (Exhibit B), including, but not limited to, compliance with all industry standards and all applicable codes and regulations.

(a) Developer shall timely pay any and all fees, charges, costs, expenses and other amounts properly due and payable by Developer under this Agreement.

(b) Developer shall supply qualified personnel necessary to perform its responsibilities under this Agreement, and all such persons shall be employees, agents, or Subcontractors of Developer and shall not be, or be deemed to be, employees of the City. Developer shall employ such employees as shall be necessary or appropriate to enable Developer at all times to oversee, coordinate and provide the Developer Services as required under this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of such employees shall be the sole responsibility of Developer and Developer shall comply with all applicable laws and regulations having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, prevailing wages, working conditions and safety and similar matters with respect to such employees. Should the City determine that Developer, or any agent or employee of Developer, is not performing the Developer Services in accordance with the requirements of this Agreement, the City shall provide Developer with written notice of such failure. Within five (5) business days of Developer's receipt of such notice, Developer shall take commercially reasonable efforts to remedy the deficiency. Notwithstanding the foregoing, if the City believes that an action of Developer, or any agent or employee of Developer, warrants immediate remedial action by Developer, the City shall contact Developer and provide Developer in writing with the reason for requesting such immediate action.

1.7 Project Contracts.

(a) Assignment. The term "Project Contracts" shall include the Architect Contract, the General Contractor's Construction Contract, subcontracts entered into by the Architect or General Contractor, and various materials and equipment contracts with the suppliers. In the event this Agreement is terminated for any reason, Developer shall, if so directed by the City, immediately assign the Project Contracts to the City in accordance with the Contract Documents.

(b) Provisions in Project Contracts. Developer shall include or require inclusion of the contract provisions required under S.F. Administrative Code sections 6.22 and 6.61, including the provisions set forth in Exhibit G and Exhibit I in all Project Contracts, except as any requirements in those sections may be waived by the City's Board of Supervisors.

(c) Design Professional Services. In addition to the requirements in Exhibit G and Exhibit I, Developer shall include contract provisions required under S.F. Administrative Code section 6.42, including the provisions set forth in Exhibit H, in the Architect's Subcontract and all subconsultants to the Architect.

1.8 Project Coordinator. Developer shall cooperate with the City in order to perform the Developer Services to ensure compliance with applicable deadlines and to cause the expeditious and timely completion of the Project. Developer designates Laura Billings as its representative who will serve as the primary contact with the City (the "Project Coordinator"). The Project Coordinator shall attend regularly scheduled preconstruction, construction and related meetings relating to the Project and report to the City regarding the same. In addition, Developer shall organize, prepare agendas and lead construction progress meetings on a regular basis for the City's personnel assigned to the Project, no less than weekly. Developer shall keep the City informed of all material matters relating to or affecting the Project. In such regard, the Project Coordinator shall communicate directly with the "City's Representative" on a regular basis, informing such person of all material events relating to the Project. In addition, Developer shall promptly and in a timely manner answer all inquiries the City may have with respect to the Project. Developer may change the designated Project Coordinator during the term of this Agreement with City's consent, which shall not be unreasonably withheld.

1.9 Communications with the City; Regularly Scheduled Meetings. Developer shall make its personnel available at reasonable times for communications with the City and will keep the City advised of all matters affecting the Project within the scope of Developer's Services and will provide updates regarding the status of the Project on a monthly basis. Developer shall designate representatives of its Architect and General Contractor, who are acceptable to the City, who shall be authorized by those entities as individuals with the authority, respectively, to bind the Architect or the General Contractor, and who shall attend construction project meetings. In addition to "regularly scheduled" construction progress meetings, appropriate personnel of Developer and its Subcontractors shall attend other meetings as reasonably requested by the City relating to the Project.

1.10 Procuring Project Development Approvals. Developer shall submit requests for regulatory and other approvals in a timely manner in order to obtain all required approvals that are necessary for the Project in accordance with the Project Schedule. Notwithstanding the foregoing, City acknowledges and agrees, conditioned upon Developer's submittals to regulatory agencies being complete, accurate, and timely, that (i) the timeline for City's review and approval of the Design Submittals and related documents, (ii) the timeline for public or regulatory agencies' (including but not limited to the California Department of Transportation and the Pacific Gas and Electric Company) review and processing of approvals, and (iii) objections or appeals by unsuccessful bidders during the bid process, are outside the reasonable control of Developer. The Project Schedule contains reasonable assumptions about the anticipated time periods associated with City's and regulatory agencies' reviews and approvals and the bid process required by the Contract Documents. If the actual time periods for the foregoing causes a critical path delay on Developer's most recent critical path schedule,

Developer shall be entitled to a non-compensable time extension, and the parties shall make an equitable adjustment to the Project Schedule.

1.11 Standard of Performance. Developer covenants to the City that the Developer will perform or cause the applicable Subcontractor(s) to perform the Work with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time for construction managers, design professionals, and construction contractors. Without limiting the foregoing, Developer shall perform the Developer Services in a manner consistent with Developer's work on the other similar projects. Developer understands and agrees that in entering into this Agreement, the City is relying on Developer's experience and expertise and Developer's commitment to take such actions as needed to manage the Project's design and construction consistent with other similar projects completed by Oryx, or by senior members of Oryx staff as completed by them prior to employment by Oryx. Under this Agreement, Developer shall, consistent with industry standards for similar projects, closely monitor and oversee the work of its Subcontractors throughout the construction of the Project, and promptly notify the City of any defaults, deficiencies or violations of which it becomes aware.

2. **Contract Sum**

2.1 Contract Sum. The Contract Sum for Phase One is \$10,300,000 as set forth on Exhibit A, which consists of the following amounts for specified portions of the Work:

(a) **Design Fee.** The amount of the Design Fee is \$3,526,225. Developer agrees that the amount of the Design Fee provides full compensation for the Project's design, including but not limited to all services of the Architect, Architect's subconsultants, General Contractor, and Core Lower-Tier Trade Subcontractors as permitted under subsection 1.3(b) of this Agreement, necessary to Provide 100% Construction Drawings, all required regulatory approvals, and construction administration services for the Site Work, but excluding construction oversight and other construction administration services by the Architect and other design consultants to be included in the Phase Two Budget, and excluding any additional design services required of the Architect and other design consultants during Phase Two Construction Work (e.g., modifications to the Construction Documents required as a result of a Change Order).

(b) **Site Work.** Site Work construction in the amount of \$3,286,960, which shall constitute payment in full for abatement, demolition, grading, sitework and piles.

(c) **Management Fee:** The Management Fee is a fee payable to Developer for Developer's project management services during Phase One. The Management Fee shall comprise a "Base Fee" and a "Bonus Fee". The Management Fee shall include all of Developer's construction management fees and project management fees, (excluding third party, project specific costs) for Phase One Work.

(i) City shall pay Developer a Base Fee, which shall be calculated as 3.5% of project costs excluding costs for insurance, bonds, Management Fee, Change Orders, and unused contingencies (the "Base Fee"). The Base Fee for Phase One shall be paid in installments commencing with the first Application for Payment and monthly thereafter for a total of 14 payments of \$70,500 each (the "Monthly Payments"). In the event that Phase One is completed prior to the payment of all of the Monthly Payments referred to above and if the City has not issued a NTP with construction for Phase Two to Developer, then all of the remaining unpaid Monthly Payments shall be due and payable at the completion of Phase One. If the City issues a NTP for Phase Two, the City shall pay Developer Base Fee amounts applicable to Phase Two. The City will pay Developer the Base Fee for Phase Two in prorated equal monthly installments until Final Completion.

(ii) The Bonus Fee applicable to Phase One (the "Phase One Bonus Fee") shall be lump sum of \$393,000. The Phase One Bonus Fee shall be earned and payable only if Developer has completed all of its Phase One obligations hereunder within the Contract Time and for an amount equal to or less than the Contract Sum set forth in Section 2.1 herein. The Bonus Fee applicable to Phase Two (the "Phase Two Bonus Fee") shall be equal to 1.5% of project costs excluding costs for insurance, bonds, Management Fee, Change Orders, and unused contingencies for the performance of the Work under the Contract Documents for Phase One and Phase Two, less the amount of the Bonus Fee actually paid in connection with Phase One, so long as Developer has completed all of its Phase Two obligations within the Contract Time for Phase Two and for an amount equal or less than the Contract Sum for Phase Two.

(d) Other costs. Other actual documented expenses in the total amount of \$2,106,814 incurred by Developer for consulting, legal, project insurance, permits and other Project specific costs (including a Contingency (as defined below) of \$941,340 applicable to all direct and indirect Phase One Costs as set forth in the Phase One Project Budget in Exhibit A). The Phase One Budget does not include all of the costs potentially attributable to the City's requirements in Exhibit F, Section 1.3 C - which coverage is not required until the NTP for Site Work is issued. At the time the NTP for Site Work is issued, Developer and the City shall discuss the insurance requirements appropriate for the Site Work and any increase in Phase One costs resulting from the City's final requirements for insurance applicable to the Site Work pursuant to Exhibit F, Section 1.3.C shall give rise to an equitable adjustment in the Phase One Budget, and the Contract Sum for Phase One shall be adjusted by Change Order, accordingly. Any unspent balance shall be treated as contingency reserves as set forth in paragraph 2.3.

2.2 Conditioned upon agreement by the Parties to a budget for Phase Two, the Contract Sum shall be modified to include the agreed-upon amount for Phase Two.

2.3 Contingency Reserves: The GMP, the Phase One and Phase Two Budgets contain the following contingency reserves: Contractor's Contingency, Developer's Contingency and Indirect Costs Contingency (collectively the "Contingencies" or "Contingency Reserves") to cover unforeseeable changes in market conditions, cost to repair defective work not recovered from subcontractors or suppliers contingent on first exhausting all other potential avenues for

recovery such as insurance, errors in plans and drawings but only if the Architect's performance of the Work of creating the plans and drawings does not fall below the standard of care for design professionals performing similar work in the San Francisco bay area, purchasing gaps but only if Developer has first made diligent efforts to resolve the problem with the supplier, overtime and schedule acceleration if required to maintain or recover schedule delays not associated with Owner changes, and unanticipated costs arising from changes in circumstances that are beyond the reasonable control of and could not have been reasonably anticipated by Developer. The Developer's Contingency shall also include reserves to cover unforeseen conditions discovered after the commencement of the Work; provided, however, that none of the Contingencies shall be used to cover additional costs associated with Differing Site Conditions. In addition, the Contingencies shall not be used to fund any increase in the cost of the Work associated with changes requested by the City to the Scope of Work or the Criteria Package, additional General Conditions, overtime and extended overhead, failures of subcontractors or supplier, subcontractor disputes directed at Developer, or losses beyond Developer's insurance coverage..

(a) Contingency Reserves may be used only upon Developer's submission of a Contingency Utilization Form describing the scope and approximate cost of the work requested as a draw from a Contingency reserve and City approval of the request. Any construction-related request shall first be applied to the Contractor's Contingency, while design or other non-construction requests shall first be applied against the Indirect Costs Contingency. In the event that the Contractor's Contingency or the Indirect Costs Contingency are respectively exhausted, such requests may be applied to the Developer's Contingency conditioned on approval by the City. Once the Contingency Utilization Form has been approved by the City, which approval shall not be unreasonably denied, conditioned, or delayed, Developer may proceed with the subject work ("Contingency Work") and, upon completion, Developer shall notify the City that the Contingency Work is complete. Developer's notification shall include a detailed description of the Contingency Work completed and all necessary supporting documentation to back up the final cost of the Contingency Work, which will then be billed as part of the monthly progress payments.

(b) Upon Final Completion of the Work, any unused Contingency Reserves shall be divided among the parties as follows.

(i) Any unused amounts remaining in the Contractor's Contingency shall be shared equally between the City and Developer, with Developer further sharing it's share with the General Contractor as set forth in the Subcontract agreement between Developer and the General Contractor.

(ii) Any unused amounts remaining in the Indirect Costs Contingency or the Developer's Contingency shall be shared equally between the City and Developer.

(c) In the event that, at completion of Phase One, the Phase One Budget has not been fully expended, the remaining funds shall transfer to the Phase Two budget. If the Parties do not proceed with Phase Two, the remaining funds, excluding Phase One Contingency Reserves, shall accrue to the City. In the event that, at Final Completion of Work, the Phase One and Phase Two Budgets (including the GMP contained therein) have not been fully expended, such “Cost Savings,” excluding Contingency Reserves, shall accrue to the City.

2.4 Phase Two Budget, Authorized Not-To-Exceed Amount (“Guaranteed Maximum Price” or “GMP”) and Contract Time for Phase Two. Prior to or upon City’s approval of the 50% Construction Documents, the Developer shall prepare and submit for approval a proposal for the GMP (to be included with the Phase Two Budget proposal) and Contract Time for Phase Two. The Estimated GMP shall be prepared by the General Contractor on the basis of accepted bids for Trade Packages and the General Contractor’s estimates for Trade Packages which have not completed the bid process at the time of the GMP proposal. If the Phase Two Budget and Phase Two Contract Time proposed by Developer is acceptable to the City, the City’s Board of Supervisors may authorize a not-to-exceed Phase Two contract amount and Phase Two Contract Time. At no time, shall the Contract Sum exceed the Budget Limit.

2.5 Trade Package Sets

(a) Trade Packages Sets are scopes of Work to be procured in conformance with Article 1.5 above and the General Conditions. Trade Package Sets will be issued by the Developer at various intervals throughout the Agreement for the purpose of soliciting bids, selecting and contracting with trade subcontractors.

(b) Each Trade Package Set contract price shall include any costs associated with errors and omissions, trade scope gaps, and schedule issues relating to the Work included in the Trade Packages. A Trade Package Set shall not include unanticipated costs for unforeseen conditions outside the control of Developer or design changes initiated by the City by Design Directive. Any costs associated with these items will be incorporated into the Agreement by Change Order.

(c) The total price for each Trade Package Set shall include the following pricing items:

(i) Trade Package Base Bid(s): The lowest responsive bid from a responsible bidder for the trade work or directly negotiated trade work as allowed by the Agreement. The Trade Package Base Bid shall not include any scopes of work for the trade that are part of any Trade Package Reserves.

(ii) Trade Package Allowances: Trade Package Allowances are amounts proposed by Developer and approved by the City to cover Work determined to be unquantifiable for a Trade Package. The amount shall be stated as an allowance for the Trade Package. The unquantifiable Work is to be clearly identified as a Trade Package Allowance item

within the detailed line item construction budget and within the applicable Trade Package. Any unspent balance of any such allowance will accrue to the City.

(iii) If the Developer and City agree on a GMP and to proceed with Phase Two, and after Developer delivers all bids and final cost estimates for Trade Package Sets to the City, if the sum of all of the Trade Package contract award amounts is lower than the approved GMP, then the GMP will be reduced by that lower amount. If the sum of all the Trade Package contract awards is greater than the GMP, the Developer is obligated by contract to complete the project without any increase in the Contract Sum.

(iv) During the construction phase after award of Trade Package subcontracts, costs savings from value engineering ideas proposed by Developer and approved by the City will be shared between the Parties as follows: (1) if the value engineering idea was proposed by Developer, then saving will be shared equally by the City and Developer; (2) if the value engineering idea was proposed by the General Contractor, then 50% of the savings shall accrue to the benefit of the City and 25% of the savings shall accrue to the benefit of the Developer and 25% of the savings shall accrue to the benefit of the General Contractor; or (3) if the value engineering idea was proposed by a Lower-Tier Subcontractor, then 40% of the savings shall accrue to the benefit of the City, and the Developer, General Contractor, and Lower-Tier Subcontractor that proposed the value engineering idea shall each be credited with 20% of the savings amount.

2.6 Change Orders. The Contract Sum may be increased or decreased by Change Orders. Change Orders are governed by General Conditions Article 6 – Clarification and Changes in the Work.

2.7 Contract Closeout. Upon Final Completion of the Work, any unused Trade Package Allowances shall accrue to the benefit of the City, including the Developer's Fee associated with unused Trade Package Set Allowances, and the Contract Sum shall be adjusted by deductive Change Order.

2.8 Certification by the Controller. This Agreement is subject to the budget and fiscal provisions of the City. Charges will accrue only after prior written authorization certified by the City Controller, and the amount of the City's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

3. Contract Time and Liquidated Damages

3.1 Contract Duration. The Project will be accomplished in two phases: (1) the Design Phase ("Phase One"); and (2) the Construction Phase ("Phase Two"). The phases of Work are more fully described in Exhibit C and Exhibit D hereto.

(a) The Design Phase shall include Site Work at the Selby Galvez Site only, including abatement, demolition, grading, sitework and piles. This work requires plans stamped by the appropriate design professional, approved by the regulatory authorities with jurisdiction,

and the City's issuance of a Notice to Proceed with such Work. The Work must be performed by individuals or entities holding the appropriate license.

(b) Developer shall commence Design Phase Work promptly after the Controller's Office certifies this Agreement and the City issuance of a Notice to Proceed with Design.

(c) The total contract duration for the Design Phase, including the City's approval of the 100% Construction Documents, receipt of all required regulatory approvals, and completion of the Site Work is 437 consecutive calendar Days, subject to extensions of time resulting from Unavoidable Delays.

(d) If the City is delayed in its ability to deliver the Purchased Site to Developer and issuance of the NTP with Site Work in Phase One is delayed, City shall grant Developer a non-compensable time extension for completion of the Site Work portion of the Design Phase, which shall be Developer's sole remedy for any such delay in issuance of the NTP with Site Work. If there is such a delay in the issuance of the NTP with Site Work, the total contract duration for completion of 100% Construction Documents and receipt of all required regulatory approvals shall remain unchanged. City's payment obligations for Site Work shall not arise until Developer has completed the applicable portion of the Site Work as designated on the Schedule of Values.

(e) Developer shall include with its GMP proposal for Phase Two the number of consecutive calendar Days to constitute the duration of the Construction Phase until achievement of Substantial Completion. If the Parties agree on the duration of the Construction Phase (and the GMP as discussed in Article 2), subject to the approval of the City's Board of Supervisors and certification of funds by the office of the City Controller, the agreed-upon duration for the Construction Phase will be implemented by contract modification.

(f) The duration for Developer to achieve Final Completion is ninety (90) consecutive Calendar Days following the City's issuance of a Notice of Substantial Completion.

3.2 Liquidated Damages. The City and the Developer understand and agree that time is of the essence in all matters relating to the Contract Documents and that the City will suffer financial and other intangible but significant losses if the Work is not completed within the Contract Time, as may be extended in accordance with Article 7 of the General Conditions. The City and Developer further understand and agree that the actual cost to the City that would result from Developer's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, the City and Contractor agree that, as City's sole and exclusive remedy for delay, Developer will pay the City liquidated damages for delay (but not as a penalty) the following amounts for each day a phase of work remains uncompleted after expiration of the durations referenced above:

(a) Design Phase: \$5000 for each Day after the Design Phase Contract Time duration on which Developer has not accomplished completion and City approval of the 100% Construction Documents and completion of Site Work construction.

(b) Construction Phase: \$5000 for each Day after the Construction Phase duration on which the Developer has not accomplished Substantial Completion until the City issues a Notice of Substantial Completion.

(c) Final Completion: \$500 for each Day after the 90-day duration following Substantial Completion on which the Developer has not accomplished Final Completion until the City issues a Certificate of Final Completion.

Notwithstanding anything to the contrary herein, in the event that the Board of Supervisors approves the Phase Two Budget (including the GMP) and the Contract Time is extended as provided in this Agreement, the Liquidated Damages for Phase One Work referred to above in Section 3.2 (a) shall be of no force or effect and shall be replaced by the Liquidated Damages applicable to the Construction Phase and the Final Completion referred to in Section 3.2 (b) and (c) above.

4. Obligations of the City

4.1 City Representative. The City will provide timely notice to the Developer (no later than the date of issuance of the NTP with Design) of the City employee designated as the City's representative for purposes of contact between the City and Developer in connection with the construction of the Project, including, without limitation, the giving of notices, consents and approvals ("City Representative"). The City representative may, in a signed written document, which he or she may withdraw at any time, designate another City employee as the City Representative's authorized designee. The City may at any time, by notice given to Developer, remove the City's Representative and appoint another individual to act as the City's Representative. Except as set forth in this Agreement to the contrary, the City's Representative or designee shall have the authority to bind the City with respect to all matters for which the consent or approval of the City is required or permitted pursuant to this Agreement and all consents, approvals and waivers given by the City's Representative shall bind the City and may be relied upon by Developer. The City Representative may delegate his or her authority to another individual by written notice to the Developer, which may be changed or withdrawn at any time.

4.2 City Cooperation. The City shall cooperate with Developer for the design and construction of the Project and shall promptly and in a timely manner (a) provide information regarding its requirements for the Project, (b) answer inquiries Developer may have with respect to such information, and (c) timely approve or disapprove (in accordance with the terms of this Agreement) any items and grant its approval for Developer to execute Project Contracts required for the development of the Project. The City shall provide responses to additional information or

decisions requested by Developer in a prompt and timely manner in accordance with the terms of this Agreement, and within the approval timeframes specified in the Contract Documents.

4.3 Access to Project Sites. The City shall make the Project Sites available to Developer. Without limiting the foregoing, City shall obtain and grant to Developer: (i) all necessary consents, licenses and/or approvals required for Developer and its Subcontractors to enter upon the Project Sites to conduct pre-construction testing and due diligence and to perform the Work, including but not limited to any consents required from existing tenants of any portion of the Project Sites; and (ii) any required approvals of the project design (e.g., consent from any tenant of existing buildings on the Project Sites and from the owner of the Toland site). If Developer is unable to access any portion of the Project Sites or proceed unimpeded with the Work due to lack of the foregoing consents or approvals, then any delay associated therewith shall be considered Unavoidable Delay.

4.4 City Keeping Developer Informed. The City shall keep Developer promptly informed of all material matters that come to the City's attention relating to or affecting the project management, design or construction of the Project relevant to the Developer Services, including, without limitation, all agreements and discussions between the City and third parties relating to such matters, and the City shall promptly notify Developer of any developments necessitating or warranting a change in the Project Plan or the Plans and Specifications.

5. **Indemnity; Exculpation**

5.1 Developer Indemnity. Developer's indemnity obligations are set forth in sections 3.21 and 3.22 of the General Conditions.

5.2 City Exculpation. No board or commission of the City (and no officer, director, member, manager, employee or agent of the City) shall be personally liable for the performance of the City's obligations under this Agreement.

5.3 Developer Exculpation. No direct or indirect partner, employee, sub-consultant, shareholder or member in or of Developer (and no officer, director, managing director, manager, employee, sub-consultant or agent of such partner, shareholder or member) shall be personally liable for the performance of Developer's obligations under this Agreement.

5.4 Limitations. No insurance policy covering Developer's performance under this Agreement shall operate to limit Developer's liability under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such liability. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the Developer's performance of the Work.

5.5 Liability for Use of Equipment. The Developer shall be liable, and the City shall not be liable, for any damage to persons or property as a result of the use, misuse or failure of

any equipment used by Developer, or any of its Subcontractors, or by any of their employees, subcontractors, or agents, even though such equipment is furnished, rented or loaned by the City.

6. Dispute Resolution

6.1 Partnering. The Parties agree that they will in good faith engage in the partnering process set forth in Exhibit K as an avenue to work together to resolve questions and concerns as they arise.

6.2 Non-Binding Mediation.

(a) Upon an alleged default, either party may request non-binding mediation by delivering a written request for mediation ("Mediation Request") to the other party. The Mediation Request must include a summary of the issue in dispute and the position of the parties, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding party may agree to meet and confer promptly with the requesting party to attempt to resolve the matter. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the party who requested mediation may submit the matter for mediation to a mediator acceptable to both parties. If the parties cannot agree on a mediator, the party may refer the matter for mediation with JAMS.

(b) The parties will cooperate with one another in selecting a mediator who is acceptable to both parties or selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. Neither party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions in sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation.

(c) The provisions of sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation.

(d) Upon the failure of any agreed-upon mediation to resolve the default in question, the Parties may pursue such rights and remedies as are available under this Agreement – the Parties agreeing that the aforementioned mediation process is a non-binding process.

7. Project Signage

Developer may maintain reasonable and customary signage at the Development Site specifying Developer's role in the Project.

8. Insurance

8.1 Developer Insurance. Developer shall procure and maintain, at its cost and expense, insurance relating to the Project in conformance with the requirements stated at Exhibit F attached hereto.

8.2 Developer Obligations to Submit Reports. Upon receipt of notice thereof, Developer shall promptly investigate and make a written report to any insurance company providing coverage to the City with respect to the Project, with a copy to the City, of all accidents, claims, or damage relating to the Project within the scope of the Developer Services, any damage or destruction to the Project and the estimated cost of repair thereof, and shall prepare such further reports required by any such insurance company in connection therewith.

9. Assignment

9.1 Developer Assignment. The services to be performed by Developer and its Subcontractors under this Agreement are personal to Developer and its Subcontractors and neither Developer nor its Subcontractors may not assign or transfer their obligations under this Agreement or any rights or benefits under this Agreement to any person or entity without the prior written approval of the City, which consent may be granted or withheld in the City's sole discretion.

9.2 Obligations Binding on Permitted Assigns. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of any respective permitted successors and assigns.

9.3 No Release of Liability. Notwithstanding any assignment by Developer or its Subcontractor(s) of rights under this Agreement, in no event shall Developer or its Subcontractor(s) be released from any obligations or liabilities hereunder, and if requested by the City, Developer shall covenant in writing to be jointly and severally liable with its assignee for all of its obligations and liabilities hereunder.

10. Rights in Deliverables

10.1 Ownership of Results. Any interest of Developer or its Subcontractors in the design documents, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files, media, other documents, or other documents referenced as Deliverables in paragraph 10.2, prepared by Developer or its Subcontractors (the "Deliverables"), shall become the property of and will be transmitted to the City upon the Final Completion of the Project or earlier termination of this Agreement. However, unless expressly prohibited elsewhere in this Agreement, Developer and its Subcontractors may retain and use copies of the Deliverables for reference and as documentation of its experience and capabilities.

10.2 Works for Hire. If, in connection with the Work, Developer or its Subcontractors or lower-tier subcontractors create Deliverables including, without limitation, artwork, copy,

posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City effective upon the Final Completion of the Project or earlier termination of this Agreement. If any Deliverables created by Developer or its Subcontractors or their subcontractors under this Agreement are ever determined not to be works for hire under U.S. law, Developer and its Subcontractors, effective upon the Final Completion of the Project or earlier termination of this Agreement, hereby assign all Developer's and its Subcontractors' copyrights to such Deliverables to the City, agree to provide any material and execute any documents necessary to effectuate such assignment, and agree to a clause in every subcontract imposing the same duties upon subcontractors.

10.3 Assignment of Interest in Project Deliverables. Upon Final Completion of the Project or earlier termination of this Agreement and payment to Developer of all amounts to which it is entitled under this Agreement, Developer and its Subcontractors shall assign to the City all their rights, title and interest in and to the Deliverables. All of the Project Contracts including subcontractors or subconsultants of every tier shall require assignment of all Deliverables to the City, together with all warranties and guarantees, without the prior consent of the Developer and without any payment to the Developer.

10.4 City Use of Deliverables. The City may reproduce, distribute, and make any use of the Deliverables without further notice or compensation to Developer or any Subcontractor or subconsultants, provide that the City shall not use the Deliverables on other unrelated projects. If Developer's design Subcontractor or its subconsultants are not terminated for fault, the design Subcontractor or its subconsultants shall not be liable for any claim to the extent arising out of the use by or through the City of the Deliverables without Developer's design Subcontractor or its subconsultants' professional involvement.

11. Additional Requirements; Certain Requirements Incorporated by Reference

11.1 Laws Incorporated by Reference. The full text of the laws expressly listed in this Section 11, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions expressly incorporated by reference in this Section 11 and elsewhere in the Agreement are available at www.sfgov.org under "Government."

11.2 Additional Requirements – Subcontractor Agreements. It is hereby understood and agreed that Developer shall incorporate into all of its Project Subcontracts agreements all requirements of this Section 11, and all Subcontractors and their lower-tier subcontractors shall be bound the same as Developer for compliance with all requirements of this Section 11. Developer shall include a provision in each Subcontract requiring Subcontractors to incorporate into all lower-tier subcontractor agreements, if any, all requirements of this Section 11.

Subcontractors and their lower-tier subcontractors providing Work on the Project shall all be bound the same as Developer for compliance with all requirements of this Section 11.

11.3 Conflict of Interest. By executing this Agreement, Developer certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

11.4 Prohibition on Use of Public Funds for Political Activity. In performing the Developer Services, Developer shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Developer is subject to the enforcement and penalty provisions in Chapter 12G.

11.5 Nondisclosure of Private, Proprietary or Confidential Information.

(a) If this Agreement requires the City to disclose "Private Information" to Developer within the meaning of San Francisco Administrative Code Chapter 12M, Developer shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Developer Services. Developer is subject to the enforcement and penalty provisions in Chapter 12M.

(b) In the performance of Developer Services, Developer may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to Developer, then, to the extent Developer is advised in writing that such information is proprietary or confidential, such information must be held by Developer in confidence and used only in performing this Agreement, subject to Developer's right to disclose such information as may be required by Court order or applicable law. Developer shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary or confidential information.

11.6 Nondiscrimination Requirements.

(a) Non Discrimination in Contracts. Developer shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Developer is subject to the enforcement and penalty provisions in Chapters 12B and 12C to the extent applicable to Developer.

(b) Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Developer does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property

owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

11.7 Minimum Compensation Ordinance. Developer shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Developer is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Developer certifies that it is in compliance with Chapter 12P.

11.8 Health Care Accountability Ordinance. Developer shall comply with San Francisco Administrative Code Chapter 12Q as applicable to Developer's work under this Agreement. To the extent applicable, (1) Developer shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3 and (2) Developer is subject to the enforcement and penalty provisions in Chapter 12Q.

11.9 Owner Contracting Requirements. Developer must comply with the Owner Contracting Requirements set forth in Exhibit G and Exhibit I hereto, and shall be subject to the enforcement and penalty provisions of such requirements.

11.10 Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require Developer to remove from, the City facilities personnel of any Subcontractor or lower-tier subcontractor who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of the City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, the City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

11.11 Limitations on Contributions. By executing this Agreement, Developer acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of

negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective Party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor retained by Developer to provide services for the Project; and any committee that is sponsored or controlled by Developer. Developer must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to the City.

11.12 Consideration of Criminal History in Hiring and Employment Decisions.

(a) Developer agrees to comply fully with and be bound by the provisions of Chapter 12T, "City Developer/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Developer shall comply with all of the applicable provisions of 12T. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to Developer's and its Subcontractors' operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees of Developer and its Subcontractors who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment by Developer and its Subcontractors of an individual wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

11.13 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Developer not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

11.14 Preservative Treated Wood Products. Developer shall comply with the applicable provisions of San Francisco Environment Code Chapter 13, which requires that contractors purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

11.15 Compliance with Laws. Developer shall use commercially reasonable efforts to cause each Subcontractor and all lower-tier subcontractors to become and remain fully informed

of and comply with the applicable provisions of the Charter, ordinances, and regulations of the City and other local agencies having jurisdiction over their work, and all federal and state laws and regulations in any manner affecting the Project Contracts, the performance of the Work thereunder, or those persons engaged therein. Developer shall require compliance with, and shall use good faith efforts to ensure all construction and materials provided under the Project Contracts shall be in full accordance with, the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Codes specified in the Project Contracts, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. To the extent applicable to Developer, Developer shall comply with all laws including the applicable provisions of the Charter, ordinances and regulations of the City and local agencies having jurisdiction over it.

12. Notices

12.1 Any notice required or permitted to be given hereunder and any approval by the parties shall be in writing and shall be (as elected by the Party giving such notice or granting such approval): (1) personally delivered, (2) delivered by recognized overnight courier, (3) transmitted by postage prepaid certified mail, return receipt requested, or, (4) by facsimile or electronic mail with a hard copy sent by one of the other methods described in clauses (1) – (3) of this Section. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on the earlier to occur of: (a) the date of receipt if delivered personally; (b) on the next business day if sent by overnight courier; (c) five (5) days after the date of posting if transmitted by mail; or (d) the date of transmission with confirmed answerback if transmitted by facsimile or electronic mail. Either Party may change its address for purposes hereof by notice given to the other Party. Notwithstanding the foregoing to the contrary, any notice of default must be sent by registered mail.

12.2 Notices, requests and approvals hereunder shall be directed as follows:

the City: Public Works
The City and County of San Francisco
30 Van Ness, Suite 4100
San Francisco, California 94102
Attn: Patricia Solis
Re: Central Shops Project
Facsimile No.: (415)557-4701

with copy to: Randy Parent
Deputy City Attorney
Office of the City Attorney
The City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: Central Shops Project
Facsimile No.: (415) 554-4755

Developer: Oryx Development I, LLC
P.O. 14315
San Francisco, CA 94114
Attn: JC Wallace
Facsimile No.: (408) 693-3836

with a copies to: Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94111
Attention: CJ Higley, Esq.
Telephone No.: (415) 954-4942
Fax No.: (415) 954-4480

13. Compliance with Americans with Disabilities Act

Developer shall provide the Developer Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

14. Modification of This Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as expressly provided herein. Any modification or waiver must be in writing. "Notices" regarding change in personnel or place must be communicated by written instrument executed and approved in the same manner as this Agreement.

15. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles of conflicts of laws. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

16. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Counterparts

This Agreement may be executed in one or more counterparts, and each of such counterparts shall, for all purposes, be deemed to be an original, but all of such counterparts shall constitute one and the same instrument. The parties agree that their respective signatures transmitted by facsimile or PDF electronic mail shall be deemed binding for all purposes.

18. Benefits and Obligations

The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, administrators, legal representatives and permitted successors and assigns. No provisions of this Agreement shall inure to the benefit of, or be enforceable by, any creditors or other third parties.

19. Integration

This Agreement represents the entire and integrated agreement between the City and Developer and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by the City and Developer.

20. Further Assurances

The City and Developer agree to execute and deliver such further instruments as may be necessary or desirable to effect this Agreement and the covenants and obligations of the parties hereto, subject to any necessary governmental approvals.

21. Headings

The headings in this Agreement are solely for convenience of reference and shall not affect its interpretation.

22. Survival

Notwithstanding anything stated to the contrary in this Agreement, none of the covenants, conditions or indemnities of the Developer or the City under this Agreement shall (a) survive the termination of this Agreement, except in connection with an action by such Party for termination of this Agreement and damages based on the alleged breach of such covenant, condition or indemnity, or (b) survive Final Completion, except that (1) the provisions of 3.2, 8.2, 10.3, 11.4, and Exhibit J shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of one year after either such event occurs, (2) the provisions of Sections 1.11, Article 5, 6.1, 11.2, 11.5, 11.11, 11.15, 12 and 13 shall survive the termination of this Agreement, or Final Completion, as applicable, for a period of three (3) years after either such event occurs, or, such longer time as is necessary to resolve any issue for which indemnification is asserted under such sections provided a demand is made by the party asserting such indemnification obligations within such three (3) year period, and (3) the provisions of Sections 1.7(b), 1.7(c), 8.2, 9.3, 10.1, 10.2, 15, 16, 17 and 18 shall survive the termination of this Agreement, or Final Completion, as applicable, without limitation.

23. No Waiver

No failure or delay of either Party in the exercise of any right under this Agreement shall be deemed to be a waiver of such right. No waiver by either Party of any condition under this Agreement for its benefit or any breach under this Agreement shall constitute a waiver of any other or further right or subsequent breach.

24. Ownership of Work Product

Whether provided by the City or Developer or their respective agents, all of the data, notes, estimates, computations, sketches, photographs, presentations, reports, renderings, computer programs and all other materials relating to the Project and the Developer Services (collectively, the "Works") are and shall remain, together with all copyright privileges, the property of the City whether or not the Project for which they are made is executed. To the extent Developer has any copyright in the Works, Developer hereby assigns any such copyright to the City. Developer may retain copies, including reproducible copies and intermediate drafts, of the same for information and reference only.

25. Sunshine Ordinance

Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code section 6250 et seq.), this Agreement and any and all records, information, and materials

submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

26. City's Remedies for False Claims and Other Violations

Under San Francisco Administrative Code section 6.22(M), any Developer, Subcontractor, lower-tier subcontractor, or consultant who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of its agreement, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, any Developer, Subcontractor, lower-tier subcontractor, or consultant who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

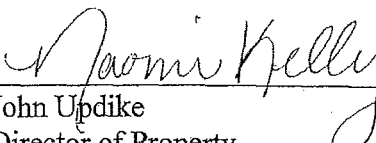
27. MacBride Principles -Northern Ireland

The provisions of San Francisco Administrative Code section 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Developer confirms that Developer has read and understands that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year written above.

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a Charter City and County

By: 
Name: John Updike
Title: Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

By: Elaine M. O'Neil

Name: Deputy the City Attorney

DEVELOPER

ORYX Development I, LLC,
a Nevada limited liability company

BY: ORYX Partners, LLC
a Delaware limited liability company

By: Juan Carlos Wallace
Name: Juan Carlos Wallace
Title: Managing Member

EXHIBIT A
PROJECT BUDGET

EXHIBIT A

Project: Central Shops Relocation, GSA



Phase One Project Budget (as of 2/12/16)

ref: CS991-011916

		\$	
Acquisition Due Diligence Costs		25,000	Allowance for misc. follow-up on reports from City's due diligence
A&E - Architect & Subconsultants		2,419,488	A&E design budget for primary architect and subconsultants, includes 4 mo of CA
A&E - Design-Build Subs		479,737	MEP & F&LS design-build sub-contractors (DD/CD phase)
Pre-construction Services (Pankow)		627,000	Pre construction services from contractor (SO/DD/CD)
Permits and Fees		925,475	Preliminary Estimate - includes both filing and issuance fees
Legal, insurance, accounting and misc admin		215,000	Legal costs include Dev Agmt, A&E & Const Contracts, Subcontracts, Insurance, Accounting
Development Management Base Fee (Phase 1)		987,000	Through GMP / CDs (14 months)
Development Management Bonus (Phase 1)		393,000	Bonus due upon completion of Phase 1 Deliverables
Abatement/Demolition/Grading/Sitework/Piles		3,286,860	Initial site-work (Selby Galvez)
Contingency	10%	941,340	% of Pre-Development Costs
TOTAL PHASE ONE BUDGET		10,300,000	

CENTRAL SHOPS - PROJECT BUDGET (as of 11/18/2015)

NOVEMBER 18, 2015

Preliminary: based on information available to Oryx as of

November 18, 2015

ref: CS9111815

		\$
DIRECT COSTS		
GENERAL REQUIREMENTS		5,089,995
DEMO		730,645
EXCAVATION, PILES & EXTERIOR		5,677,336
BUILDING		21,924,118
EQUIPMENT		7,038,116
TOTAL		40,460,210
GC FEE		1,891,515
DIRECT BUILDING COSTS		42,351,725
GC CONTINGENCY		4,235,172
TOTAL BEFORE OWNERS CONTINGENCY		46,586,897
DEVELOPER'S CONTINGENCY		1,993,897
TOTAL DIRECT BUILDING COSTS		48,580,795
INDIRECT COSTS		
A&E		1,820,000
MANAGEMENT FEE (Base + Bonus)		2,629,699
OTHER		1,417,585
CONTINGENCY		551,921
TOTAL INDIRECT COSTS		6,419,205
TOTAL PROJECT COSTS		55,000,000

EXHIBIT A

EXHIBIT B

CRITERIA PACKAGE

This Exhibit B contains the Criteria Package provided by the City to Developer as of the date of this agreement and contains the following:

- (1) Conceptual drawings prepared by the Department of Public Works of the City and County of San Francisco's Building Design and Construction Division dated November 13, 2015 for the Development Sites (the "Drawings")
- (2) The attached memorandum dated January 11, 2016 prepared by Gannett Fleming Inc. providing comments and concerns regarding the Drawings, including an earlier version of the Drawings prepared on August 4, 2015 and June 24, 2015 (the "Gannett Fleming Memorandum").
- (3) City has also provided Developer with a copy of the Draft Geotechnical Data Report for CDD HD SIG SITES, 1975 Galvez Avenue and 555 Selby Street, San Francisco, California, prepared by AGS and dated December of 2015.

The City acknowledges that the Phase One Project Budget is based on the information contained in the Drawings and the Gannett Fleming Memorandum. The City further acknowledges that (i) the comments and concerns raised by the Gannett Fleming Memorandum will need to be jointly evaluated by the Developer, the Architect, the General Contractor and the City (after the issuance of the NTP for Phase One), as part of the Phase 1 Scope of Work, and (ii) such evaluation may lead to substantive changes to the Drawings, subject to City approval. Upon City's approval of the revised Drawings (the "Conceptual Design Documents") such Conceptual Design Documents shall be deemed to constitute the revised Criteria Package and attached to this Agreement for reference.

EXHIBIT B

EXHIBIT B

-2-

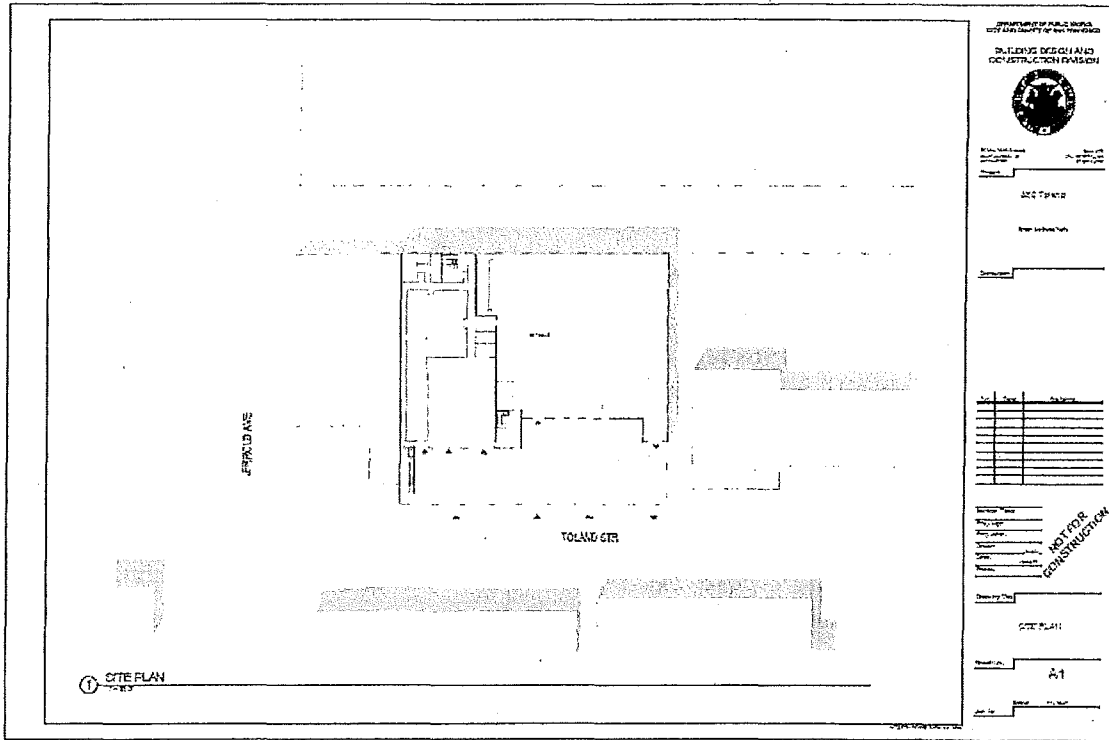


EXHIBIT B

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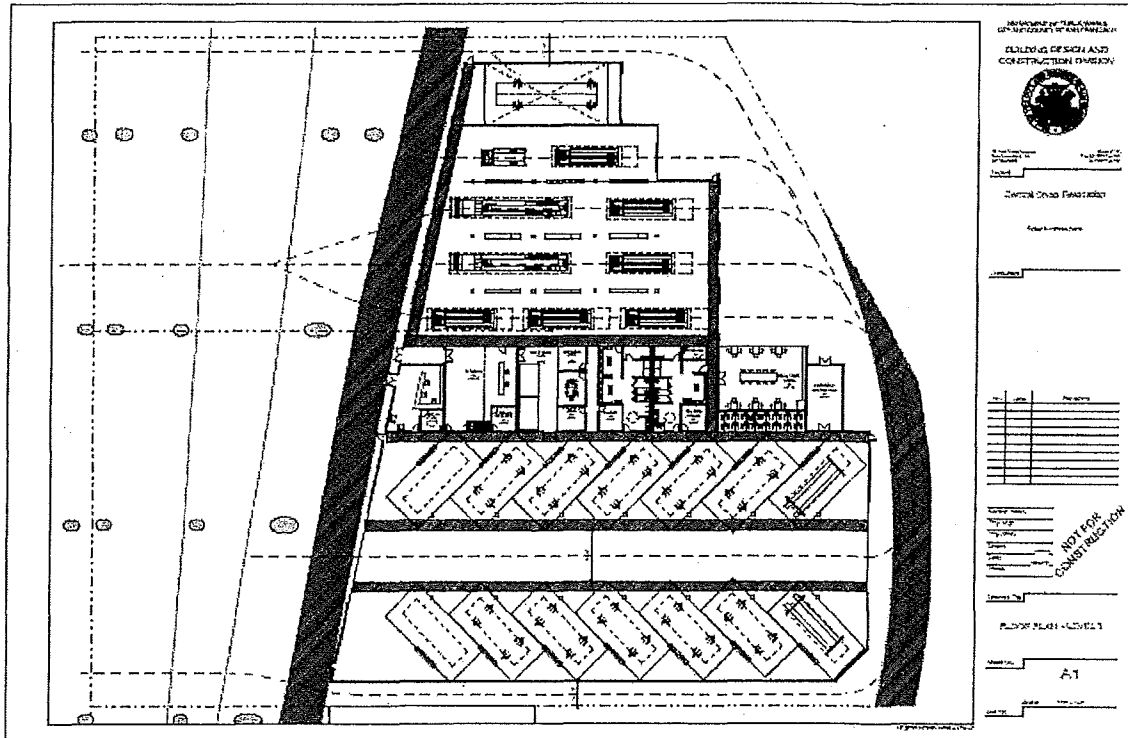


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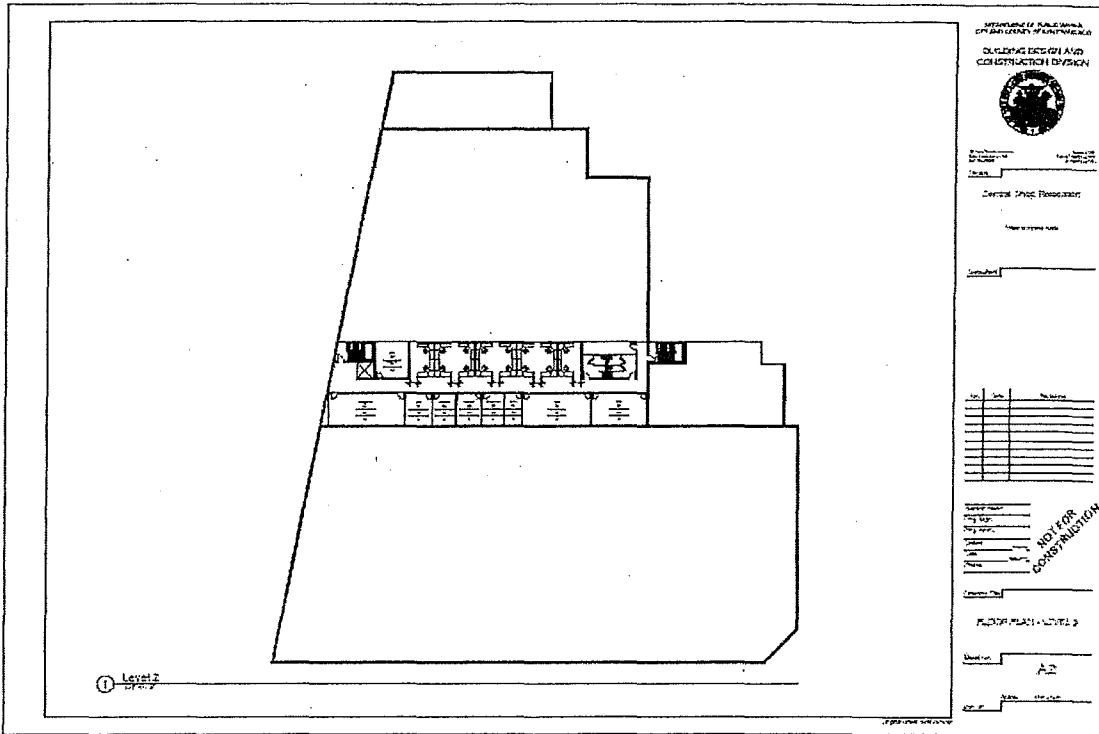


EXHIBIT B

EXHIBIT B

EXHIBIT B

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GANNETT FLEMING, INC.
Suite 1900
3838 North Central Avenue
Phoenix, AZ 85012

Office: (602) 553-8817
Fax: (602) 553-8816
www.gannettfleming.com

TO: Dan McKenna
Special Projects, Fleet/Central Shops
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

FROM: Luigi Leone

DATE: January 11, 2016

SUBJECT: CCSF Selby/Galvez and Toland Sites Technical Review (Final Memorandum)

COPIES: Kam Shadan, Mark Wavering

GF PROJECT NO.: 60043 – Task A.1
Contract Number: 98000 – Task A.1 – A.2

Introduction:

The City and County of San Francisco (CCSF) is in the process of relocating their Central Shops currently servicing the City and County fleet to two new locations to satisfy the maintenance needs of their changing fleet. As part of the Task A.1 requirements, Gannett Fleming is supporting the CCSF with oversight and review of the design and construction process for the new facilities. The Department of Public Works, Building Design and Construction Division (SFDPW) is in the process of preparing design and construction documents addressing the CCSF fleet's needs.

The CCSF has recently acquired one parcel of land and leased a second parcel at two separate locations to satisfy the light, medium and large duty fleet vehicles that the CCSF serves. The Selby/Galvez site will house the maintenance operations with administrative support for the medium and large duty fleet. This site has been purchased by CCSF and the documents will support the construction of a new maintenance building for the assigned fleet. In addition, the CCSF is in the process of finalizing a 10 year lease agreement for the lease of an existing building located approximately two blocks from the Selby/Galvez site on Toland Street. The building will be renovated to support the light duty servicing of the CCSF fleet along with paint and body operations, carpentry shops for support of the Fire Department vehicle ladder assembly and support. The Toland site located at 450 Toland Street will be renovated with a small mezzanine area that will provide ancillary spaces in support of the staff while the main floor will house the light duty vehicle maintenance bays and support shops.

As part of the effort, Gannett Fleming was retained to provide design review efforts during the design process. This report addresses a functional review provided for the preliminary layouts of both sites. The review comments below are linked to specific concerns identified on the sites

EXHIBIT B

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and are identified using an Index Drawing (See Appendix A) that supports the listed comments below.

Functional Review of Work Areas:

The following review comments are based on Industry Standards for the functional relationships and requirements for the CCSF. These comments are based on information acquired during the site visits and meetings with staff and the Validation Report generated by Gannett Fleming dated January 2015. The Validation Report took into consideration the original Mercury Report dated September 2013 and adjustments based on meetings with CCSF. In addition, CCSF has revised the new requirements due to the complexity of the sites which impact the programming document. These impacts have led CCSF staff to consider downsizing certain functions to satisfy the new sites. Dan McKenna's email dated October 8, 2015 as listed below, provided some consolidation or reprogramming of the original space program. This information was used to generate the first set of review comments that were submitted to Mr. McKenna on October 19, 2015 for his review and process. The following were the guidelines from Mr. McKenna:

We have gone through some significant changes since your last review of the project. First, I need to bring you up to speed. The project is now on two sites (555 Selby and 1976 Galvez to be considered as one site and 450 Toland as the second site).

Oryx will be the developer, and Pankov will be the GC. They have hired FME as their principle design firm, and I believe they will sub some of the design work to MDG. So that seems to the team. Our Real Estate Group has LOIs for each of the properties and is working on finalizing the Lease/PA and CAs as well. We are to be at the Board of Supervisors in November and have NTPs in January. The S/G sites will be purchased and the 450 Toland Site will be leased for 10 years. The project is now at Planning for CEQA and at Civic Design Review. I have attached the CDR package.

The two distinct properties are located approximately two blocks from each other. This was done to eliminate two story construction on the Selby/Galvez site. Geo-Tech draft report below, and Hazmat Phase II is underway. We should also have a survey of the S/G site completed this week as well. I will forward if you need that. You will also find attached the DPW design for the two sites, which is the focus of this task order. However, in order to complete your review of the design, you will need to account for Programming changes we will undertake prior to occupying the new facilities. They include the following:

- 1. A reduction in the number of LD vehicles in the fleet overall. We believe a conservative reduction of 10% will occur during the next several years.*
- 2. LD oil, lube and smog inspections will be conducted off site*
- 3. LD body/paint work will be conducted off site*
- 4. Small engine repair will be conducted off site*
- 5. Machine Shop will be located off site*
- 6. Electric Shop will be consolidated in the various shops and storeroom*

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7. *New Storeroom inventory practices will be implemented in order to reduce storage space and decrease inventory carryforward costs. (We will seek some guidance from you as we move forward on this issue)*
8. *Staging will be reduced dramatically, through new practices including an online reservation system, and off-site staging.*

As a follow up to the review submitted to Mr. McKenna, The Department of Public Works incorporated the comments and due to cost concerns on the entire building design, additional program reconfiguration was incorporated by the Department of Public Works. Mr. McKenna provided additional requirements to be considered in an e-mail dated November 16, 2015. These additional guidelines were as follows:

Good Morning Gentlemen

Please find attached the final program design prepared by the SFDPW design team.

You will immediately note that the program elements have continued to shrink and be repurposed based upon site constraints, budget and schedule. The Toland Site has presented the largest challenge due to its configuration and potential TI costs, which we estimate to be near \$400 sq. ft. So the following new program "concessions" along with those previously enumerated will become the baseline program evaluation criteria for your analysis:

Toland:

1. *No dedicated welding area*
2. *Ladder shop sq. ft. will be reduced and their spray booth will be partially located within the shop*
3. *Tire carousels will be located at ea. location*
4. *Secure Parts Rooms will be located at ea. location*
5. *Consolidated Training/Lunch/Break Rooms will be located at each location, but combined will not equal the recommended sq. ft. size as recommended.*

As we move the project forward, your comments to this design will be presented to the new Project Architect, Terri Emery of FME. Unless you note some large critical element to the program design, your comments should be submitted within 30 days. If that schedule cannot be met, please inform me so we can discuss what is doable.

A Technical Review conference call was held on January 7, 2016 and all discussion items and responses have been incorporated in this Final Memorandum.

The following review comments to the Department of Public Works Conceptual Design are based on common practices and functional requirements and are open to discussion. The Department's program changes have been taken into consideration for this review and recommendations. Please refer to attached Appendix A for comment location. Most the comments above referring to a specific location have a letter associated with comment that is shown on the attached drawings in Appendix A. These drawings serve as the index to further clarify location for each of the comments listed above.

Selby/Galvez Site Level 1 – Sheet No. A1:

- A. The Stores Area has now been programmed into both buildings. As per Mr. McKenna's direction above, each Facility will provide a standalone secured Stores. Although the area has decreased in size from the original Mercury Report (7,000 S.F.) and the Validation Report generated by Gannett Fleming (5,500 S.F.) There is a new

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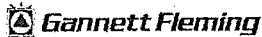


Stores Room inventory practice that will be implemented in order to reduce storage capacity as listed in the planned reduction above. This new practice should take into consideration all components currently housed and controlled by the Stores Department. It is recommended that CCSF work with the Industrial Designer of record and Review Team to determine best practices to implement for the reduced Stores area.

- B. **Tire Storage Area:** Per the original review comments and recommendations by Gannett Fleming, the Department programmed tire carousels on each location to maximize the tire storage capacity for the rubber inventory stored at the facilities. Even though tire carousels is highly recommended for the light duty rubber tire inventory, larger tire storage still should be considered to be stored on two-tier heavy duty tire racks. Larger truck tires are too bulky and heavy and do not lend itself to be stored in carousels, so suggested storage is heavy duty tire racks with simple handling hoist for lowering upper rows of tires by personnel. Per Dan McKenna's comments. The Selby/Galvez site will utilize outside vendors for the mounting and dismounting of tires so there is no need for tire shop support for the larger heavier tires. Although storage of such tires will be performed on site and storage capacity is necessary, it is important to have a space to provide sufficient equipment for emergency situations. Verification on the tire function based on the latest drawings, tire service (mount/dismount) will not be available in the current space with the exception of emergency service. All heavy tire work will be outsourced.
- C. Confirm with the Architect on the type of elevator that will be specified. If a hydraulic elevator, a machine room adjacent to the elevator will be required; if a Machine Room Less (MRL) elevator, a control closet within a 100 feet of the motors is required; if a traditional overhead, then a large machine room required above the second floor.
- D. There are two large areas shown on the floor plan that are not identified. These spaces are adjacent to the Stores Area. Per Dan McKenna's December comments provided, these spaces are for Tire Storage and possibly a small Tire Shop for emergency situations since all heavy duty tire work is now planned to be outsourced.
- E. It is suggested that for the four post platform lifts shown on the Medium-Duty Truck Bays be specified as platform "Flush Mount" lifts to allow the bays to be flushed when platform is not in use without any obstructions. This provides multi-purpose capability at the bay. There are numerous manufacturers that provide this installation. It is not suggested that four post lifts or parallelogram style platform lift be used due to the space constraints at the bays. Gannett Fleming suggest the use of lift systems that will satisfy the various functions for the Central Shops. It is recommended that the Designer of Record discuss with the users the various types of lift systems available including in-ground scissor lifts, piston lifts, vertical platform lifts and portable column lifts to satisfy the requirements for the facility. With in-ground or platform lifts, it is suggested that all installations be flush to the finished floor. Suggested manufacturers to consider may include but not limited to Rotary Lift and Stertil Koni who are the largest manufacturers of heavy duty lifts in the USA. It is recommended that CCSF consider the use of one manufacturer for all lift systems to simplify equipment maintenance and warranty issues.

The use of portable column lifts gives the user the ability to introduce flexibility to the work bays. Portable columns should not be required in every bay since they utilize a large amount of storage area, column lifts may be shared between bays to minimize

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the number of units purchased. Suggest that the Designer of Record provide various sets jack stands.

In addition, due to the materials handling requirements along the bay areas in the medium duty and heavy duty bays, it is necessary to address the inclusion of overhead crane systems to support the removal and replacement of components on vehicles, work on hydraulic components on vehicles and overall assistance with maintenance work on the larger vehicle components. Designer of Record should consider introducing crane system covering the work bays. Coordinate with Maintenance Supervisor on the area of coverage.

Selby/Galvez Site Mezzanine – Sheet No. A2:

- F. There does not appear to be an IT/Server Room called out in this layout at Selby/Galvez Site. Per CCSF, IT Support will be provided off-site with minimal requirement in the Selby/Galvez site. Verify with IT Services for minimal equipment be housed in this building.
- G. There is no Break Room or Kitchenettes in the second floor to provide a user separation between the Administrative Staff and the Mechanics. There is a multi-purpose Room that will serve for this function. Per Dan McKenna's December 7, 2015 review comments, this area will satisfy the required purpose and serve as break room and coffee area. It is recommended that the space be provided with a counter and a sink for such functions.

General:

- H. Layout of the parking concept for the site was not provided. CCSF should provide adequate parking for the number of vehicles and equipment that will be stored at the facility, to include circulation patterns within the parking areas.

Toland Street Site – Level 1 – Sheet No. A2:

- I. It is suggested that the Designer assess the functional process for the relationship between the Carpentry Shop servicing the ladders and the ladder booth. Assume the booth entrance is from the Carpentry Shop, keeping in mind that ladders are 25 feet long and need to have means to move material within the two areas. In addition, verification of areas dedicated for raw stock and finished ladders should be considered. Additional consideration on the layout of the Carpentry Shop is stressed since large material will need to be moved within the Carpentry Shop. The shop will house a large number of heavy equipment including table saws, planers, cutting machines, dust collectors and workbenches. The layout should allow for proper circulation. It is suggested that the designer of record discuss shop functions with Carpentry/Ladder Shop Supervisor prior to starting design.

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- J. Carpentry Shop: Similar to comment above, need to clarify material circulation between the bays and the Carpentry Shop to move Fire Apparatus ladders in and out of the Carpentry Shop and the Ladder Paint Booth to the appropriate areas. Layout currently appears not to support this movement.
- K. Following concerns identified in Comment J above, suggest that a larger aisle between the Ladder Booth and the stair well be provided for material movement. This would allow ladders removed from the trucks to move directly into the Carpentry Shop. Daily movements should be coordinated with the Carpentry Shop Supervisor to assure proper access.
- L. Access to the Carpentry Shop and light Duty Body Shop: This circulation appears to have some concerns with the movement and delivery of existing ladders and wood supply (material) which comes in long lengths via truck delivery. In addition, means of entering the body shop is nonexistent and should be addressed. Verify the process for material handling for this area. In addition, address the entrance for light duty vehicle to this work bay.
- M. Body Shop: Per Mr. McKenna's e-mail dated November 16, 2015, there is to be no dedicated Welding Area in the building. It is assumed that replacement of panels and minor welding will be performed in this area. There appears to be two areas separated by the large Paint Booth. It has been verified by CCSF that the East Side of the Body Shop is dedicated for light duty vehicles, with medium and heavy duty vehicle body work dedicated on the west side of the shop. Required ventilation or fume collection to address any welding tasks in these areas should be incorporated during design.
- N. General Comment: It is understood from Mr. McKenna's e-mail from October 19, 2015 that all body and paint work for the light duty fleet is now being outsourced outside of this facility. Verify that this is still the case since area showing light duty vehicles is now being identified in this area. (Note: This is a General Note and is not depicted on sheets in Appendix A).
- O. Suggest planning an Overhead Crane span between the two heavy duty vehicle bays in these shop. This crane support system should be self-contained as to not impact the existing structural integrity of the building.
- P. The Meeting Room/Library area between Columns 1 and 4 is suggested to be removed and relocated. It is understood from Dan McKenna that it may not a viable option due to structural impacts, code compliance and budget concerns. The suggestion is provided to address a major concern with the functionality of the facility. The light duty body shop currently is shown without an access. It is recommended that an overhead door for access to the light duty bay be provided and without removal of the structure, some other alternatives will be necessary to allow vehicle access. Also, there is a secondary concern with delivery of larger stock to the carpentry Shop, See Comment L above. Currently only a 6 foot double door is shown in this area and will not support the functionality of the shop since there is no means for vehicles to enter the bay.
- Q. Since all material and components serviced by the booths and the Carpentry and Body Shop are coming from the Selby/Galvez site, there needs to be a functional means of receiving these vehicles and materials for work in these areas. Currently it appears that there is no means to stage larger vehicles outside the area nor access for deliveries without impacting the area. This needs to be coordinated.
- R. Large vehicle paint booth: The drawings does not appear to show proper booth size. The large vehicle booth should be approximately 22 feet wide to allow for scaffolding

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or man lifts on either side of the vehicle and the length should allow for work area for largest vehicles. Need to coordinate with Paint Supervisor as to largest vehicle to be painted and provide a minimal of 6 feet clear in front and rear. There is currently an area that will accommodate increasing the length of the booth. It is suggested that the booth be enlarged to support largest vehicles. Required path between booths to access the light duty and heavy duty bay to be a minimal of 10 feet for forklift aisle. It is strongly suggested that this 10 foot area be material and personnel movement only and not be considered as a light duty vehicle access to the bays. This concern should be coordinated with FME and the Designer of Record.

- S. There is a concern with the configuration of the support spaces between columns A6 and B on Grid 1A. The Compressor Room needs to have accessibility for the delivery, removal and maintenance of the compressor equipment. It is suggested that the Compressor Room be provided with double doors for equipment access. It is understood based on conversations with Dan McKenna that the area in front of the Compressor Room is open to the bay area for access into Compressor Room. This will provide sufficient means to move equipment and service compressor as required.
- T. Oil Storage Area: Per meeting with Tom Fung and Dan McKenna on January 7, 2016, it is understood that the oil storage area will support fluid distribution for reels at the light duty bays. Based on this information, Gannett Fleming suggests the area be programmed to house bulk storage tanks and 55 gallon drums associated with fluid distribution for the light duty bays. In addition, a waste oil tank and waste coolant tank will also be necessary to be located within the premises. Flexibility along the north wall may provide some space for location of aboveground tanks, this will need to be coordinated during design. Based on the assigned program for this space, the need for double doors to facilitate the delivery of drums and fluids to the area will be necessary. In addition, oil spill containment capacity for stored fluids needs to be planned in this area to meet codes having jurisdiction.

Gannett Fleming also recommends that the Oil Storage Room, which will serve as the Lube/Pump Room for the facility be expanded to the east wall of the building and eliminate the corridor between the building and the Oil Area. This will allow the increase of square footage for the Oil Room.

- U. The light duty bay at the northwestern most corner (Column grid G and 1A) might have difficulty getting in the bay due to the area allowed for the turning of vehicle into bay. Should be verified and adjusted accordingly.
- V. Up fit area: Although not identified on the plans, it is understood that the two bays located in the light duty area between Columns B and C / and 1A and 2A are assigned for the Up-Fit functions. This has been verified by Dan McKenna on his latest comments from December 7, 2015 e-mail.
- W. Per e-mail dated November 16, 2015, it is stated that the Storage space will be a secured storage serving this building and separate from the Selby/Galvez site. It is also stated that area is to be a secured space similar to the Selby site. If the area is going to house shelving and storage material storage racks, it appears that the 14 foot width might not be sufficient. Designer of Record should review clearances and consider storage mezzanine and/ or space saver storage systems for this area.
- X. Tire Storage Area: As covered in Item B above, in discussions with Dan McKenna and Tom Fong on January 7, 2016, although the heavy tire work will be outsourced and

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only minor storage of mounted tires will be kept in the shop, the Toland Facility will support tire shop and storage with all tire work being performed at the facility. This area needs to be accommodated with miscellaneous tire shop equipment to include, at minimum, tire mount and dismount unit and a tire balancer. In addition based on the facility's requirements consideration of support tire equipment should be discussed. To maximize the storage of rubber, it is suggested in Item B that for this site consideration of tire carousels be programmed into the design to minimize space while maximizing storage capacity. There appears to be sufficient area allocated to storage of tires.

Toland Street Site Mezzanine – Sheet No. A3:

- Y. The previous layout identified support shops such as Component Rebuilt, Electronics Repair and EOC Storage areas. It was confirmed by Dan McKenna that these support shops have been removed from the program.
- Z. Same as Comment C above for Selby/Galvez site: Confirm with the Designer of Record on the type of elevator that will be specified. If a hydraulic elevator, a machine room adjacent to the elevator will be required; if a Machine Room Less (MRL) elevator, a control closet within a 100 feet of the motors is required; if a traditional overhead, then there is a large machine room required above the second floor. These spaces are currently not shown on the drawings.
- AA. The Toland site no longer houses the Administrative staff on the mezzanine level, only on the shop floor. First floor houses two Supervisor Offices and all other administrative functions are now located in the mezzanine at the Selby site. A concern was identified during the January 7, 2016 meeting with CCSF staff. There is no supervision along the center area of the work bays and no visual supervision to the work bays along this row of vehicle bays thus creating a concern. Designer of record should address this concern during design and also verify that the two offices satisfy the space requirements for all supervisory personnel required at the Toland Street Site.
- BB. The mechanic's lockers and restrooms are now located on the mezzanine floor. This will generate a lot of vertical movement since all the functions are on the first floor. The unisex rest room will support some of this concern but its single usage only. With lockers and showers upstairs, and the Training/Lunch Room also upstairs, it can create a vast amount of vertical movement and no supervision on the mezzanine floor. Since IT only requires a small closet, it is suggested moving the IT function and Electrical Room upstairs and expanding restroom capability and possibly a small break room on the first floor to support the maintenance staff.

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Conclusion:

The comments listed above are suggested comments based on the revised layout provided for the two sites on November 16, 2015 (Drawings dated August 4th and June 24th) and the January 7, 2016 teleconference meeting with CCSF staff. The comments are based on a functional review of the sites looking for possible concerns that may impact functional operations. The suggested comments are provided for consideration by the designer of record. The mission critical comments are underlined above and should be addressed before conceptual design is finalized. It is strongly suggested that the SFDPW coordinate the suggested review comments with Central Shops staff and incorporate comments agreed upon into the conceptual plans prior to issuing the documents for design. This will allow the Designer of Record to have a document that incorporates all the required components for the facility.

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City and County of San Francisco
Selby/Galvez and Toland Street Sites
Technical Review

Appendix

Appendix A:

Review comment index.

- Selby/Galvez Floor Plan – Level 1
- Selby/Galvez Floor Plan – Mezzanine
- Toland Street Floor Plan – Level 1
- Toland Street Floor Plan – Mezzanine

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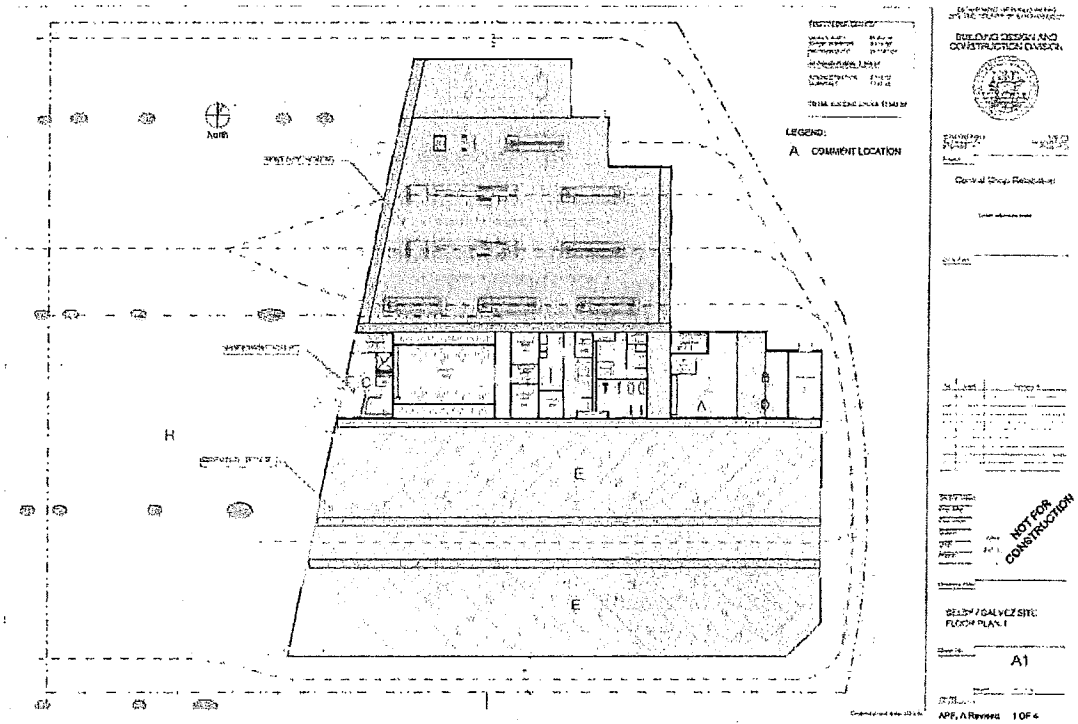


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Central Shops Replacement Facilities Project
PROJECT DELIVERY AGREEMENT
Contract No. 7994A

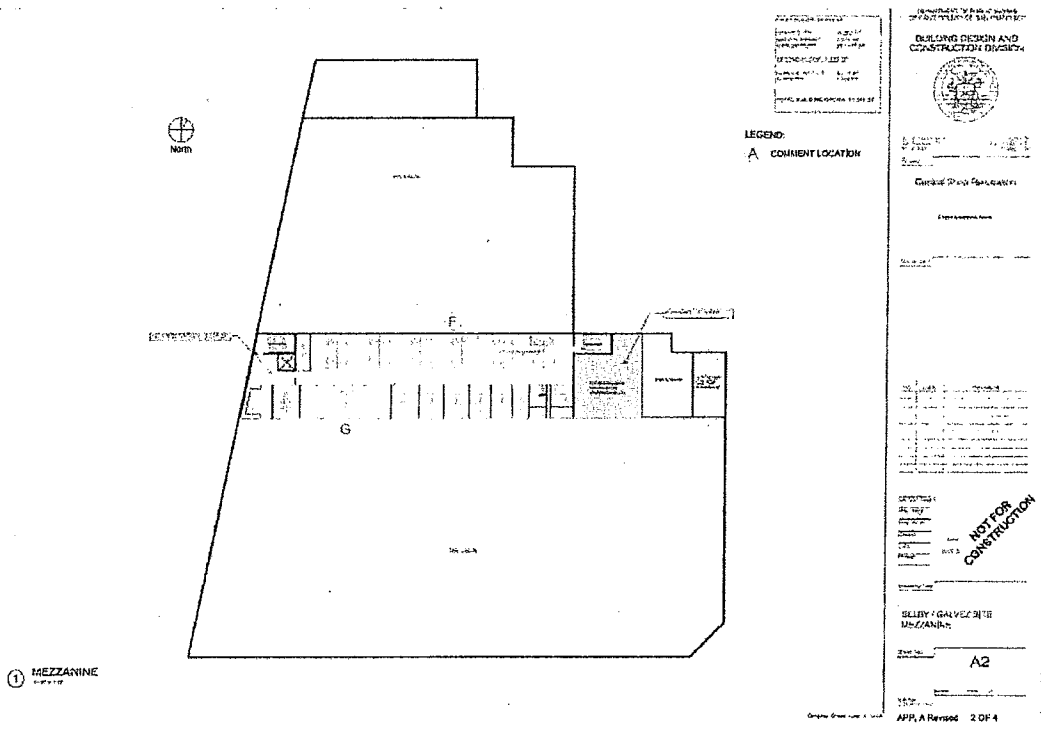


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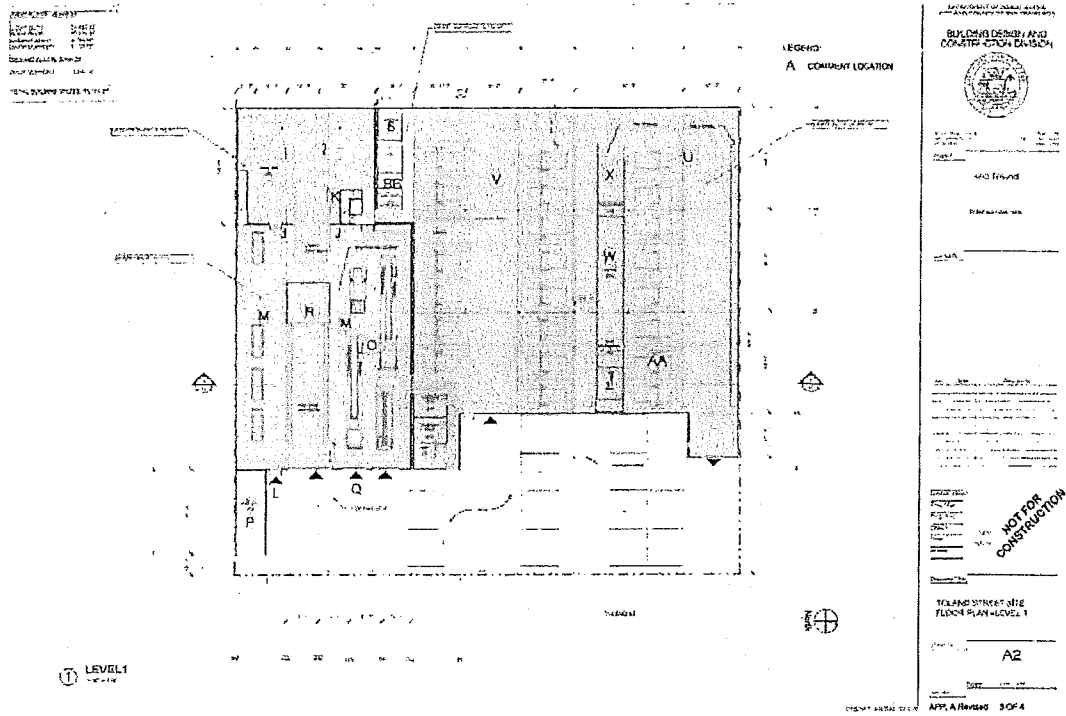


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Central Shops Replacement Facilities Project
PROJECT DELIVERY AGREEMENT
Contract No. 7994A

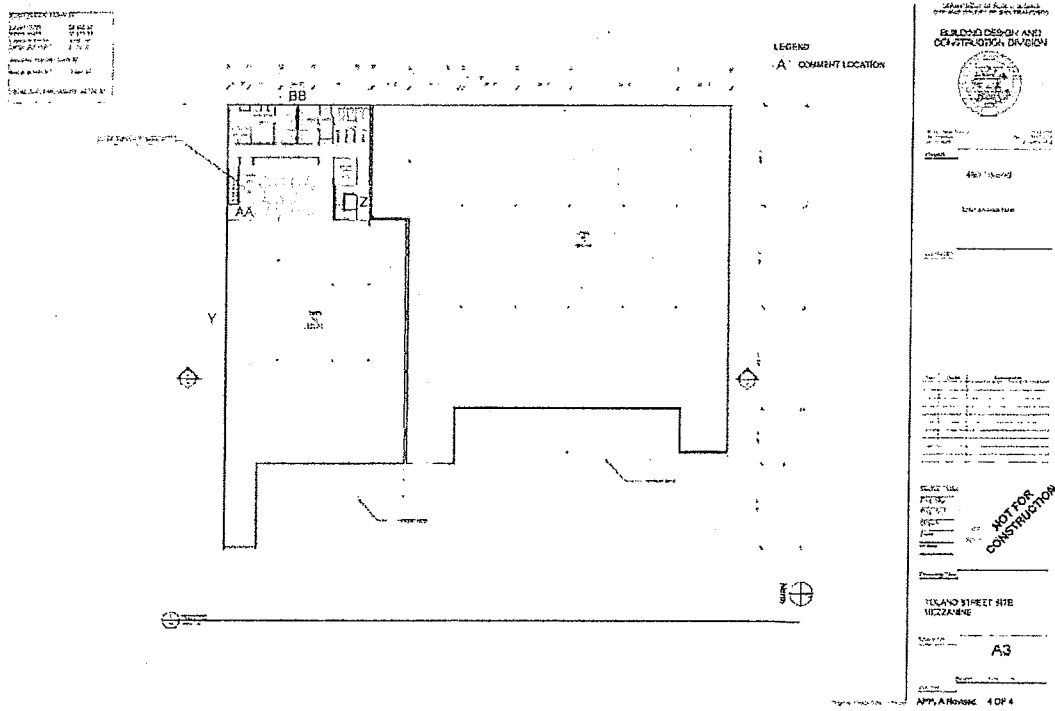


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EXHIBIT C

SCOPE OF DEVELOPER SERVICES

I. DESCRIPTION OF GENERAL SERVICES

A. General Services. Unless otherwise provided, the Developer Services identified below and in the Agreement shall extend to the design and construction of the Project. Developer shall oversee and monitor all aspects of the design and construction of the Project.

1. Administration and Coordination

- (i) In conjunction with the City, prepare the Project Plan for the City's approval. The Project Plan shall include, but not be limited to, Site logistics, measures to keep the Site secure, a defined Site perimeter, and progressive Site clean-up. Developer shall update or modify the Project Plan from time to time upon the request of the City or when Developer deems necessary, and all such revisions to the Project Plan shall be subject to the City's approval.
- (ii) Establish and implement procedures for coordination of all aspects of the Project between the City, Developer, and Developer's subcontractors of all tiers..
- (iii) Negotiate contracts and agreements for all contracted services, including site development, architectural, construction, engineering, testing and consulting services, and provide written recommendations to the City to approve contracts or agreements.
- (iv) Coordinate the services and activities of the General Contractor, Architect, and the Lower-Tier Subcontractors and Suppliers, to facilitate cooperative efforts in the development and implementation of the Project Plan.
- (v) Negotiate any documents, instruments or agreements or amendments thereto necessary or appropriate for the implementation of the Project and services related thereto, to the extent such documents, instruments or agreements, or amendments thereto, are consistent with the Project Plan. Except as otherwise provided in this Agreement, all material documents, instruments, agreements or amendments are subject to the reasonable approval of the City.

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2. Management Control Procedures

- (i) Coordinate the performance of all budgeting, billing and payment application review/assimilation functions as necessary or appropriate for and in connection with the coordination of the design and construction activities being conducted pursuant to the Project Plan. Such functions shall include, without limitation, the preparation and submittal to the City of a monthly single, comprehensive application for payment in form and substance satisfactory to the City, representing work completed in accordance with Article 9 of the General Conditions. The form of application for payment shall include and incorporate, without limitation, the Developer's pay application for any period in which the Developer has submitted such application for payment for work performed. The form of application for payment shall also include (i) a statement of the Development Services Fee for such month, (ii) a statement of Developer's Reimbursable Expenses for such month, (iii) invoices establishing all other payables for such month, and (iv) such lien releases and other documentation as may be required for payment in accordance with the terms of the agreements with the Architect, General Contractor, Lower Tier Subcontractors, and any other Project team members.
- (ii) Establish and implement administration and reporting procedures for the Project, including finance, budget and cost controls, as well as supervision of accounting.
- (iii) Coordinate the development and implementation of a procedure/system of Project cost control and track actual and projected costs.
- (iv) Oversee the activities of the Subcontractors regarding their performance in accordance with their respective agreements. Upon receipt of knowledge thereof, notify the City of all material deviations and coordinate the implementation of the necessary procedures to rectify the same.
- (v) Coordinate the scheduling of meetings on a regular basis, or more frequently as the City may reasonably elect, among the City, the Architect, the General Contractor and such other parties as the City may deem necessary or appropriate concerning the Project.
- (vi) Consistent with industry standards for similar projects, monitor, manage and oversee the Architect's work throughout design and construction of the Project.

EXHIBIT C

- (vii) Consistent with industry standards for similar projects, monitor, manage and oversee the General Contractor's work throughout design and construction of the Project.
- (viii) Review, monitor, and certify the correctness of the General Contractor's monthly construction cost report of expenditures for the Project on a monthly basis.
- (ix) Review the Project Budget, as compared to actual expenditures, throughout the construction of the Project and advise the City if Developer reasonably believes that the total Project Costs are likely to exceed the amounts set forth in the Project Budget and, if such is the case, Developer shall use commercially reasonable efforts to provide the City with proposed alternatives in order to keep the total costs below those set forth in the Project Budget.

3. Timing and Scheduling

- (i) Coordinate the development and updating of appropriate Project schedules, including a critical path analysis.
- (ii) Oversee the coordination of the individual timing schedules of all Project participants so as to conform to the overall Project Schedule and manage any necessary adjustments.
- (iii) Monitor the Project participants in order to confirm that their individual work capacities and performances continually conform to the overall Project Schedule.
- (iv) Endeavor to identify appropriate opportunities for "fast-tracking" the overall Project Schedule, evaluate the costs and benefits of such strategies and provide the City with Developer's recommendations. Endeavor to identify schedule impacts and prepare recovery strategies and budget of costs relating thereto.

4. Reporting

- (i) Conduct Project meetings; review and comment on reports delivered by others.
- (ii) Keep the City informed of all material internal and external Project related matters by initiating and distributing relevant information. The level and detail of such information will be mutually reviewed as the Project progresses.

EXHIBIT C

- (iii) Use good faith diligent efforts to inform the City of all upcoming meetings in a timely manner.

II. PHASES OF WORK

PART 1 - DESIGN PHASES

1.01 GENERAL REQUIREMENTS

- A. Developer shall not commence the Design Phases outlined below, which includes Site Work (abatement, demolition, grading, sitework and piles), until the City issues a Notice to Proceed (“NTP”) with Design.
- B. Developer shall not commence the Site Work until the City issues a Notice to Proceed (“NTP”) for the Site Work.
- C. Throughout all design phases, Developer shall collaborate with the Project Team and shall update all submitted plans, schedules, and reports.
- D. Developer shall provide a schedule indicating the critical path for the Project duration and update this schedule throughout all design phases.

1.02 CONCEPTUAL DESIGN PHASE

A. Based on the Criteria Package, Developer shall develop the Conceptual Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% Conceptual Design Documents package will become the revised, final Criteria Package as provided in Exhibit B and shall include at a minimum:

- 1. Architectural site plans, floor plans with general blocking of uses showing target adjacencies, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), and pedestrian access/egress, in general conformance with the City’s required Program.

1.03 SCHEMATIC DESIGN PHASE

A. Based on the Criteria Package, Developer shall develop the 100% Schematic Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% SD package shall include at a minimum:

- 1. Architectural site, floor plans, reflected ceiling, and equipment plans, exterior and interior elevations, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), pedestrian access/egress, etc.
- 2. Interior design plans and other supporting documents to illustrate the graphic design layouts.

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3. Refined building systems, material, and products selections.
 4. Refined MEP, Special Systems, Fire Protection, and Exterior Skin and other systems floor plans, diagrams and text to describe these systems.
- B. Developer shall develop BIM Model for detailed MEP, Special Systems, and other systems floor plans, diagrams, and text to describe these systems
 - C. Prepare a Schematic Design phase report to document and summarize the Schematic Design phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.
 - D. Developer shall perform and document constructability review.
 - E. Prepare initial trade bid packages (BIM model (if applicable), drawings, specifications, instructions to bidders).

1.04 DESIGN DEVELOPMENT PHASE

- A. Developer shall refine the approved 100% Schematic Design Documents to fully integrate all required Project design elements and issue a 50% and 100% Design Development Package, order to provide sufficient information to develop the Construction Documents for the Trade Packages. City shall approve the 50% and 100% Design Development Packages within 10 working days of delivery of the respective Design Development Packages to the City.
- B. Update BIM Models.
- C. Document the constructability review, including an evaluation of the design documents to identify value engineering opportunities, identification of long lead items, availability of labor, and other factors affecting construction.
- D. Prepare a Design Development phase report to document and summarize the Design Development phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

1.05 CONSTRUCTION DOCUMENTS PHASE

- A. Based on the approved Design Development documents, Developer shall prepare 50% and 100% Construction Documents to fully describe the Work for each Trade Package that, at a minimum, should include drawings, diagrams, calculations, 3D models, renderings, schedules, and a Project Manual that includes the General and Supplementary Conditions, Divisions 00 and 01, and Technical Specifications. The City Representative shall provide all City comments on the 50% and 100% CD packages within 10 working days.
- B. In accordance with the provisions of Section 1.10, Developer shall obtain and document all required approvals for the Construction Documents from regulatory authorities having jurisdiction over the Project, which are necessary to obtain a Temporary Certificate of Occupancy.

EXHIBIT C

- C. Prepare a Construction Document phase report to document and summarize the Construction Document phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

PART 2 - CONSTRUCTION PHASE

2.01 GENERAL SCOPE OF WORK

- A. Developer shall not commence with the Construction Phase unless and until the city issues a Notice To Proceed with Construction.
- B. Developer shall furnish and install mock ups as identified and determined during Programming for performance, acceptance of size, circulation, and FF&E as determined in the approved Project Schedule. The mock-ups may be constructed in-place and/or off-site as determined during Programming.
- C. Construction Work activities will be authorized by the City upon award of each Trade Package Set. Developer shall perform all Work and construction administration services necessary to achieve an exceptional project outcome that meets the Programming Phase requirements with approved deviances; construct the Project in accordance with the design-build delivery method; and render the Project with all its components operational, functional, and usable.
- D. Developer shall plan for authorities with jurisdiction to inspect the Work. The City Representative has final authority over coordination, use of premises, and access to site.
- E. Developer shall provide qualified staff to manage construction as required by the Contract Documents, including:
 - 1. Administration: Developer shall provide required administrative services.
 - 2. Superintendence: Developer shall provide a qualified management team.
 - 3. Quality Control: Developer shall implement a Quality Control (QC) Program.
 - 4. Cost Control: Developer shall provide cost estimating, cost control, and cost management.
 - 5. Scheduling: Continuous updating of the critical path schedule in conformance with requirements in the Contract Documents.
 - 6. Reporting: Developer shall provide reporting services related to cost, schedule, and critical issues facing the Project.
 - 7. Document Control/Project Records: Developer shall provide Document Control services and maintain Project Records.
 - 8. Project Meetings: Developer shall schedule and attend weekly Project meetings.
 - 9. Security: Developer shall secure the Project site and Work.
- F. Developer shall perform the Work in phases and utilize Trade Packages as needed to achieve the Project schedule.

EXHIBIT C

- G. Developer shall report on the progress of the Project including information on Developer and its Architect's and General Developer's Work, percentage of completion of the Work, current estimates, forecasted contract growth, subcontract buyouts, updated monthly schedules, including projected time to completion and estimated cost to complete the Work, digital progress photographs, logs for Requests for Information, submittals and shop drawings, pending and approved change orders, meetings minutes, and other project metrics as requested by the City.
 - H. Developer shall develop and implement a process to procure Trade Packages in conformance with the Contract Documents:
 - 1. Maximize both competition and the involvement of small businesses.
 - 2. Develop subcontractor and supplier interest for each division of the Work.
 - 3. Use best efforts to obtain bids for each Trade Package that are less than the final cost estimates.
 - 4. Conduct bid openings in the presence of the City Representative. All bid documents shall be circulated and viewed by those present. Developer shall provide the City with a copy of its preliminary bid tabulation and, if requested, a copy of all bids.
 - 5. Determine final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items.
 - 6. Prepare and furnish to the City a final bid tabulation summary that includes by subcontract, trade and/or bid division, the applicable final estimated cost and the related final bid amount and the details of all scope clarifications for City's review and approval.
 - 7. Identify to the City in writing the subcontractors to which the Developer recommends award of subcontracts, and when authorized by the City, award and enter into subcontracts.
 - I. Developer shall maintain systems and equipment. Developer shall provide services and maintain all equipment in accordance with manufactures instructions until such time as the City receives and takes over the equipment in the activation phase.
- 2.02 ACTIVATION/COMMISSIONING /MAINTENANCE TRAINING PHASE
- A. Developer is responsible for performing the requirements of the commissioning process including those responsibilities assigned to subconsultants, subcontractors, vendors, manufacturers, or their representatives. The Developer shall insure that all subconsultants, subcontracts or purchase orders for systems, inclusive of all of the system components to be commissioned, include provisions for compliance with this Document.
 - B. The requirements of this Document are additional to the requirements of the General Conditions. If this Document requires additional labor, coordination, or documentation, including submittal data, the Developer shall comply with this

EXHIBIT C

Document and if any requirement of this Document conflicts with other provisions of the Contract requirements, the Developer shall request formal clarification of the Contract requirements.

- C. Under the Direction of the City, Developer shall commission all systems and equipment in order to achieve the following specific objectives:
1. Verify and document that the building enclosure, systems and equipment are documented in the Design and Construction Documents in accordance with the Criteria Package.
 2. Verify and document that equipment is designed, installed, started, and operates properly pursuant to the requirements of the Contract and manufacturer's specifications, instructions and recommendations.
 3. Verify and document building enclosure mockups and installation perform as designed and as intended.
 4. Identify deficient building enclosure, equipment, systems and installations as early as possible to facilitate timely corrective action minimizing schedule impact.
 5. Verify and document that the building enclosure, equipment, and systems receive complete operational checkout by installing subcontractors, vendors and manufacturers.
 6. Verify and document building enclosure, equipment and system performance.
 7. Verify and validate that the City's operating personnel are adequately trained on the Operation and Maintenance of building equipment and systems.
 8. Verify Operations and Maintenance Data for systems and equipment is complete and usable, and provided in the format as required by the City.
- D. The commissioning process does not reduce the responsibility of the Developer, its Architect or subconsultants, General Contractor or its subcontractors, or vendors to perform and complete all Work in accordance with the requirements of the Contract.

2.03 SUBSTANTIAL COMPLETION

- A. Prior to Substantial Completion, Developer shall submit all Equipment Inventory Sheets
- B. In advance of Substantial Completion, Developer shall obtain the Temporary Certificate of Occupancy.
- C. Developer shall demobilize from the Project Site.

2.04 FINAL COMPLETION

In advance of Final Completion, Developer shall complete all move in/fit out of the FF&E and for the entire Project and shall complete all Site work, and shall complete all equipment, hardware, and software training for maintenance staff. Developer shall obtain the Final Certificate of Occupancy.

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PROJECT SCHEDULE – WORK BY PHASE

The Project will be accomplished in two phases: (1) the Design Phase; and (2) the Construction Phase. The Design Phase shall include Site Work at the Development Sites comprising abatement, demolition, grading, sitework and piles. At the time this Agreement is executed, only the Design Phase will have been approved by the City’s Board of Supervisors.

Prior to or upon City’s approval of the 50% Construction Documents,, Developer shall propose a Guaranteed Maximum Price (“GMP”) for Phase Two construction Work to the City which shall be incorporated into a Phase Two Budget proposal. The proposed Phase Two Budget shall include all costs necessary for the Developer to complete and Deliver the Project to the City in conformance with all requirements of the Agreement. The Parties agree to negotiate in good faith to reach agreement on the GMP and any other Phase Two Budget line items.

Proceeding with the Construction Phase requires the approval of the City’s Board of Supervisors of the Phase Two Budget and approval for the City to issue the NTP with construction. If the City does not issue a NTP with construction, the Agreement shall be terminated under the provisions authorizing Termination by the City for Convenience (General Conditions, Article 14.03).

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EXHIBIT D

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EXHIBIT F

INSURANCE REQUIREMENTS

1.1 SUMMARY

- A. This Document includes insurance requirements, which amend Article 10 of the General Conditions.

1.2 DEVELOPER'S LIABILITY INSURANCE

- A. Developer shall maintain in full force and effect, for the period covered by the Contract (except for the Builder's Risk insurance described in Section 1.3, below), the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors of every tier.
 2. Commercial General Liability insurance with limits not less than \$2,000,000.00 each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, and completed operations.
 3. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.
- B. Approval of Developer's insurance by the City will not relieve or decrease the liability of Developer under this Agreement. The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase.

1.3 ADDITIONAL COVERAGES

- A. Builder's Risk Insurance: Developer shall provide "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis as follows:
1. Amount of Coverage: The amount of coverage shall be equal to the Project's full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," such as but not limited to design and engineering fees, code updates,

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permits, bonds, insurances, and inspection costs caused by an insured peril; the policy may limit the amount for soft costs but such limit shall not be less than 5% of the coverage amount. The Builder's Risk Insurance shall also include the full replacement cost of all City-furnished equipment, if any.

2. Period of Coverage: Developer shall provide evidence of Builder's Risk Insurance coverage in accordance with the requirements set forth herein within five (5) days of City's issuance of the Notice to Proceed with the Site Work (in Phase One).
3. Additional Premium: If, due to change orders or project term extensions authorized by the City, the Builder's Risk policy becomes subject to additional premium, the City will reimburse Developer the actual cost of such additional premium, without markup, provided that the Developer submits to the City proof of payment of such additional premium and either:
 - (a) copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk Policy is issued on a declared-project basis; or
 - (b) copy of Evidence of Property Insurance if the Builder's Risk policy is placed on a reporting form basis.
4. Parties Covered: The Builder's Risk policy shall identify the City and County of San Francisco as the sole loss payee. The policy shall name as insured the City and County of San Francisco, the Developer and its subcontractors of every tier.

Each insured shall waive all rights of subrogation against each of the other insured to the extent that the loss is covered by the Builder's Risk Insurance.
5. Included Coverage: The Builder's Risk Insurance shall include, but shall not be limited to, the following coverages:
 - (a) All damages or loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction Site and temporary structures.
 - (b) The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and water damage.
 - (c) The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and any applicable law, ordinance, or regulation. Limit for such coverage shall be no less than 25 per cent of full construction value.
 - (d) Start up and testing and machinery breakdown including electrical arcing.
 - (e) Consequential loss (lost revenues and costs of funding or financing when a covered risk causes delay in completing the Work). In the event the City receives coverage specifically for a consequential loss associated

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with delay to the completion of the Project, such specific amount shall be credited against any liquidated damages for delay for which the Developer would otherwise be responsible.

6. Deductibles: The Builder's Risk Insurance may have a deductible clause not to exceed the amounts below. Developer shall be responsible for paying any and all deductible costs. The deductible for coverage of All Perils shall not exceed the following:
 - (a) \$10,000 for projects valued up to \$25,000,000;
 - (b) \$25,000 deductible for projects valued in excess of \$25,000,000 and up to \$75,000,000; and
 - (c) \$50,000 deductible for projects valued in excess of \$75,000,000.

- B. Professional Liability Insurance: In the event that Developer employs professional architectural, engineering or land surveyor services for performing Project design, field engineering or preparing design calculations, plans and specifications, Developer shall require the retained architects, engineers and land surveyors to carry professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Developer's professional liability policy shall not have an exclusion for environmental compliance management or construction management professionals.

- C. During all phases of construction activities, Developer shall require Developer's contractor to maintain the following type of coverage with the limits specified as follows or coverages as required by laws and regulations, whichever is greater.
 1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors of every tier.

 2. Commercial General Liability insurance with limits not less than \$10,000,000.00 each occurrence, and not less than \$20,000,000 aggregate combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage,, and completed operations. If proximity to nearby rail lines generates a need for Railroad Protective Liability coverage, it shall be in the amounts required by owners/operators of the rail lines.

 3. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force,

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throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$2,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

4. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.
- D. The City reserves the right to require an increase in the Developer's contractor's insurance coverage in the event the City determines that conditions show cause for an increase.

1.4 INSURANCE FOR OTHERS

- A. For general liability and automobile liability insurance, Developer shall include as additional insured, the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
- B. General /Auto Liability policies shall:
1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees as well as others as required by contract and must include coverage for bodily injury and property damage.
 2. Developer agrees to waive subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation

1.5 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Developer's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. Developer will be allowed a maximum of 5 working days, after the date on which the Contract is awarded, in which to deliver appropriate bond and insurance certificates and endorsements.
- B. Approval of the insurance by the City shall not relieve or decrease the extent to which Developer or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Developer shall be responsible for all losses

EXHIBIT F

not covered by the policy, excluding damage caused by earthquake and flood consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.

- C. The Developer and its Subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Developer and all of its Subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- D. Liability insurance, with an allowable exception for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
- E. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
- F. Should any of the required insurance be provided under a claims-made form, Developer shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 5 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- G. Each such policy shall be endorsed to provide thirty (30) days advance written notice to the City of reduction or non-renewal of coverages or cancellation of coverages for any reason. All notices shall be made to:

City and County of San Francisco
San Francisco Public Works
1155 Market Street, 4th Floor
San Francisco, CA 94103
Attn: Contract Analyst
Re: Central Shops Project

- H. Developer, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the

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effective date of such cancellation, change or expiration, with a complete copy of the new or renewed policy.

- I. If, at any time during the life of this Contract, Developer fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until the Developer's notice is received by the City as provided in the immediately preceding Subparagraph "H" informing the City that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.
- J. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Contract.

1.6 QUALIFICATIONS

- A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

END OF DOCUMENT

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CITY REQUIREMENTS

1. Non Discrimination in the City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Agreement, Developer agrees not to discriminate against any employee of, any City employee working with Developer, or applicant for employment with Developer, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts

Developer shall include in all contracts and subcontracts relating to the Project a nondiscrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Developer shall incorporate by reference in all subcontracts the provisions of sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors and subcontractors of every tier to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits

Developer does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in section 12B.2(b) of the San Francisco Administrative Code.

(d) CMD Form

As a condition to this Agreement, Developer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting

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documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (the "CMD"). Developer hereby represents that before execution of the Agreement: (a) Developer executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (b) the CMD approved such form.

2. Tropical Hardwood and Virgin Redwood Ban

(a) Except as expressly permitted by the application of sections 802(b) and 803(b) of the San Francisco Environment Code, neither Developer nor any of its Developers shall provide any items to the City in the construction of the Project or otherwise in the performance of this Agreement which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) In the event Developer fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Developer shall be liable for liquidated damages for each violation in an amount equal to Developer's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Developer acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Developer from any contract with the City and County of San Francisco.

3. Labor Requirements for Construction

(a) Applicable Labor Laws and Agreements. Compensation and working conditions for labor performed or services rendered (excluding professional design services) under the Project Contracts shall be in accordance with the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E). The requirements of this Section 3 (collectively, the "Labor Requirements") shall be included in all Project Contracts (as applicable), and subcontracts relating to the work, as applicable, unless otherwise agreed to by the City. The Project Contracts shall expressly acknowledge the City's right to monitor and enforce the Labor Requirements in all respects and at all times, and to withhold payments when permitted under the provisions of the Labor Requirements.

(b) Prevailing Wages. The Project Contracts shall require payment of the latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors, as same may be changed during the term of this Agreement. Each Developer shall provide, and shall deliver to the City every month during any construction period, certified payroll reports with respect to all persons performing labor in the provision of the work. Copies of the latest prevailing wage rates are on file at the Department of Public Works, the City and County of San Francisco, Bureau Manager, Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, CA, 94103.

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(c) Penalties. The Construction Contract shall provide for payment to the City back wages due plus fifty dollars (\$50.00), for: (i) each laborer, workman, or mechanic employed in the provision of the work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or (ii) each laborer, mechanic or artisan employed in the provision of the work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

(d) Local Hire, First Source and LBE Requirements. The Construction Contract shall require compliance, as applicable, with the Local Hire, First Source and LBE requirements set forth in Exhibit I, unless otherwise agreed to by the City.

4. Rights and Remedies During Construction

(a) General. The provisions of the Project Contract shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the parties to the Project Contract, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Project Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

(b) No Waiver. No waiver of any breach of any provision of the Project Contract shall be held to be a waiver of any other or subsequent breach. The only waiver by the City shall be a waiver in writing that explicitly states the item or right being waived.

(c) City's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22(M), a Developer that fails to comply with the terms of the Project Contract, who violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code sections 6.22 through 6.45), submits false claims, or violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Project Contract, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq. Additionally, a Developer that submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq.

(d) Interpretation. The Project Contract shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code.

5. Sunshine Ordinance

Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code

EXHIBIT G

section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

6. MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

8. Conflicts of Interest

Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and section 87100 et seq. and section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Developer becomes aware of any such fact during the term of this Agreement, Developer shall immediately notify the City.

9. Notification of Limitations on Contributions

Through its execution of this Agreement, Developer acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a the City elective officer, the board on which that the City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each Developer; each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

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Developer further agrees to provide to the City the name of each person, entity or committee described above.

10. Compliance with Laws

Developer shall remain fully informed of and comply with the applicable provisions of the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the work, and all federal and state laws and regulations in any manner affecting the contract documents, the performance of the work, or those persons engaged therein. Developer shall require compliance with the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Code specified in the contract documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. Architect and General Developer shall comply with the applicable provisions of San Francisco Administrative Code Chapter 6 that are incorporated into the Architect Contract and the Construction Contract, respectively.

11. First Source Hiring Program

Developer must comply with the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, and as set forth in Exhibit I hereto, and Developer is subject to the enforcement and penalty provisions in Chapter 83.

12. Preservative-Treated Wood Containing Arsenic

Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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13. Resource Efficient City Buildings and Pilot Projects

Developer acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Developer hereby agrees that it shall comply with all applicable provisions of such code sections.

14. Liability for Use of Equipment

The City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Developer, or any of its Subcontractors, or any Lower-Tier Subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by the City.

15. Copyright Infringement

Developer shall indemnify, defend and hold the City harmless from and against all claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City of the materials or work provided by Developer.

EXHIBIT H

DESIGN PROFESSIONAL CONTRACT PROVISIONS

Developer shall include the following terms and conditions in all Design Professional contracts that Developer enters into as part of the Project:

1. Design Professional Services

- A. This provision sets forth basic Design Professional services to be provided by Architect or other Design Professional for the Project. Refer to the Agreement and the Criteria Package for additional, project-specific requirements.
- B. The Design Professionals shall be licensed in the State of California and shall have the necessary expertise and experience required to prepare such design documents to permit the General Contractor to complete its Work in accordance with the requirements of the Contract Documents.
 - 1. All design work shall be performed and stamped by licensed architects or engineers, as appropriate.
- C. Design Professionals may be replaced only with the approval of the City.
- D. The standard of care for all design services performed or furnished under the Agreement will be the care and skill ordinarily used by members of the engineering or architectural professions practicing under similar conditions, for projects of similar size and complexity, at the same time and locality. Notwithstanding the above, in the event that the Contract Documents specify that portions of the work be performed in accordance with specific performance standards, the design services shall be performed so as to achieve such specific standards.
- E. Design Professionals to be responsible without limitation for the following:
 - 1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.
 - 2. Before undertaking each part of the work, review the Contract Documents, including the Criteria Package, and existing reference documents and studies of the proposed site and other data furnished to the Design Professional, and advise the City and Developer whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Architect shall notify the Developer in writing promptly upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect.
 - 3. Request additional surveys, studies, investigations, reports and information related to the site, which the Design Professional deems necessary for the performance of the work.
 - 4. Provide design-related services for preparing Schematic Design ("SD"), Design Development ("DD"), and Construction Documents necessary for the General

EXHIBIT H

Contractor to construct and interface the Item(s) in complete conformance with the intent and performance requirements of the Contract Documents.

- a. Architect shall submit SD, DD, and Construction Documents to the City for review and acceptance for conformance with the intent and performance requirements of the Contract Documents. Construction Documents shall be submitted to the City for review and acceptance before initiating permit or construction activities based on such Construction Documents.
 - b. The City's review, approval or acceptance of SD, DD, and Construction Documents submitted by Developer and its Architect shall neither release Developer from its responsibilities to coordinate the various portions of the design and to provide accurate and complete design documents to fulfill the intent and requirements of the Contract Documents, nor transfer any design liability from Developer to City.
 - c. All SD, DD and Construction Documents, including CADD and other computer discs prepared by Developer's Design Professionals, and all other documents prepared by Architect or its subconsultants in connection with Design Professional services, shall be made and remain the property of the City, except as otherwise provided in the Agreement. Developer will provide the City with software that will allow the City to view the electronic CADD files. The ability to view the files is required; the ability to alter the files is not intended.
 - d. The SD, DD and Construction Documents will be prepared for the Work of the Agreement only. Any unauthorized use of the SD, DD and Construction Documents is at the sole liability of the user. The City and Developer may make and retain copies of the SD, DD, and Construction Documents for information and reference in connection with the use and occupancy of the Project by the City.
5. Comply with requirements of codes, regulations, and written interpretation thereof, existing at the time permit application(s) are made with the local authorities having jurisdiction over the Project.
 6. Provide Design Professional's professional liability insurance policies and coverages as required.
 7. Provide assistance in connection with the commissioning, start-up, testing, refining and adjusting of equipment or system designed by the Design Professional for incorporation into the Project.
 8. Assist the City in training staff and developing processes and procedures for operation, maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.
- F. Developer shall be wholly responsible for all engineering and design of all Items required to be designed by Architect regardless of any contribution, input, review, participation, or

EXHIBIT H

coordination that the City, its agents, members, employees, and authorized representatives may have provided to Developer or its Architect or General Contractor.

- G. At all times during the design of the Project, the City and its representatives shall have full access to design documents and design meetings.
- H. If, in connection with the Design Professional services, Developer, General Contractor, Architect or their subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City (subject to Developer's rights under the Agreement). If it is ever determined that any such works are not works for hire under U.S. law, Developer hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. Developer shall include in its subcontracts with its Subcontractors provisions to make the Subcontractors subject to this paragraph. With the approval of the City, Developer, General Contractor and Architect, as applicable, may retain and use copies of such works for reference and as documentation of its experience and capabilities.
2. Insurance. Design Professional shall maintain in force, during the full term of its agreement, insurance in the amounts and coverages specified in the Contract Documents, and name as additional insureds the City and County of San Francisco, its Officers, Agents, and Employees.
3. Indemnification.
- a. General. To the fullest extent permitted by law, Architect shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Architect or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Architect, any subconsultant to the Architect, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").
- b. Limitations. No insurance policy covering the Architect's performance under this Agreement shall operate to limit the Architect's liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Architect assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the subcontractor of any Indemnitee.
- c. Copyright infringement. Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade

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secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Architect's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

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EXHIBIT I

LOCAL HIRE, FIRST SOURCE AND LOCAL BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS

1. Local Hiring Requirement.

1.1. General Provisions.

- 1.1.1. Developer shall comply with all applicable requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in section 6.22(G) of the San Francisco Administrative Code. The provisions of the Policy are incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the Policy.
- 1.1.2. Developer shall require the General Contractor and all subcontractors of every tier performing construction work on behalf of the Developer as part of the Project to comply with all applicable requirements of the Policy.
- 1.1.3. Developer agrees that the Office of Economic and Workforce Development ("OEWD") will have the authority to enforce all terms of the Policy. Further information on the Policy and its implementation may be found at the OEWD website at: www.workforcedevelopmentsf.org.

1.2. Local Hire Requirements. Developer shall comply with the following:

- 1.2.1. Local Hire by Construction Trade: Mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.
- 1.2.2. Local Apprentices: At least 50% of the Project Work Hours performed by apprentices within each construction trade shall be performed by local residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Economically Disadvantaged Workers.
- 1.2.3. Construction Contracts: Developer, shall include the terms of this Policy in the contract with the General Contractor and in every construction contract and subcontract entered in to for construction of the Project. Developer shall notify OEWD immediately upon execution of all construction contracts.
- 1.2.4. Preconstruction Meeting: Prior to commencement of construction, Developer and all construction subcontractors shall attend a preconstruction meeting convened OEWD staff. Representatives from Developer and all construction subcontractors who attend the pre-construction meeting must have hiring authority.
- 1.2.5. Forms and Payroll Submittal: General Contractor and all construction subcontractors shall utilize the City's web based payroll system to submit all of OEWD's required Local Hiring Forms and Certified Payroll Reports. The General

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Contractor shall submit Local Hiring Forms prior to commencement of construction and within 15 calendars days from award of contract. The General Contractor must submit payroll information on all subcontractors who will perform construction work on the Project regardless of tier and contract amount. The General Contractor and all construction subcontractors shall submit Certified Payroll Reports on a weekly basis.

- 1.2.6. Recordkeeping: Developer and all construction subcontractors shall keep, or cause to be kept, for a period of four years from the date of completion of project work, payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the General Contractor or subcontractor hired or retained that worker for work on the project. Developer and all construction subcontractors may verify that a worker is a local resident by following OEWD's domicile policy. All records described in this subsection shall at all times be open to inspection and examination by OEWD.
- 1.2.7. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Developer and all construction subcontractors working on the Project. Developer shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of the Site. Developer and all subcontractors shall also allow representatives of OEWD to have access to employees of Developer and all construction subcontractors and the records required to be maintained under the Policy.
- 1.2.8. Noncompliance and Penalties. Failure of General Contractor and/or its construction subcontractors to comply with the requirements of the Policy may subject Developer to the consequences of noncompliance specified in Section 6.22(G)(7)(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 6.22(G)(7)(f)(ii). In the event the Developer fails to adhere to the penalties administered by OEWD, the Developer will be responsible for penalties for noncompliance. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 6.22(G)(7)(f)(iv) for a description of the recourse procedure applicable to penalty assessments under the Policy.

2. First Source Requirements

2.1. General Provisions and Definitions.

- 2.1.1. Developer shall participate in the Workforce System program managed by the Office of Economic and Workforce Development ("OEWD") as established by the City pursuant to Chapter 83 of the San Francisco Administrative Code ("First Source Hiring Policy"). The provisions of the First Source Hiring Policy are

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incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the First Source Hiring Policy.

- 2.1.2. Developer shall require the Architect and all Subcontractors or subcontractors performing professional services in excess of \$50,000 on behalf of the Design-Builder as part of the Project to comply with all applicable requirements of the First Source Hiring Policy.
- 2.2. Developer agrees that OEWD will have the authority to enforce all terms of the First Source Hiring Policy. Further information on the First Source Hiring Policy and its implementation may be found at the OEWD website at:
www.workforcedevelopmentsf.org.
- 2.3. Definitions. For purposes of this section, the following terms shall be defined as follows:
 - 2.3.1. "Entry Level Position" means any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
 - 2.3.2. "Workforce System" means the First Source Hiring Administrator established by the City and managed by OEWD.
 - 2.3.3. "Referral" means a member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a specified Entry Level Position.
 - 2.3.4. OEWD Workforce System Participation Requirements. Architect and all professional services subcontractors shall notify OEWD's Business Team of every available Entry Level Position for work performed by the Architect and all professional services subcontractors in the City and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Architect and all professional services consultants and subconsultants shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Architect and all professional services consultants and subconsultants no later than 10 business days after date of interview or hire. Architect and all professional services consultants and subconsultants will also provide feedback on reasons as to why referrals were not hired. Architect and all professional services consultants and subconsultants shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Architect and all professional services consultants and subconsultants. Failure to comply with the terms of the First Source Hiring Policy may result in penalties as defined in Chapter 83 of the Administrative Code.

3. Local Business Enterprise Program Requirements

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- 3.1. Purpose. Developer agrees to partner with the Contract Monitoring Division (“CMD”) to provide Local Business Enterprises (“LBE”) with meaningful opportunities to participate in the construction of the Project.
- 3.2. LBE Participation Goal. Developer, on behalf of itself and its General Contractor and Architect, agrees to work with CMD on developing separate LBE Subconsulting and subcontracting goals and to perform good faith efforts (see attached) to award 20% of the cost of all professional services and 20% of the cost of all construction contracts awarded by Developer as part of the Project to small and/or micro LBE businesses certified by CMD pursuant to Chapter 14B of the Administrative Code.
- 3.3. Reporting. Beginning as of the PSA Ratification Date and every quarterly thereafter, Developer shall report in writing to the City Representative with a copy to the Director of CMD a summary of Developer’s attainment of the LBE Participation Goal.

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EXHIBIT J

ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES AND OTHER
INTANGIBLE PROPERTY

THIS ASSIGNMENT is made and entered into as of this _____ day of _____, 20_____, (the "Effective Date") by and between _____, a _____ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date, Assignor hereby assigns and transfers to Assignee, and Assignee assumes, all of Assignor's rights, obligations, claims, title, and interest in and under:

A. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto (the "Parcel") including, without limitation, those warranties and guaranties listed in Schedule 1 attached hereto (collectively, "Warranties");

B. any intangible personal property now or hereafter owned by Assignor and used in the ownership, use or operation of the Parcel, including the Assumed Contracts listed in Schedule 1.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

3. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

By: _____
 [NAME]
Its: _____

ASSIGNEE:

CITY AND COUNTY OF SAN
FRANCISCO, a Charter city and county

By: _____
 [NAME]
Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
 [DEPUTY'S NAME]
 Deputy City Attorney

EXHIBIT K

PARTNERING REQUIREMENTS

PART 1 - GENERAL

1.1 PARTNERING LEVEL

- A. This Project shall incorporate the required partnering elements for **Partnering Level 1**.

1.2 SUMMARY

- A. This Document specifies the requirements for establishing a collaborative partnering process. The partnering process will assist the City and Developer to develop a collaborative environment so that communication, coordination, and cooperation are the norm, and to encourage resolution of conflicts at the lowest responsible management level.
- B. The partnering process is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Developer.
- C. This specification does not supersede or modify any other provisions of the Contract, nor does it reduce or change the respective rights and duties of the City and Developer under the Contract, or supersede contractual procedures for the resolution of disputes.

1.3 DEFINITIONS

- A. **Partnering Charter ("Charter"):** The Charter is the guiding focus for the Project Team. It documents the team's vision and commitment to work openly and cooperatively together toward mutual success during the life of the project. The charter helps to maintain accountability and clarity of agreements made and allows for broader communication of the team's distinct goals and partnering process. The partnering charter includes the following elements:
 - 1. Mutual goals
 - 2. Partnering maintenance and close-out plan
 - 3. Dispute resolution plan with Escalation Resolution Ladder
 - 4. Team commitment statement and signatures
- B. **Collaborative Partnering:** A structured and scalable process made up of elements that develop and grow a culture (value system) of trust among the parties of a construction contract. Together, the combination of elements including the Partnering Charter, Executive Sponsorship, partnering meetings, an accountability tool for the Project Team (Scorecards), and a Facilitator, if employed, create a collaborative atmosphere on each project.
- C. **Core Team Partnering:** On Level Four or greater construction projects, a core team is identified from those Project Team members who are a part of the project for its duration, including the following (not in order of hierarchy):

City:	Developer:
Resident Engineer	Building Superintendent
Project Manager	Project Executive
Construction Manager	Jobsite Supervisor
Engineer, Architect	Project Engineer
Division Manager	Subcontractors
Construction Engineer	Key suppliers
Inspectors	Senior Management (e.g. Area Manager, Operations Manager, VP, President, Owner)
Client Department representative	
Critical third parties: stakeholders, other agencies, utilities, etc., or anyone who could potentially stop or delay the project.	

- D. **Executive Partnering Team:** The senior leaders of the City and Developer who may form a project board of directors and are charged with steering the project to success.
- E. **Executive Sponsorship:** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.
- F. **Field-Level Decision Making:** Decisions made by those who are running the day-to-day work in the field – this is typically the inspector or resident engineer.
- G. **Internal Facilitator:** A trained employee or representative of the City who provides partnering facilitation services for Level 1, 2 or 3 projects.
- H. **Kick-off Partnering Workshop:** The initial partnering session where the team develops their initial partnering Charter and officially starts the partnering process.
- I. **Multi-Tiered Partnering (Executive - Core Team - Stakeholder):** Quarterly partnering workshops can be divided into multiple sessions including an Executive Session, Core Team Session and Stakeholder Session. For very large projects, a best practice is to use the Executive Team as a "project board of directors" who provide vision and steer the project. The Core Team is the central group of key individuals who are on the project throughout the duration.
- J. **Partnering Level:** The desired level of engagement in the partnering process may vary depending on a Contract's size or a construction project's complexity, location or other risk factor. If a project encounters any of the following risk factors, the City may consider elevating the partnering process to the next higher level.

Level	Estimated Construction Amount	Complexity	Political Significance	Relationships
5	\$200 million +	Highly technical and complex design & construction	High visibility/ oversight; significant strategic project	New project relationships; high potential for conflict (strained relationship, previous litigation, or high probability of claims)
4	\$50 - \$200 million	High complexity – schedule constraints, uncommon materials, etc.	Probable	New contractors or CM, new subs
3	\$20 - \$50 million	Increased complexity	Likely, depending on the location and other project characteristics	Established relationships; new CM, subs, or other key stakeholders
2	\$5 - \$20 million	Moderate complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders
1	\$100,000 - \$5 million	Standard complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders

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- K. **Partnering Meetings:** Formalized meetings focused on developing a collaborative culture among the Project Team. Teams use these meetings to, among other tasks, set project goals, define project commitments and attend joint training sessions.
- L. **Professional Neutral Facilitator:** The mutually agreed upon experienced professional neutral facilitator whose business is providing partnering services for construction projects.
- M. **Project Scorecards:** An accountability tool that allows project teams to measure how well they are doing at following through on commitments made to one another. Typically the scorecard is a confidential survey prepared and submitted to the team by the partnering facilitator, if any. The facilitator then compiles the responses into a report which is then sent out to the Project Team for review.
- N. **Project Stakeholders:** Any person or entity that has a stake in the outcome of a construction project. Examples include the end users, neighbors, vendors, special interest groups, those who must maintain the facility, those providing funding, and those who own one or more of the systems.
- O. **Project Team:** Key members from the City and Developer organizations responsible for the management, implementation, and execution of the Project, and will participate in the Partnering process.
- P. **Resolution Ladder:** A stepped process that formalizes the negotiation between the parties of a construction project. While actual titles may differ, the intent of this ladder is to provide a process that elevates issues up the chain of command between the parties involved in an issue. The objective is to resolve issues at the lowest practical level and to not allow individual project issues to disrupt project momentum. When an issue is escalated one level, it is expected that a special meeting focusing on the negotiated settlement for that issue will be called with the goal of settling as quickly as possible. A Sample escalation resolution ladder is shown below. A project resolution ladder will be developed during the Kick-off Partnering Workshop.

	Level	Awarding City Department	Contractor	Time to Elevate
Sample Resolution Ladder	I	Inspector or Resident Engineer	Foreman/ Superintendent	1 day
	II	Project Manager	Project Manager	1 week
	III	Program Manager	Area Manager	1 week
	IV	Division Manager	Operations Manager	2 weeks
	V	Deputy Department Director	Owner, President	2 weeks

- Q. **Self-Directed Partnering:** The Project Team leads themselves through all of the Collaborative Partnering elements.
- R. **Special Task Forces:** A subset of the Project Team that is assigned to take on a particular issue or opportunity for the good of the overall project.
- S. **Stakeholder Team (as in Multi-tiered Partnering):** Those people who have a stake in the outcome of a construction project.
- T. **Stakeholder on-boarding/off-boarding:** As a project progresses various systems and processes will be the focus. Stakeholders will participate when the systems or processes they are involved with are the focus. The stakeholders will step back when that system or process is no longer the focus. This on-boarding and off-boarding may occur throughout the duration of the Contract.

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- U. **Subcontractor on-boarding/off-boarding:** At the various stages of construction various key subcontractors (trades) as determined by City and Developer will roll in and roll out as their work comes available and is completed.
- V. **Third-Party Facilitator Agreement:** An agreement, appended to this Specification, to which the Professional Neutral Facilitator, the City and the Developer are parties, which establishes a budget for fees and expenses of the Facilitator and workshop site costs, if any, and the terms of the Facilitator's role for this Project consistent with the requirements of this Specification.

1.4 PURPOSE/GOALS

- A. The goals of project partnering are to:
 - 1. Use early and regular communication with involved parties;
 - 2. Establish and maintain a relationship of shared trust, equity and commitment;
 - 3. Identify, quantify, and support attainment of mutual goals;
 - 4. Develop strategies for using risk management concepts and identify potential project efficiencies;
 - 5. Implement timely communication and decision-making;
 - 6. Resolve potential problems at the lowest possible level to avoid negative impacts;
 - 7. Hold periodic partnering meetings and workshops throughout the life of the project to maintain the benefits of a partnered relationship;
 - 8. Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

1.5 COSTS

- A. The fees and expenses of the Facilitator and workshop site costs, if any, shall be shared equally by the City and the Developer as set forth in the Third Party Agreement.
- B. The Developer shall pay the invoices of the Facilitator and/or workshop site costs after approval by both parties. Upon receipt of satisfactory evidence of payment of the invoices of the Facilitator by the Developer, the City will then reimburse the Developer for 50% of such invoices from a fixed cash allowance included as a bid item in the Bid Prices. No mark-up, overhead or other fees shall be added to the partnering costs. If the total cost of the partnering differs from the allowance amount, the Contract Sum shall be adjusted by Change Order for the difference between the total actual cost and the amount included in the Bid, as an additional amount due the Developer or a credit to the City, as appropriate. If the Developer fails or refuses to pay the Facilitator invoices, the City may pay such invoices and deduct the Developer's portion from any amount that is due or may become due under the Contract.
- C. With the exception of the Facilitators fees and workshop site costs described in subparagraph A above, all costs associated with the Partnering workshops and sessions, partnering evaluation surveys, or partnering skills trainings are deemed to be included in the Bid Prices.

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PART 2 - EXECUTION

2.1 PARTNERING INITIATION

- A. The City Representative after award of Contract, but in no case longer than 30 days following Notice to Proceed, shall send Developer a written invitation to enter into a partnering relationship. If a Professional Neutral Facilitator will be retained, the City and Developer shall cooperatively and in good faith select a Facilitator as specified in subparagraph 3.3 below.

2.2 PARTNERING ELEMENTS

- A. The required partnering elements for all levels of partnering include:
1. **Internal or External Professional Neutral Facilitator.** City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.
 2. **Kick-off Partnering Workshop.** The City, Developer, and Facilitator if any, shall meet to mutually develop a strategy for a successful partnering process and to develop their initial partnering charter.
 3. **Partnering Charter and/or mission statement.** The City and Developer shall agree to create a partnering charter that includes:
 - (a) Mutual goals, including core project goals and may also include project-specific goals and mutually-supported individual goals. The required core project goals relate to project schedule, budget, quality, and safety.
 - (b) Partnering maintenance and close-out plan, including partnering session attendees and frequency of meetings.
 - (c) Dispute resolution plan that includes an Escalation Resolution Ladder.
 - (d) Team commitment statement and signatures.
 4. **Minimum Two Partnering Workshops or Sessions** (including Kick-off Workshop). The partnering team may participate in additional workshops or sessions during the life of the project as they mutually agree is necessary and appropriate.
 5. **Executive Sponsorship.** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.
 6. **Resolution Ladder.** The City and Developer shall mutually develop a project resolution ladder.
- B. For Level 2 Projects add the following elements:
1. **Internal or External Professional Neutral Facilitator.** City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or

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workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.

2. **Minimum Two Project Scorecards.** City and Developer shall participate in periodic partnering evaluation surveys to measure progress on mutual goals and short-term key issues as they arise.

C. For Level 3 Projects add the following elements:

1. **Professional Neutral Facilitator for Kick-off and Quarterly Partnering Sessions.** City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the Kick-off partnering workshop and quarterly partnering meetings. Additional meetings, workshops, or sessions may be facilitated by a mutually agreed internal facilitator or may be self-directed.
2. **Quarterly Partnering Sessions.** The partnering team shall convene partnering sessions quarterly throughout the duration of Contract.
3. **Quarterly Project Scorecards.** City and Developer shall participate in minimum quarterly partnering evaluation surveys (monthly recommended).

D. For Level 4 Projects add the following elements:

1. **Professional Neutral Facilitator.** City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below.
2. **Multi-tiered Partnering (Executive – Core Team – Stakeholder).** Partnering team will divide into smaller groups and convene multiple sessions including an Executive Session, Core Team Session and Stakeholder Session.
3. **Monthly Project Scorecards.** City and Developer shall participate in monthly partnering evaluation surveys.
4. **Stakeholder On-Boarding/Off-Boarding.** Various key stakeholder groups will be invited to participate in partnering sessions as necessary throughout the duration of the project.
5. **Key Subcontractor On-Boarding/Off-Boarding.** Key subcontractors will be invited to participate in the partnering sessions as necessary as determined by City and Developer as their participation in the project work becomes relevant.

E. For Level 5 Projects add the following elements:

1. **Monthly Partnering Sessions.** The partnering team will hold professionally facilitated monthly partnering sessions throughout the duration of project.
2. **Special Task Forces.** The partnering team may task a subset of the team to work on a particular issue or opportunity for the good of the overall project.

2.3 SELECTION OF A PROFESSIONAL NEUTRAL FACILITATOR

- A. If a Professional Neutral Facilitator will be retained, the City and Developer shall meet as soon as practicable after award of Contract, but in no case later than 30 days after the

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Notice to Proceed (NTP), to mutually select a Facilitator. The City and Developer shall also schedule the Kick-off Workshop, determine the workshop site and duration, and agree to other administrative details.

- B. The City, the Developer, and the selected Facilitator shall execute a Third-Party Facilitator Agreement within 30 days of NTP.
- C. The Facilitator shall lead the Kick-Off Partnering Workshop and other partnering sessions as necessary or required.

2.4 FACILITATOR QUALIFICATIONS AND REQUIREMENTS; EVALUATIONS

- A. The Facilitator shall be trained in the recognized principles of partnering.
- B. The Facilitator shall have the following professional experience and qualifications:
 - 1. At least 3 years experience in partnering facilitation with a demonstrated track record, including public sector construction for a city or other municipal agency; and,
 - 2. Skill set that may include construction management, negotiations, labor-management mediation, and/or human relations.
- C. The Facilitator shall be evaluated by the partnering team: (1) at the end of the Kick-off Partnering Workshop; and (2) at the project close-out partnering session.

END OF SECTION

SECTION 00 72 00.20
GENERAL CONDITIONS
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GENERAL CONDITIONS

ARTICLE 1 – GENERAL

1.01 DEFINITIONS

A. Wherever a word or phrase defined below, or a pronoun used in place thereof, is used in the Contract Documents (as defined in Paragraph 1.02), it shall have the meaning set forth in this Paragraph 1.01. References to related Paragraphs or Documents are provided for convenience but not to exclude other Paragraphs or Documents where such terms may be used. The colon (":") is employed in this Paragraph as a symbol for "shall mean." A colon also may be employed in these General Conditions or elsewhere in the Contract Documents to set off a paragraph title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows.

1. Accepted, Approved: Accepted or approved, or satisfactory for the Work, as determined in writing by the City, unless otherwise specified. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, proposals and reports by Developer, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Conditions. In no case shall the City's approval be interpreted as a release of Developer from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of any City's right under the Contract.

2. Agreement: See Project Delivery Agreement.

3. Application for Payment: Written request submitted by Developer to City for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Article 9, Payments and Completion.

4. Approved Equal: Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the City Representative. The burden of proof of equality is the responsibility of Developer.

5. Bonds: Performance and payment (labor and materials) bonds and other instruments of security acceptable to the City. Developer must submit Bonds on the City's form.

6. Bulletin: Refer to "Field Order."

7. By Others: Work on this Project that is outside the scope of Work to be performed by Developer under this Contract, but that will be performed by the City, other entities, or other means and at other expense.

8. Change Order: A written instrument prepared by the City issued after the effective date of the Project Delivery Agreement and executed in writing by the City and Developer, stating their agreement upon all of the following: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Sum, if any; (iii) the extent of the adjustment in the Contract Time, if any; and (iv) an amendment to any other Contract term or condition. Refer to Article 6, Clarifications and Changes in the Work.

9. Change Order Request ("COR"): Refer to Paragraph 6.03, Change Order Requests and Proposed Change Orders.

10. City: The City and County of San Francisco, California, identified as such in the Project Delivery Agreement and referred to throughout the Contract Documents as if singular in number. The term "Owner" means the City and its authorized agent or representative.

11. City Representative: The authorized on-Site representative of the City, identified by the City in writing who will act as the City's representative with respect to Developer's performance of on-Site inspection and administration of the Contract. All liaisons between the City and Developer shall be directed through the City Representative.

12. Claim: A written demand or assertion by Developer seeking an adjustment or interpretation of the terms of the Contract Documents, an adjustment in the Contract Sum or Contract Time, or both, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Developer arising out of or related to the Contract Documents of the performance of the Work, which is submitted in accordance with the requirements of the Contract Documents. Refer to Article 13.

13. Clarification: A document consisting of supplementary details, instructions or information issued by the City which clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work, Contract Sum or an

extension of Contract Times unless requested by Developer and approved by the City in accordance with the Contract Documents. Refer to Article 6, Clarifications and Changes in the Work.

14. Code: The latest editions of the San Francisco Municipal Code or the San Francisco Administrative Code, as well as any State of California, Federal, or local law, statute, ordinance, rule or regulation having jurisdiction or application to the Project.

15. Contract: Refer to "Contract Documents."

16. Contract Documents: Refer to Paragraph 1.02, Contract Documents and Contracting Requirements.

17. Contract Sum: The sum stated in the Project Delivery Agreement and, including authorized adjustments, the total amount payable by the City to Developer for the performance of the Work under the Contract Documents. Refer to the Project Delivery Agreement.

18. Contract Time(s): The number of consecutive days following the City's issuance of a Notice to Proceed to: (i) achieve completion of a phase of the Work as designated in the Project Delivery Agreement; (ii) achieve Substantial Completion; (iii) complete the Work so that it is ready for final acceptance as evidenced by the City's issuance of written acceptance as required by section 6.22(k) of the Administrative Code; or (iv) achieve any interim Milestones specified in the Contract Documents.

19. Contracting Requirements: The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Section 00 72 00) and the Project Delivery Agreement.

20. Critical Path: A continuous chain of activities with zero float running from the start event to the finish event in the schedule.

21. Critical Path Method ("CPM"): Refers to the critical path method scheduling technique.

22. Day: Reference to "day" shall be construed to mean a calendar day of 24 hours, unless otherwise specified.

23. Default: Refer to Paragraph 14.01, Notice of Default; Termination by the City for Cause.

24. Delivery: In reference to an item specified or indicated shall mean for the Developer, Subcontractor, and/or Supplier to have delivered and to unload and store with proper protection at the Site. Refer to Paragraph 9.03, Progress Payments,

for delivery to another (off-Site) location.

25. Department Head: The contracting officer for the Agreement (e.g., San Francisco Director of Property), or his/her designee, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Section 00 52 00, Project Delivery Agreement Form.

26. Designer or Design Professional: A person or entity that is a Subcontractor to Developer that is lawfully entitled to practice architecture or engineering in the State of California that will provide design services for the Project. The Designer is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "the Designer" means any such professional Engineer or Architect and its/their authorized representatives and agents, employees, successors and assigns, and any persons or entities who work by, through, or for any of them.

27. Design Requirements: The design-related work and construction support services required to be Provided by Developer as set forth in the Contract Documents and required to be performed by properly licensed design professionals as a Subcontractor to Developer.

28. Design Submittal: Documents, usually drawings and/or specifications, submitted to the City to indicate how the Developer intends to build the Project, and which will eventually become the Construction Documents.

29. Designated, Determined, Directed: Required by the City, unless otherwise specified. Refer to Paragraph 2.01, Administration of the Contract.

30. Developer (sometimes referred to as "Developer" or "Contractor"): The person or entity selected by the City to Provide for the design and construction of the Project and with whom the City has executed the Agreement. Developer or Developer is referred to throughout the Contract Documents as if singular in number and neuter in gender.

The term "Developer" means Developer and its authorized representatives and agents, employees, successors and assigns, and any persons or entities who work by, through, or for any of them.

Developer is not a licensed architect, engineer, or general contractor. All work necessary to meet Developer's obligations related to: (1) design of the Project; and (2) construction of the Project, shall be performed by Subcontractors holding valid licenses issued by the State of California permitting the Subcontractor to perform such Work. The City

acknowledges that Developer does not hold such licenses and will not perform design or construction Work through its own employees.; rather, such Work shall be performed by Subcontractors. Notwithstanding, the fact that a Subcontractor completes Work that Developer is obligated to Provide shall not relieve Developer of its obligations to meet all of its responsibilities under the Contract Documents.

31. Differing Site Conditions: Refer to Paragraph 3.05, Differing Site Conditions.

32. Division: A grouping of sections of the Specifications describing related construction products and activities.

33. Drawings: The graphic and pictorial portions of the Construction Documents to be prepared by the Developer's properly licensed Subcontractor and approved by the City showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

34. Effective Date of the Agreement: The date indicated in the Project Delivery Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Project Delivery Agreement is signed by the last of the two parties to sign, or when the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.

35. Field Order: A written order issued by the City which provides instructions or requires minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Paragraph 6.02, Requests for Information, Clarifications and Field Orders.

36. Final Completion: The date of written acceptance of the Work by the City, issued in accordance with section 6.22(k) of the Administrative Code, when the Contract Work has been fully and satisfactorily completed in accordance with the Contract Documents.

37. Force Account Work: Change Order Work to be paid for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Paragraph 6.07, Force Account Work.

38. Furnish: Purchase and deliver to the Site, including proper storage only; no installation is included. The term "Furnish" also means to Supply and Deliver to the Site.

39. General Requirements: The General Requirements include all Documents referenced in these General Conditions or the Agreement, and govern the execution of the Work of all sections of

the Specifications.

40. Guarantee To Repair Period: The period specified in Paragraph 8.03 during which Developer must correct Non-conforming Work.

41. Indicated: Shown or noted on the Drawings or written in the Specifications.

42. Install: Apply, connect or erect items for incorporation into the Project; Furnishing or Supplying is not included. The term "Install" also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

43. Installer: A person or entity engaged by Developer, its Subcontractor or Lower-Tier Subcontractor for performance of a particular element of construction at the Site, including installation, erection, application and similar required operations.

44. Item: A separate, distinct portion of the whole Work, which may comprise material, equipment, article, or process.

45. Lower-Tier Subcontractor or Supplier: A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to furnish materials or equipment to be incorporated in the Work by a Subcontractor or Lower-Tier Subcontractor, as applicable.

46. Milestone: A principal date or time specified in the Contract Documents relating to an intermediate event prior to Substantial Completion or completion of a phase of the Work as specified in the Agreement.

47. Modification: A document incorporating one or more Change Orders approved by the City to comply with the Certification by Controller requirements of the City's Charter as stated in the Agreement.

48. Non-conforming Work: Work that is unsatisfactory, faulty, defective, omitted, incomplete or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referred to in the Contract Documents; or Work that has been damaged or disturbed by Developer's operations contrary to the Contract Documents prior to Final Completion.

49. Notice of Default: Refer to Paragraph 14.01, Notice of Default; Termination by the City for

Cause.

50. Notice of Potential Claim: Refer to Paragraph 13.02, Notice of Potential Claim.

51. Notice of Substantial Completion: The written notice issued by the City to Developer acknowledging that the Work of Construction Phase is Complete as determined by the City. Said Notice shall not be considered as final acceptance of any portion of the Work or relieve Developer from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.

52. Notice to Proceed or "NTP": The written notice issued by the City to Developer authorizing Developer to proceed with the Work or a Phase of the Work and establishing the date of commencement of the Contract Time. The Contract Documents may specify more than one NTP applicable to different Phases of the Work.

53. Owner: Refer to "City."

54. Paragraph: A paragraph under an Article of these General Conditions. Refer to "General Conditions—Table of Contents" for a listing of Article and Paragraph numbers and titles.

55. Partial Utilization: Right of the City to use a portion of the Work prior to Substantial Completion of the Work.

56. Phase: The Project will be accomplished in two phases: (1) the Design Phase; and (2) the Construction Phase. See Exhibit D to the Agreement.

57. Project: Refer to "Work."

58. Project Delivery Agreement ("Agreement"): The Project Delivery Agreement to be entered into by and between the City and Developer relating to the design and construction of the Project. These General Conditions and other Contract Documents are incorporated into and made part of the Agreement.

59. Project Manual: The bound written portion of the Contract Documents prepared for constructing the Work.

60. Proposed Change Order ("PCO"): A document prepared by the City requesting a quotation of cost or time from Developer for additions, deletions or revisions in the Work initiated by the City or Developer.

61. Provide: Furnish and Install or Supply and Install complete in place at the Site. Whenever the word or term "provide," "to be provided,"

"provision," or similar phrase is used in the Contract Documents, in regard to any and all items or things or any part of the Project to be Provided under the Agreement by Developer, this word or these phrases shall mean that properly licensed design and construction Subcontractors to Developer shall perform all tasks and take all steps necessary for Developer to Provide the Project such service, item, or thing new, if required to be performed by a licensed design provisional or licensed contractor, complete, and in satisfactory operating condition as called for by the Criteria Package or elsewhere in the Contract Documents, at no additional cost to the City and without any change in the Contract Sum or Contract Time. In this regard, "Delivery" shall be interpreted to include, but shall not be limited to, all design, re-design, engineering, re-engineering, coordinating, drafting, programming, administration, supervision, monitoring, management, overhead and profit, procurement, shipping and handling, delivery, installation, erection, assembly, construction, adjusting, testing, balancing, connecting, procurement, and/or rental of equipment with the necessary appurtenances, tools, devices, computer hardware and software, provision of labor and materials, or any other item necessary to perform all tasks associated with and necessary to the Work, including all remedial and corrective measures, and payment of all necessary permits and fees.

62. Punch List/Final Completion: A punch list prepared by the City identifying deficient Items to be corrected by Developer prior to Final Completion. Refer to Paragraph 9.09, Final Completion and Final Payment.

63. Punch List/Substantial Completion: The list provided by the City identifying Items that shall be corrected or completed before the City considers the Work Substantially Complete. Refer to Paragraph 9.08, Substantial Completion.

64. Quality Assurance ("QA"): All those planned and systematic actions necessary to provide adequate confidence that a Quality Control Program has been applied.

65. Quality Control ("QC"): Those actions that control and measure the characteristics of an item, process, or facility against established requirements to ensure that a product or service will satisfy given requirements for quality.

66. Reference Documents: Refer to Criteria Package for Reference Documents, if any.

67. Regular Working Hours: 7:00 a.m. to 5:00 p.m., Monday through Friday, except City legal holidays.

68. Request for Information ("RFI"): A

document prepared by Developer requesting information from the City regarding the Project or Contract Documents.

69. Request for Product Substitution ("RFPS"): A request from Developer to substitute a material, product, thing or service specified in the Contract Documents with an equal material, product, thing or service. Refer to Paragraph 3.13, Substitutions, and Section 00 49 18, Request for Product Substitution form.

70. Required: In accordance with the requirements of the Contract Documents.

71. Resident Engineer: See "City Representative."

72. Samples: Physical examples of materials, equipment, or workmanship that are submitted for adjudication of their compliance with the specification.

73. Shop Drawings: All drawings, diagrams, illustrations, schedules and other data or information which are prepared or assembled by or for Developer and submitted to City.

74. Site: Geographical location of the Project as indicated elsewhere in the Contract Documents.

75. Specifications: The portion of the Project Manual to be Provided by Developer during the Design Phase comprising Division 01 through Division 48 consisting of requirements and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related administrative services.

76. Specified: Written or indicated in the Contract Documents.

77. Subcontractor: A person or entity who has a direct contract with Developer to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" shall also include contracts assigned to Developer by the City, if any. Unless a Contract Document expressly states to the contrary, the term "Subcontractor" includes a person or entity who has a direct contract with the Developer: (1) to provide professional services in connection with the Work such as (but not limited to) engineering services, design professional services and/or construction administration services; or (2) construction services.

78. Submittal: A written or graphic document

prepared by Developer that is required by the Contract Documents to be submitted to the City by Developer. Submittals may include Drawings, Specifications, progress and submittal schedules, shop drawings, product data, samples, design data, test reports and certificates. Submittals other than Drawings or Specifications are not Contract Documents.

79. Substantial Completion: The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents including receipt of a temporary certificate of occupancy, if applicable, issued by the agency having jurisdiction over the Work so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

80. Supplier: A manufacturer, fabricator, distributor, or vendor having a direct contract with Developer or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.

81. Supply: Refer to "Furnish."

82. Team: The essential personnel on Developer's team, which will be agreed upon by Developer and the City prior to the start of each phase of Work. Developer and its Subcontractors and Subconsultants agree that said individuals will not be transferred or removed from the Project without the prior written permission or direction of the City, which will not be unreasonably withheld.

83. Testing Agencies: An independent entity engaged by the City or Developer to perform any required inspections or tests, either at the Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

84. Unavoidable Delay: Refer to Paragraph 7.02, Delays and Extensions of Time.

85. Unilateral Change Order: A written Change Order issued by the City to Developer after the effective date of the Project Delivery Agreement in accordance with Paragraph 6.05.

86. Unit Price Work: Work to be paid for on the basis of unit prices and actual quantities of Work. Refer to Paragraph 6.08.

87. Work: The performance by Developer of all its responsibilities and obligations set forth in the Contract Documents. Work shall include, but not be limited to, providing all labor, materials, equipment, administrative services, design services, Commissioning services, and documentation required by the Contract Documents for the design and construction of the Project. References in the

Contract Documents to "Work" may be to items of Work. Refer to Paragraph 1.03.

88. **Working Day:** Any day of the week except Saturdays, Sundays and statutory holidays.

1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS

A. The Contract Documents form the entire Contract for the design and construction of the Work, and consist of the following:

1. The Project Delivery Agreement and other documents listed in the Agreement;
2. The Criteria Package, including all appendices and attachments;
3. These General Conditions;
4. the Drawings, Project Manual, and all Addenda thereto, that are prepared by Developer during the Design Phase;
5. The Construction Documents, which will be prepared by Developer and Accepted by the City; and
6. Change Orders, Unilateral Change Orders, Clarifications, and Field Orders issued after execution of the Agreement.
7. Nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier or a person or entity other than the City and Developer.

1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS

A. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract Documents will be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the city and/or county where the Project is located.

B. The intent of the Contract Documents is to describe and provide for a functionally complete and operational Project (or part thereof) to be designed, constructed and turned over in a new, complete and satisfactory operating condition in accordance with the Contract Documents including but not limited to, the Criteria Package. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by

Developer with no change in the Contract Sum or Contract Time.

C. Arrangement and titles of Drawings, and organization of the Specifications into Divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among subcontractors, or establishing the extent of Work to be performed by any trade. Developer may arrange and delegate its Work in conformance with trade practices, but Developer shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Specifications. The City assumes no responsibility to act as arbiter to establish subcontract limits between portions of the Work.

D. In interpreting the Contract Documents, words describing materials or Work with a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.

E. In the event of a conflict in the Contract Documents regarding the quality of a product, Developer shall request Clarification from the City as provided in Paragraph 6.02 before procuring said product or proceeding with the Work affected thereby.

F. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings shall be prepared by Developer to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations, i.e. relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interferences, are the responsibility of Developer without change to the Contract Time or Contract Sum. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work; shall be performed in such sequence and manner as to avoid conflicts; shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.

G. Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for

dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, Developer shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.

H. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

I. When there is a conflict between existing on-Site conditions and information indicated on information that the City provides to Developer, other than Differing Site Conditions as defined in Paragraph 3.05, the existing condition shall govern. Developer shall perform the Work and adjust to the existing condition at no additional cost to the City, provided Developer should have known of such conflicts based on its reasonable investigation of the Site prior to executing the Agreement.

J. All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action or determination of the City Representative for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in subparagraph 1.03B. Such determinations of the City Representative shall be final and conclusive.

1.04 AMENDMENT OF CONTRACT DOCUMENTS

A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) Change Order; (ii) Modification, or (iii) Unilateral Change Order.

B. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (i) a Field Order; (ii) a Clarification, written interpretation or other bulletin issued by the City; or (iii) the City's review and acceptance of a shop drawing or sample in accordance with Paragraph 3.12.

1.05 RESOLUTION OF CONFLICTING TERMS; PRECEDENCE OF CONTRACT DOCUMENTS

A. The Contract Documents are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the extent possible.

B. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail (listed in order of highest to lowest precedence):

1. Modifications, Change Orders, and Unilateral Change Orders in inverse chronological order, and in same order as specific portions they are modifying.
2. Written Clarifications and Field Orders.
3. Executed Agreement.
4. These General Conditions.
5. Other Contracting Requirements.
6. Divisions 2 through 48 of the Specifications.
7. Drawings.

C. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):

1. Written numbers over figures, unless obviously incorrect.
2. Figured dimensions over scaled dimensions.
3. Large-scale Drawings over small-scale Drawings.
4. Schedules on Drawings or in Project Manual over conflicting information on other portions of Drawings.
5. Detail Drawings govern over general Drawings.
6. Drawing with highest revision number prevails.

1.06 REUSE OF CONTRACT DOCUMENTS

The Contract Documents are and shall be prepared for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the City. Any unauthorized use of the Contract Documents is at the sole liability of the user.

ARTICLE 2 – CITY’S RESPONSIBILITIES AND RIGHTS

2.01 ADMINISTRATION OF THE CONTRACT

A. The City shall administer the Agreement as described in the Contract Documents.

B. The City will designate in writing an authorized representative with limited authority to act on behalf of the City. The City may at any time during the performance of this Contract make changes in the authority of any representative or may designate additional representatives in accordance with the City’s Charter and codes. These changes will be communicated to Developer in writing. Developer assumes all risks and consequences of performing work pursuant to any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.

C. During the design phase, the review, approval, or other action taken by the City upon Developer’s Design Submittals shall apply only as to whether the design, drawings and specifications are in conformance with the intent and requirements of the Criteria Package. During the construction phase, the review, approval, or other action taken by the City upon Developer’s Construction Submittals shall be for strict compliance with the Construction Documents.

The City’s review, approval, or other action will be taken with reasonable promptness provided that Developer shall provide the City with reasonable time to permit adequate review. The City will make best efforts to expedite its responses. The Parties will collaborate at weekly team meetings to establish a scheduled time in which the city will respond. Such actions of the City shall in no way relieve Developer from its responsibility to complete a fully functional and operational project, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper and timely execution of the Work.

Should the City request a change that affects the cost or time of performance to a Developer’s Submittal that was previously approved by the City, and the Submittal conforms to the requirements of the Criteria Package or incorporates deviations from the Criteria Package specifically approved by the City, Developer may submit a Claim in accordance with Article 13. Developer shall be responsible to provide design and engineering or other costs necessary to prepare the Submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of approving a change in the requirements of the Criteria Package, from obtaining a credit for construction cost resulting from allowed concessions

in the Work or materials therefor.

2.02 INFORMATION AND SERVICES

A. The City shall make the Site available to Developer so that Developer can inspect the Site and perform the Work.

B. The City shall make available to the Developer as Reference Documents only, information available to the City concerning the Site and the Project. The City will provide assistance with, but will not be responsible for, the filing of documents as is required to obtain necessary approvals of governmental authorities, jurisdictional agencies, or utility companies having jurisdiction over the Project. Such assistance may be in the form of executing permits where owner’s signature is required or in the providing of information that would not otherwise be available to Developer. Payment for related services, fees or taxes is not the responsibility of the City except as noted below in Paragraph 3.08.

C. The City will be responsible for paying all real property taxes and assessments applicable during the performance of the Work or portions thereof.

D. The City shall apply and pay for the building permit if required for the Work and shall pay all permanent utility service connection fees. All other permits, easements, approvals, temporary utility charges, and other charges required for construction shall be secured and paid for by Developer in accordance with Paragraph 3.08.

1. The City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Article 8.

2.03 RIGHT TO STOP THE WORK; DEVELOPER’S FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH CONTRACT

A. In the event of material breaches of the Agreement by Developer, the City may order Developer to stop the Work, or a portion thereof, until the cause for such order has been eliminated. Any such order to stop the Work shall be in writing, provide Developer with an effective date for stopping Work, and shall be signed by the City Representative. Unless otherwise agreed to by the City, Developer shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of an order to stop the Work.

B. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Developer or other person or entity.

C. Reasons for ordering Developer to stop the Work, or a portion thereof, include but are not limited to the following:

1. Developer fails to correct Work which is not in accordance with the requirements of the Contract Documents; or
2. Developer fails to carry out Work in accordance with the Contract Documents, or
3. Developer disregards the authority of the authorized City Representative; or
4. Developer disregards the Laws or orders of a public body having jurisdiction over the Project; or
5. Developer violates any material provisions of the Contract Documents; or
6. Developer fails to maintain current certificates of insurance on file with the City; or
7. Developer is proceeding with original Contract Work, which will be modified by a pending Change Order.

D. In the event the City intends to order Developer to stop Work, the City shall issue a written notice to Developer. The notice shall identify the ground(s) for ordering Developer to stop Work and provide the Developer with a 14-day cure period to complete necessary corrective Work and/or actions. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Developer or its Subconsultants, Subcontractors and Suppliers, Developer shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence diligently the corrective Work and/or actions. The City, after accepting Developer's proposed schedule, will amend the stop work notice in writing to set forth the agreed-upon cure period. If Developer fails to completely cure the ground(s) for stopping Work either (i) within the 14-day cure period set forth in the notice; or (ii) within the agreed-upon cure period set forth in an amended notice, the City may, without prejudice to any other rights or remedies that the City may have, order Developer to stop the Work until the cause for such order has been eliminated.

E. In the event that Developer (i) fails to maintain current certificates of insurance on file with the City; (ii) commits criminal or unlawful acts; (iii) creates safety hazards; or (iv) commits acts or creates conditions that would have an immediate adverse impact on the well-being of the Project, the City, the public, Developer's employees, a Subcontractor's employees, or a lower-tier subcontractor or supplier's employees, the City shall have the right to order Developer to stop the Work immediately, without prior

notice.

2.04 RIGHT TO CARRY OUT THE WORK

A. In the event that Developer fails to carry out the Work in accordance with the Contract Documents and fails to promptly correct or prosecute the Work within a 3-day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies.

B. In such case the City will deduct all costs of such corrections, including the costs of City staff and consultants, from amounts due Developer. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Developer shall reimburse the City.

2.05 EXAMINATION OF RECORDS; AUDIT

A. The City shall have the right to examine, copy and audit all documents, whether paper, electronic, or other media, and electronically stored information, including but not limited to, any and all books, estimates, records, contracts, documents, proposal documents, proposal cost data, subcontracts, schedules, job cost reports, and other data including computations and projections of Developer, Subconsultants, Subcontractors, Lower-Tier Subconsultants, Lower-Tier Subcontractors and Suppliers related to proposing, negotiating, pricing, or performing the Work covered by: (i) a Proposed Change Order Cost Proposal; (ii) a Proposed Change Order Time Adjustment Proposal; (iii) Force Account Work; or (iv) a Contract Claim. In the event that Developer is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.

B. Upon written notice by the City, Developer immediately shall make available at its office at all reasonable times the materials noted in subparagraph 2.05(A) for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five-days' notice of the examination and/or audit. The City may take possession of the records and materials noted in subparagraph (A) by reproducing documents for off-site review or audit. When requested in the City's written notice of examination and/or audit, Developer shall provide the City with copies of electronic documents and electronically stored information in a reasonably usable format that allows the City to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Developer shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and

information.

C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

D. The City may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until three years after final payment under this Agreement.

E. Failure by the Developer to make available any of the records or materials noted in subparagraph (A) or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination For Cause.

F. Developer shall insert and require the insertion of a clause containing all the provisions of this Paragraph in all subcontracts with Subconsultants, Subcontractors, and Suppliers of all tiers in excess of \$10,000.

2.06 NO WAIVER OF RIGHTS

A. None of the following shall operate as a waiver of any provision of the Contract Documents or of any power herein reserved by the City or any right to damages herein provided:

1. inspection by the City or its authorized agents or representatives; or
2. any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or
3. any extension of time; or
4. any position taken by the City or its authorized agents or representatives.

2.07 CITY NOT LIABLE FOR CONSEQUENTIAL DAMAGES

The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Developer for any type of special, consequential or incidental damages arising out of or connected with Developer's Work.

2.08 RIGHT TO CHANGE, SUSPEND OR DELAY THE WORK

By executing this Agreement, Developer agrees that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties: (i) order changes, additions, deletions and extras to the Work after execution of the Contract and issued from time to time throughout the period of construction, regardless of

their scope, number, cumulative value, or complexity, to correct errors, omissions, conflicts and ambiguities in the Contract Documents, or to implement discretionary changes to the scope of Work requested by the City; (ii) issue changes, additions, deletions and extras in a manner that is not in sequence with the as-built or as-planned progress of the Work; (iii) issue changes due to Unforeseen or Differing Conditions; or (iv) suspend the Work, or parts thereof, or limit access to portions of or all of the Work, for the convenience of the City or in the interests of the Project; and (v) delay or disrupt the Work due to failure of the City to timely perform any contractual obligation.

ARTICLE 3 – DEVELOPER'S RESPONSIBILITIES

3.01 GENERAL DESIGN AND CONSTRUCTION RESPONSIBILITIES

A. Developer shall be responsible for its licensed Subcontractors to perform or furnish all design, construction and related services as set forth in the Contract Documents. Developer shall Provide all design and construction services necessary for receipt of all occupancy permits and authorizations to operate for a facility meeting or exceeding all design and specification requirements that have been agreed upon between the City and Developer as set forth in the Criteria Package, including, but not limited to, compliance with all industry standards and all applicable codes and regulations. Developer assumes responsibility for on-budget, on-schedule delivery of the Project regardless of its contractual agreements with parties other than City.

B. Developer shall provide the City, its employees, consultants, and other representatives, and representatives of other authorities having jurisdiction, with full cooperation in the performance of their duties and responsibilities related to the Work covered by the Agreement. Such cooperation may take the form of providing appropriate personnel to attend meetings, reviews, hearings, inspections, or similar project-related functions, and to provide documents as requested.

C. All construction Work for the Project shall be performed by contractor(s) holding the appropriate license issued by the California Contractors State License Board for the Work being performed and having the necessary expertise and experience required to enable Developer to complete the Project in accordance with the requirements of the Contract Documents.

3.02 DESIGN PROFESSIONAL SERVICES

A. This Paragraph sets forth basic Design

Professional services to be provided by Developer for the Project. Refer to the Criteria Package for additional, specific requirements.

B. All design Work for the Project shall be performed by Design Professional(s) who are licensed in the State of California and have the necessary expertise and experience required to prepare design documents to enable Developer to complete the Project in accordance with the requirements of the Contract Documents.

1. All design work shall be stamped by licensed architects or engineers, as appropriate.

C. Such Design Professional(s) shall be vested with the authority to act on behalf of Developer in all matters relating to design or supervision of construction of that Item(s) of which he or she is responsible. Developer's Design Professional(s) may be replaced only with the approval of the City

D. Developer shall require its Design Professional(s) to be responsible without limitation for the following:

1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.

2. Before undertaking each part of the Work, review the Contract Documents, including the Criteria Package, and existing Reference Documents and studies of the proposed Site and other data furnished to the Design Professional, if any, and advise the City whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Developer shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect, and the City will issue a Clarification or RFI reply, as appropriate, as to the procedure to be followed.

3.03 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

A. The Contract Documents are not complete but show the City's purpose and intent only, and Developer shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity which appear in the Contract Documents, instructions or work performed by others.

B. Developer shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Developer shall be responsible for the accuracy

of such dimensions and determinations.

C. Developer shall carefully review the appropriate portions of the Contract Documents a minimum of 30 days in advance of the Work to be executed for the express purposes of checking for any manifest errors, omissions, discrepancies or ambiguities. Developer shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by Developer's untimely review of the Contract Documents.

D. Developer shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of errors, omissions, discrepancies or ambiguities, and the City will issue a Clarification or RFI reply as to the procedure to be followed. If Developer proceeds with any such Work without receiving such Clarification or RFI reply, it shall be responsible for correcting all resulting damage and Non-conforming Work.

E. Developer shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and field conditions and to implement and administer a Request for Information ("RFI") system throughout the Contract Time. Developer shall be responsible for costs incurred by the City for the work of the City's consultants and City's administrative efforts in answering Developer's RFIs where the answer could reasonably be found by reviewing the Contract Documents.

F. Prior to start of Work, Developer and the City Representative shall visit the site and adjacent properties as necessary to document existing conditions including photographs. Developer shall document these conditions and shall submit prior to the start of Work a complete report of existing conditions.

3.04 SUPERVISION OF THE WORK

A. Unless there are specific provisions in the Contract Documents to the contrary, Developer shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Developer shall be solely responsible to the City for Developer or its Subcontractor(s)'s failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Developer, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. Developer is solely responsible for maintaining safe conditions on the site at all times, in accordance with Article 12.

B. Developer shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation into the Work in the proper

sequence and without delay of materials, devices, or provisions for future Work.

C. Whenever the Work of a Subcontractor or Lower Tier Subcontractor is dependent upon the work of another Subcontractor or Lower Tier Contractor, then Developer shall require the Subcontractor or Lower Tier Subcontractor to:

1. coordinate its Work with the dependent work;
2. provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
3. supply and install items to be built into dependent work of others;
4. make provisions for dependent work of others;
5. examine dependent drawings and specifications and submittals;
6. examine previously placed dependent work;
7. check and verify dependent dimensions of previously placed work;
8. notify Developer of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
9. not proceed with its Work until the unsatisfactory dependent conditions have been corrected.

D. Developer shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the City in accordance with the terms of this Contract, but nothing herein contained shall be taken to relieve Developer of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision.

E. Developer shall at all times permit the City, its agents and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; (ii) subject them to inspection at all such places; and (iii) reject if the Work does not conform to the requirements of the Contract Documents. This obligation of Developer shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the City as set forth in Article 8.

F. Whenever Developer desires to perform Work outside regular working hours, Developer shall give notice to the City of such desire and request and obtain the City's written permission at least 3 working days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work so that the City may make the necessary arrangement for testing and inspection.

G. If Developer receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Developer's risk.

H. During all disputes or disagreements with the City, Developer shall carry on the Work and adhere to the progress schedule required to be submitted under the requirements of the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and Developer may otherwise agree in writing.

3.05 DIFFERING SITE CONDITIONS

A. Consistent with section 7104 of the California Public Contract Code, if Developer encounters any of the following conditions at the Site, Developer shall promptly notify the City in writing of the specific differing conditions before such conditions are disturbed and before performing any affected Work to permit the City to timely investigate the conditions.

1. Subsurface or latent physical conditions at the Site (including hazardous waste) which differ materially from those indicated by information about the Site made available to Developers prior to execution of the Project Delivery Agreement.

2. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents.

B. Developer's written notice shall include the following information concerning such conditions: (i) location; (ii) nature and extent; (iii) a description of how such conditions affect the Work; (iv) recommended methods to overcome such conditions; (v) the baseline conditions described in the Contract Documents that formed the basis of Developer's expectations regarding the conditions that would be encountered; and (vi) the results of any testing, sampling, or other investigation conducted by Developer.

C. Differing Site Conditions shall not include:

1. All that is indicated in or reasonably interpreted from the Contract Documents or Available Project Information;

2. All that could be seen on Site;

3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Available Project Information.

4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Available Project Information.

D. The City will promptly investigate the conditions reported in Developer's written notice, and will issue a written report of findings to Developer.

E. Developer shall be responsible for the safety and protection of the affected area of the Work for the duration of the City's investigation of potential Differing Conditions.

F. Only if the City determines, in its sole and reasonable discretion, that the conditions reported do materially so differ, and cause a decrease or increase in Developer's cost or time required to perform all or part of the Work, will the City issue a Change Order as provided in Article 6 of these General Conditions. If the City determines that a Differing Site Condition exists, Developer shall promptly submit a Cost Proposal and/or Time Adjustment Proposal, as appropriate, per Article 6 to facilitate the timely negotiation and execution of a Change Order.

G. If Developer disagrees with the City's determination and wishes to pursue an adjustment to the Contract Sum and/or Contract Time, Developer must timely submit a written Notice of Potential Claim to the City as provided in Paragraph 13.02 of these General Conditions. Developer's Notice of Potential Claim must include the information required by Paragraph 13.02, and must also identify all documentation underlying Developer's assumptions that are affected by the alleged differing condition. In the event of such disagreement, Developer shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.

H. Failure by Developer to comply with the contract requirements concerning the timing and content of any notice of Differing Site Conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged Differing Site Conditions shall be deemed a waiver of any Contract

Claim or subsequent proceedings (e.g., Government Code Claims and litigation) by Developer for adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

3.06 SUPERINTENDENTS AND OTHER KEY TEAM MEMBERS

A. Developer shall at all times be represented at the Site by Developer's construction project manager or superintendent whom it has authorized in writing to make decisions and receive and carry out any instructions given by the City. City recognizes that the construction project manager may be a designated employee of Developer's construction Subcontractor. Notwithstanding, Developer will be held liable for the faithful compliance with such instructions. Prior to the issuance of a Notice to Proceed, Developer shall inform the City in writing of the names, addresses and telephone numbers of its key personnel whom it has authorized to act as its representatives at the Site, including employees of a Subcontractor if so authorized, and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Developer is a joint venture, it shall designate only one such representative.

B. The City reserves the right to reject Developer's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided in subparagraph 3.07A. The City shall be given written notice of, and shall have the right to approve, replacement of Developer's project manager, superintendents and foremen.

C. In the event that the Developer proposes to substitute a key team member during the performance of the Contract, Developer shall submit to the City Representative, at least seven days prior to engaging the person, an experience statement for the City's review and acceptance. Any proposed substitution is subject to the approval of the City Representative based upon qualifying experience on similar projects. Failure to obtain the City's acceptance shall not constitute a cause for delay. In addition, the City may issue an order to stop the work under Article 2.03 until such time as the Developer engages persons possessing skills and qualifications acceptable to the City.

3.07 LABOR, MATERIALS AND EQUIPMENT

A. Developer shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's notification, Developer shall discharge from the Work and replace at no additional cost to the City an employee of Developer, a Subcontractor, or a Supplier used on the Work who, in the City's sole

judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a City employee, agent or member of the public; or (iii) is refusing to carry out the provisions of the Contract.

B. In order that the City can determine whether Developer has complied or is complying with the requirements of the Contract that are not readily enforceable by inspection and test of the Work and materials, Developer shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.

C. Before ordering materials, equipment, or performing Work, Developer shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work. If a discrepancy exists as to information provided by the City, Developer shall notify the City immediately and request the City to clarify the design intent. Upon commencement of a particular item of Work, Developer shall be responsible for dimensions related to such item of Work.

D. All materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Developer shall store packaged materials and equipment to the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Developer shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.

E. Unless otherwise specified in the Contract Documents, Developer shall provide and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities and incidentals necessary for the performance, testing, start-up and completion of the Work.

F. Developer shall provide a field office at the Site with adequate separate sanitary facilities for the City Representative.

3.08 PERMITS, FEES AND NOTICES

A. Developer shall pay all utility charges for temporary connections to the Work.

B. Unless otherwise provided in the Contract Documents, Developer shall secure and pay for all permits (other than the building permit), governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than

inspections which are to be performed at the expense of the City as provided in Article 8) necessary for proper execution and completion of the Work. Developer shall be responsible for submitting complete, approvable applications for permits pursuant to the timeline set forth in the Project Schedule. If: (1) permits are not issued in the number of days allocated for each permit type in the Project Schedule; (2) delay in permit issuance is not due to any deficiency in Developer's application; and (3) such additional time to secure the permit creates a critical path delay, then Developer shall be entitled on a noncompensable time extension equal to the number of additional days taken to secure the permit.

C. Developer shall coordinate and obtain all permits prior to starting Work for which permits are required.

D. Pursuant to section 832 of the California Civil Code, Developer shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work.

E. Developer shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Developer shall timely deliver, post and maintain all notices required by such permits. Developer shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations. Should delays or damages be caused by Developer's failure to coordinate or comply with the conditions of such excavation permits, Developer shall pay all costs, assessments, fines, and penalties resulting therefrom.

F. If Developer observes that portions of the Contract Documents are at variance with the Code or other applicable laws, statutes, ordinances, rules and regulations, Developer shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with such laws, statutes, ordinances, rules or regulations, the City will make necessary changes to the Contract Documents by appropriate amendment.

G. If Developer performs Work it knows, or reasonably should have known, to be contrary to the Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Developer shall assume responsibility for such Work and shall bear all costs of correction.

H. Developer shall keep the permits, an approved set of Drawings and Specifications, and a copy of the Code at the Site readily available for inspection during regular working hours throughout the Contract Time.

I. Developer shall coordinate all required

inspections and special inspections with the appropriate agency having jurisdiction. Developer shall notify the City Representative in accordance with Article 8, so that the appropriate City representatives and inspectors will be present at these inspections.

J. Developer shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.

K. Developer shall submit to the City Representative as a condition precedent to Final Completion signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

3.09 RECORD DOCUMENTS

A. Developer shall maintain at the Site a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, Field Orders, and approved shop drawings, samples and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed.

B. Developer shall furnish on a monthly basis the aforesaid record documents for the City to review and determine their sufficiency in conforming to the requirements set forth in subparagraph 3.09A. The City shall have the right to withhold 25% of progress payments due Developer until Developer has complied with this Paragraph 3.09.

C. Record documents shall be available for inspection by the City at all times and shall be delivered to the City prior to Substantial Completion.

3.10 DEVELOPER'S DAILY REPORT

A. Developer shall complete, and submit to the City on the next day, consecutively numbered daily construction reports in a format and containing such information as may be required by the City.

B. In addition, whenever Force Account Work is in progress, Developer shall complete and submit to the City detailed written daily Force Account Work reports as provided under Paragraph 6.07.

3.11 PROGRESS AND SUBMITTAL SCHEDULES

A. Prior to issuance of a NTP with the construction Phase of the Work, Developer shall submit to the City for review the following schedules:

1. a base line construction schedule for the Work which shall use, the critical path method ("CPM"), activity on arrow or precedence diagramming method, as outlined in the Associated General Contractors publication "The Use of CPM in Construction," and shall indicate the times (number of days or dates) for starting and completing the various stages of the Work, including all milestones and special constraints specified in the Contract Documents; and

2. a submittal log, coordinated with the progress schedule, listing all submittals required by the Contract, their cognizant specification reference, and indicating the times for submitting such submittals.

B. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the City and Developer shall meet to review for acceptability to the City the schedules submitted under subparagraph 3.11.A.1.a. Developer shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the schedules.

C. No progress payments will be made to Developer unless and until the base line schedule is submitted and accepted by the City.

D. Developer shall adhere to the base line construction schedule accepted by the City in accordance with subparagraph 3.11B and as may be adjusted during the performance of the Work in accordance with the Contract Documents. Developer shall submit to the City for acceptance proposed revisions or adjustments in the base line construction schedule. Proposed adjustments in the base line construction schedule that will change the Contract Times shall be submitted to the City in accordance with Paragraph 7.02.

E. Acceptance of base line construction and submittal schedules by the City will neither impose on the City responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve Developer from its full responsibility therefor.

F. Developer shall submit a monthly progress schedule update as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03. All updates shall be submitted to the City for the City's acceptance; if rejected, Developer shall correct and resubmit updates to the satisfaction of the City before a pending application for payment is approved.

1. Each progress schedule update shall continue to show all Work activities including those already completed and those of changed Work.

2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates activities were actually started

and completed and the actual percent complete of activities.

3. Developer's submission of progress schedule updates, reports, curves or narratives, or the City's acceptance of such progress schedule updates, reports, curves or narratives, shall not amend or modify, in any way, the Contract Time or milestone dates or modify or limit, in any way, Developer's obligations under this Contract.

4. Developer waives its rights to time extensions based on changed Work if Developer has failed to meet its obligations to provide monthly schedule updates as specified herein.

G. Early Completion Schedule: If Developer submits a base line schedule that shows a completion time that is earlier than the Contract Time, the "float" or slack time shall belong to the Project and is an expiring resource available to City or Developer as needed to meet Milestones or complete the Work within the Project Time. Developer shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float."

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Developer proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Developer shall submit drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by Developer that are not required by the Contract Documents may be returned without action. The City recognizes that Developer may cause a Subcontractor to prepare such submittals, but Developer shall be responsible to the City for all required submissions.

C. By approving and submitting shop drawings, product data, samples and other submittals, Developer represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.

D. Developer shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples and other submittals

until the respective submittal has been received, reviewed and approved or received, reviewed and accepted by the City and returned to Developer. Such Work shall be in accordance with approved/accepted submittals. Developer is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals.

E. Where a shop drawing or sample is required by the Contract Documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk and responsibility of Developer.

F. The review, acceptance, approval, or other action taken by the City upon Developer's submittals such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Developer from its responsibility to notify the City of errors or omissions therein in accordance with Paragraph 3.01, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City's action will be taken with such reasonable promptness provided that the City shall be provided a reasonable time, as set forth in Division 01, to permit adequate review, but in no case shall City reviews and approvals of Shop Drawings, Product Data and Samples take longer than five (5) business days. Approval/acceptance of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely Developer's obligation. Developer shall be responsible to provide engineering or other costs necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of such approvals/acceptances, from obtaining a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

G. Developer shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples and other submittals unless Developer has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.

1. Deviations shall also be indicated clearly and boldly on such shop drawing, product data, sample or related submittal.

2. For resubmitted shop drawings, product data, samples and other submittals, Developer shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.

H. Developer shall not be relieved of responsibility

for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

3.13 SUBSTITUTIONS

A. Pursuant to section 3400 of the California Public Contract Code, Developer shall submit for approval to the City a properly completed Request for Product Substitution for each material, product, thing, or service that it proposes to substitute in place of, and as the equal, of a material, product, thing, or service specified in the Contract Documents by trade name or by the names of any particular patentee, manufacturer or dealer.

3.14 USE OF SITE

A. Developer shall confine its operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

B. In all cases, the Work shall be constructed solely within the boundaries of the Site. Developer shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties in accordance with section 832 of the California Civil Code. Developer shall obtain all such permits, rights-of-way and easements at no cost to the City.

C. Pumping, draining and control of surface and ground water and excavating or other earthwork shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Developer shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated materials at the Site.

D. Developer shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Developer subject part of the Work or adjacent property to stresses or pressures that will endanger it.

E. Developer shall assume full responsibility and shall promptly settle all claims for damage to areas of the Site, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.

3.15 ACCESS TO WORK

During the performance of the Work, the City and its authorized representatives, including City consultants performing necessary project-related

functions on behalf of the City (e.g., construction management personnel and design professionals), or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, may at any time, and for any purpose, enter upon the Work, the shops where any part of such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any materials for use in the Work are being, or are to be, manufactured. Developer shall not require City personnel or City consultants performing necessary project-related functions on behalf of the City to sign visitor hold harmless agreements or similar agreements requiring the signatory to defend, hold harmless and/or indemnify Developer for claims arising out of or relating to the Work, the Project, or the Site.

3.16 CUTTING AND PATCHING

A. Developer shall be responsible for performing, in accordance with the requirements of the Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.

B. Developer shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching or otherwise altering such construction. Developer shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Developer shall not withhold from the City Developer's consent to cut or otherwise alter the Work.

3.17 CLEANING UP AND REMOVING DEBRIS

A. Developer shall keep the Site and surrounding area, including public areas immediately adjacent to the Site such as temporary pedestrian walkways and sidewalks, free from accumulation of excess materials, rubbish, graffiti, and debris.

1. Developer shall perform such clean up and removal in accordance with the requirements of the Specifications.

2. Prior to Substantial Completion Developer shall remove from and about the Site excess materials, rubbish, Developer's tools, construction equipment, and machinery and shall perform final cleaning as specified in accordance with the requirements of the Specifications.

3. Removal and disposal of such excess materials, rubbish, and other debris shall conform to applicable laws and regulations.

B. If Developer fails to comply with Article 3.15 or to clean up as provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Developer under the Contract.

C. Developer shall salvage and deliver to the City removed equipment, appurtenances and other materials that are not reused in the Work and indicated by the City to be salvaged. Developer shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances and other materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

3.18 INTELLECTUAL PROPERTY; ROYALTIES AND INDEMNIFICATION

A. Developer shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

B. Developer shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, material, article or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.

C. To the fullest extent permitted by law, Developer shall save, defend, hold harmless, and fully indemnify the City and all its officers, employees, agents, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks or other intellectual property claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Developer is not the patentee or assignee or does not have the lawful right to sell the same.

1. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Completion and termination of the Contract. The notice, cooperation and control of defense provisions set forth in Paragraph 3.21 shall apply to

this intellectual property indemnity.

D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Developer shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Developer cannot so procure such right within a reasonable time, Developer shall promptly, at Developer's sole expense and at no cost to the City, (1) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right, or (2) replace said Work with work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

E. Subparagraphs 3.18C and 3.18D, above, shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right (i) arising from any unauthorized modifications to the Work by the City or its agents or (ii) arising from the combination of Work with any products or services not provided or recommended by Developer where the combination is the basis for infringement.

3.19 WARRANTY

A. Developer warrants and guarantees to the City that materials and equipment provided under the Contract shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity; that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents.

1. Developer additionally warrants manufacturers' product warranties.

B. Developer's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Developer, improper or insufficient maintenance, improper operation, or normal wear and tear. Testing shall not be construed as operation.

C. Developer shall deliver product warranties and guarantees conforming to the requirements of the Specifications to the City Representative prior to Final Completion.

D. The warranty provisions of this Paragraph 3.19 are separate and additional to the provisions for the Guarantee to Repair Period and correction of Non-conforming Work as specified in Article 8.

3.20 TAXES

A. Developer shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Poposal opening.

3.21 INDEMNIFICATION

A. Consistent with California Civil Code section 2782, Developer shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, agents, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct of any person indemnified herein. Developer's obligations under this Paragraph apply regardless of whether or not such claim, suit, action, loss or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this Contract, Developer shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between Developer and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Developer will be for that entire portion or percentage of liability not attributable to the active negligence of City.

1. Developer's defense, indemnity and hold harmless obligations shall extend to City Consultants (e.g., design professionals and construction managers) providing services under separate written agreement with the City covering any portion of the Project.

2. Developer's defense, indemnity and hold harmless obligations shall not extend to the liability of a City Consultant or its agents, employees or subconsultants arising out of, connected with or resulting from such indemnitee's own active negligence, errors or omissions or from (1) such indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, Change Orders, designs or Specifications, or (2) such indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.

B. Developer acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any

way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

C. The City and other indemnified parties specified in subparagraph 3.21A shall provide Developer with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Developer from any obligation hereunder. Developer shall obtain the City's and other indemnified parties' consent for Developer's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Developer and the City and/or other indemnified party conflict and counsel chosen by Developer cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Developer, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate co-counsel shall be borne by Developer, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Developer's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Developer in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

1. So long as Developer has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Developer will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Developer and does not impose any obligation upon City and/or other indemnified party in connection with such judgment or settlement and Developer obtains the full and complete release

of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Developer.

2. If Developer does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Developer, and (ii) Developer will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Paragraph 3.21.

D. Developer's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.

E. In the event that Developer and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Developer's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Developer under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

F. The defense and indemnity obligations of this Paragraph shall survive Final Completion and termination of this Contract. Developer's defense and indemnity obligations shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by Developer that occurred during the course of the Work.

3.22 COMPLIANCE WITH LAWS; INDEMNIFICATION

A. Developer shall keep itself fully informed of and comply with the Charter, ordinances, codes, and regulations of the City and other local agencies having jurisdiction over the Work, and all federal and state laws, regulations, orders or decrees in any manner affecting or applicable to the Contract Documents, the performance of the Work, or those persons engaged therein.

B. All construction and materials provided under the Contract Documents shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from

time to time, of the Code specified in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it.

C. As required by and in accordance with the procedures specified in Paragraph 3.19, Developer shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, and other designated other parties, and all of their officers, agents, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims or liability arising from the violation of law, regulation, order or decree by Developer or its Subcontractors or Suppliers of all tiers in connection with or resulting from performance of the Work.

D. If the City incurs any fines or penalties because of Developer's (or a Subcontractor's or Supplier's) failure to comply with a law, regulation, order or decree, the City may deduct the amount of the fine or penalty from the Contract Sum.

E. Authorized persons may at any time enter upon any part of the Work to ascertain whether applicable laws, regulations, orders or decrees are being complied with. Developer shall promptly notify the City Representative if a regulatory agency requests access to the job site or to records. Developer shall provide the City Representative with a list of documents provided to the regulatory agency and enforcement actions issued against Developer.

F. No additional costs will be paid or extensions of time granted as a result of Developer's compliance with this Paragraph 3.20.

3.23 LIABILITY OF DEVELOPER – CONSEQUENTIAL DAMAGES

Developer shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Developer's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Developer. This limit of

liability shall NOT, however, apply to, limit or preclude: (A) Developer's obligation to pay Liquidated Damages as set forth in the Contract Documents; (B) damages caused by Developer's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (C) Developer's obligations to indemnify and defend the City and other indemnified parties; (D) Developer's liability for any type of damage to the extent such damage is required to be covered by insurance as specified in the Contract Documents; (E) wrongful death caused by Developer; (F) punitive or treble damages; (G) Developer's liability for damages expressly provided for in this Agreement, including without limitation statutory damages imposed by the City upon Developer under the City Ordinances and Municipal Codes specified in this Agreement; and (H) Developer's warranties and guarantees under the Contract Documents.

ARTICLE 4 – SUBCONTRACTORS

4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

A. Under Section 1725.5 of the California Labor Code, all subcontractors who work on a public works project must register and pay an annual fee to the California Department of Industrial Relations. No unregistered subcontractor, regardless of the dollar amount of subcontract work, may be awarded a contract for public work on a public works project. Developer shall not employ a subcontractor of any tier that does not maintain a current registration with the California Department of Industrial Relations.

B. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with the governing regulations regarding subcontracts, section 6.21 of the Administrative Code, and section 1771.1 of the California Labor Code. Section 6.21 and section 1771.1 shall govern the designation of, failure to specify, and substitution of subcontractors and the assignment, transfer and performance of subcontracts.

C. Developer shall not employ a subcontractor of any tier, Supplier or other person or entity that the City has determined unqualified or non-responsible. The City may give written notice of such determination prior to award of the Agreement or at any time during the Contract Time, and upon receipt thereof Developer shall provide replacement with a qualified person or entity. The City shall have the right of approval and shall not be responsible for added costs to Developer, if any, of employing such replacement person or entity.

4.02 SUBCONTRACTUAL RELATIONS

Developer shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Developer by the applicable terms and conditions of the Contract Documents, in the same manner Developer is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Supplier. All Subcontractors and Suppliers shall have similar agreements with Lower-Tier Subcontractor and Lower-Tier Suppliers. All Subcontractors and Suppliers shall be given copies of the contract documents to which the Subcontractor or Supplier will be bound, and upon written request of the Subcontractor or Supplier, shall have identified written terms and conditions of their proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

4.03 ASSIGNABILITY OF SUBCONTRACTS

A. All subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers shall provide that they are freely assignable to the City under the following conditions:

1. the City terminates the Agreement for cause under provisions of Article 14;
2. the City requests such assignment; and
3. the surety providing the performance bond for the Project fails to timely fulfill its obligations under the performance bond.

B. The City will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

4.04 SUCCESSORS AND ASSIGNS

A. Developer shall constantly give its personal attention to the faithful prosecution of the Work. Developer shall keep the Work under its personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.

B. All transactions with Subcontractors will be made through Developer, and no Subcontractor shall relieve Developer of any of its liabilities or obligations under the Contract.

C. When a subcontractor of any tier fails to prosecute a portion of the Work in a manner satisfactory to the City, Developer shall remove such subcontractor immediately upon written request of the

City, and shall request approval of a replacement subcontractor to perform the Work in accordance with Administrative Code section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq., at no added cost to the City.

D. The Contract shall not be assigned except upon the approval of the City in accordance with Administrative Code section 6.22(d).

ARTICLE 5 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

A. Should the Contract Documents indicate that construction work, or work of any other nature, be performed by other contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Parties executed the Agreement, Developer shall cooperate with all such contractors or forces to the end so as to avoid delay or hindrance to their work. The cost of such cooperation shall be considered as included in Developer's Proposal price and no direct or additional payment will be made therefor.

B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work is not indicated in the Contract Documents or underway when the Parties executed the Agreement materially increases Developer's costs, then Developer may submit a Change Order Request therefor in accordance with Paragraph 6.03.

C. If the City gives Developer written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Developer is already performing Work, Developer shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Developer shall provide the City Representative written notice when cleanup and demobilization has been completed. The City Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Developer shall allow proper and safe access to the Work at the subject location and shall schedule and coordinate its Work with the other contractors' work.

D. If Developer requires access to a location where another contractor is performing work,

Developer shall request such access in writing from the City Representative. The City Representative will provide written notice to Developer when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification, Developer shall have full access and shall commence or resume its operations in that location.

E. If Developer believes it is entitled to a time extension caused by its obligations under subparagraphs 5.01Cor 5.01D above, it shall comply with the notification requirements of Paragraph 7.02.

F. When it is necessary for Developer and another contractor or utility owner to work in the same location at the Site, each party shall assume the following mutual responsibilities for the benefit of the other party at no additional cost to the City:

1. both parties shall execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in the same location;

2. both parties shall add the other party as an additional insured under their respective liability policies;

3. the party seeking to use portions of the construction Site of the other party to perform its work shall pay all direct costs incurred by the other party to accommodate its operations; and

4. if Developer contends that delay or additional cost is involved because of such action by the City, Developer shall make such Claim by the procedures as provided in Article 13.

G. The City shall not be a party to any of the agreements between multiple contractors and shall have no liability to any party with regard to the lack of coordination and cooperation or the inability of a party to execute specific work requirements. Developer agrees to indemnify and hold the City harmless for all claims or losses that Developer or the other contractors may incur as a result of their inability to successfully obtain work areas under the control of one of the parties.

5.02 COORDINATION

A. Developer shall afford other contractors and the City reasonable opportunity for storage of materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the City may direct.

B. Notice of Conflicting Conditions: Where Developer's Work is adjacent to or placed on top of

that of another contractor, Developer shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Developer proceeds without giving notice, it shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

1. The foregoing does not apply to latent defects. Developer shall report to the City latent defects in another contractor's work promptly upon discovery.

C. Developer shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract as directed.

D. Any difference or conflict that may arise between Developer and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.

E. If so directed by the City, Developer shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the work of all other contracts thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Developer may submit a Change Order Request as provided under Paragraph 6.03 for additional costs incurred by it in preparation of such coordination drawings.

F. At any time during the progress of the Work, the City may, by providing reasonable notice, require Developer to attend any conference of any or all of contractors engaged in the Work.

G. If the City determines that Developer is failing to coordinate its Work with the work of other contractors as directed, the City may upon 72 hour written notice:

1. withhold any payment otherwise owed under the Contract until Developer complies with the City's directions; or

2. direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or

3. terminate any and all portions of the Contract for Developer's failure to perform in accordance with the Contract.

5.03 CLEAN UP RESPONSIBILITIES

A. Developer and other contractors shall each bear responsibility for maintaining their respective work areas on the premises and adjoining areas free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.

B. In the event of conflicts the City, after issuing 24 hour written notice to the contractors involved, will clean up the premises and deduct from the amount due Developer under the Contract the cost of said clean up as the City determines equitable.

ARTICLE 6 – CLARIFICATIONS AND CHANGES IN THE WORK

6.01 GENERALLY

A. The City may, at any time between the Notice to Proceed and Final Completion and without notice to Developer's surety, order additions, deletions, or revisions in the Work by Change Order, Unilateral Change Order, or Field Order. Developer shall promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents.

B. Developer shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Developer performs work that is not required by the Contract Documents as amended, modified, or supplemented in writing.

C. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, the Developer provides the City with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the City may evaluate each potential Change and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the Developer of additional, undisputed amounts.

D. Failure by the Developer to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the City at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the Developer arising out of such Clarification or Change Order.

6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS AND FIELD ORDERS

A. Should there appear to Developer to be a discrepancy in the Contract Documents, should

questions arise as to the meaning or intent of the Contract Documents, or should the City's comments on submittals returned to Developer appear to Developer to change the requirements or scope of the Contract Documents, Developer shall promptly submit a Request for Information ("RFI") to the City. Developer shall coordinate and schedule its Work to provide the City sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.

B. The City shall issue a reply to the RFI within 5 working days of receipt of the same. The reply may include written Clarifications as deemed by the City to be necessary and consistent with the Contract Documents, or a Field Order requiring minor changes in the Work. If additional time is needed to issue the reply, the City will, within the 5 working-day reply period, notify the Developer of the longer reply period.

C. Clarifications of the Contract Documents and Field Orders issued by the City shall be binding on Developer and shall be promptly executed by Developer. The City's right to clarify any element of the Contract Documents shall not be construed to entitle Developer to a modification of the Contract Sum or a change in the Contract Time, unless such clarification amounts to a change in the Scope of Work.

6.03 CHANGE ORDER REQUESTS AND PROPOSED CHANGE ORDERS

A. Change Order Request ("COR") Initiation: Should the City's Clarification or other written directive or determination, in the opinion of Developer, materially exceed or change the requirements of the Contract Documents, Developer shall submit to the City a written COR within 5 working days of receipt of the Clarification or other written directive or determination. A COR shall reference the Clarification or other written directive or determination and the relevant Specification and Drawings, and clearly state reasons why a change is needed. A COR shall also include a cost proposal and/or a time adjustment proposal, as a good faith estimate of any additional compensation or time associated with the affected Work, documented in accordance with subparagraphs 6.03E and 6.03F, below, and a narrative describing the scope of the COR including means and methods, sequence of Work, and other information necessary to fully understand the scope of the COR. The COR shall also include, as a minimum standard, quantity take offs and extensions identifying equipment and material against a specific Work task within the scope. Failure to submit a timely, fully documented COR shall constitute a waiver of any future claim for additional compensation or time relating to such Work.

B. COR Review: The City will review the COR.

Within five (5) working days after receipt of the COR and all required supporting documentation, the City will issue a written determination accepting or rejecting the COR in whole or in part. If the City requires additional time to issue a determination, it shall notify the Developer of the same in writing, within the initial five (5) working-day period. A final determination is any determination on a COR which states that it is final. If the City issues a final determination denying a COR in whole or in part, Developer may contest the decision by filing a timely Notice of Potential Claim per Article 13 of these General Conditions. If the City does not issue a determination within the 5 working-day period, or such other period as set forth in a written notice, then the COR is deemed rejected and the City's failure to issue a determination shall be treated as the issuance, on the last day of the applicable period, of a final decision denying the COR in its entirety.

C. PCO Initiation: The City may initiate a change in the Work by issuing a Proposed Change Order ("PCO"). A PCO will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Specifications, and will request from Developer a quotation of cost and time for completing the proposed changes. After the City issues a PCO, Developer shall not submit a COR for the same Work addressed in the City's PCO.

D. PCO Quotation Time Period: Developer shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the City within five (5) working days after receipt of a PCO. If Developer fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the five (5) working-day period, or if the price or time adjustment cannot be agreed upon, the City may either direct Developer to proceed with the Work on a Force Account basis or a Unilateral Change Order instructing Developer to proceed with the PCO Work based on the City's estimate of the cost and/or time adjustment.

E. COR and PCO Cost Proposal Requirements: The Cost Proposal shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the City. The same shall be required for Subcontractor and Lower-Tier Subcontractor cost proposals, which shall be furnished on the same form as required for Developer.

1. At a minimum, Developer shall provide the following documentation to the City in support of Developer and Subcontractor cost proposals:

- a. material quantities and type of products;
- b. labor breakdown by trade classification,

wage rates, and estimated hours;

c. equipment breakdown by make, type, size, rental rates, and equipment hours; and

F. COR and PCO Time Adjustment Proposal Requirements: If Developer asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, Developer shall provide the following documentation to the City in support of any Developer time adjustment proposals:

1. Developer shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete and most current City-accepted progress schedule network, with appropriate logic so that a true analysis of critical path can be made.

2. Failure to comply with the requirements set forth in this subparagraph 6.03F shall constitute a waiver of any claim for delay, disruption, extended overhead and other associated costs or damages.

6.04 CHANGE ORDERS

A. Execution of Change Orders; Modifications: When the City and Developer agree on the total cost and time of a COR or PCO, the City will prepare for signatures of parties a Change Order to implement the changed Work. No oral instructions of any person-whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Change Orders that result in an increase to the amount certified by the Controller for the Project are subject to the Certification by Controller requirements of the City's Charter and are effective upon incorporation into an approved Modification.

B. Release of Claims: The parties agree to make good faith efforts to settle all Change Orders full and final at the time of Change Order execution. Accordingly, City and Developer acknowledge and agree that Change Orders shall contain the following provision, unless and only if the City determines that good cause exists to use different release language for a specific change order:

"The compensation (time and cost) set forth in this Change Order comprises the total compensation due to Developer, all Subcontractors and all Suppliers, for the Work or change defined in the Change Order, including

impact on unchanged Work. By executing this Change Order, Developer acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for the interruption of schedules, extended field and home overhead costs (if any), delay, and all impact, ripple effect or cumulative impact on all other Work under this Contract. The execution of this Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the Developer, all Subcontractors, and all Suppliers as a result of the change. The Developer, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim related to this Change Order. No further claim or request for equitable adjustment of any type for any reasonably foreseeable cause shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract."

C. Change Orders issued under this Article or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Developer under the provisions of the Contract Documents, nor shall they relieve or release Developer's sureties of bonds executed under such provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of time made by reason thereof. Developer shall be responsible for giving notice of any change affecting the Work, Contract Sum or Contract Times that is required to be given to its sureties by the provisions of any bond.

6.05 UNILATERAL CHANGE ORDERS

A. General: When time does not allow for a Change Order to be negotiated, or when the City and Developer are unable to agree on the cost or time required to complete the change in the Work, the City may issue a Unilateral Change Order instructing Developer to proceed with a change in the Work based on the City's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, Developer shall proceed with the ordered Work.

B. Protest: If time did not allow for Developer to submit a complete Cost and/or Time Adjustment Proposal prior to the issuance of a Unilateral Change Order, and Developer disagrees with any terms or conditions set forth in a Unilateral Change Order and wishes to protest the Unilateral Change Order,

Developer shall submit, within 5 working days of receipt of the Unilateral Change Order, a complete Change Order Request ("COR") in accordance with the requirements of Paragraph 6.03 (including a complete Cost and/or time Adjustment Proposal, as applicable). If a COR is not timely submitted as required, Developer waives all rights to additional compensation for said Work, and payment, which shall constitute full compensation for Work included in the Unilateral Change Order, will be made as set forth in the Unilateral Change Order. The City will review the COR and issue a determination per Paragraph 6.03. If the City denies the COR in whole or in part, Developer may contest the decision by filing a timely Notice of Potential Claim per subparagraph 6.05C, below. As a point of clarification, the protest procedures specified in this subparagraph do not apply to circumstances where Developer submitted a complete Cost Proposal and/or Time Adjustment Proposal prior to the issuance of the Unilateral Change Order at issue, and the City subsequently issued a Unilateral Change Order because the parties were unable to timely agree on the cost and/or time to complete the change in the work. In such circumstances, if Developer disagrees with any terms or conditions set forth in the Unilateral Change Order and wishes to pursue the dispute, Developer must submit a timely Notice of Potential Claim per subparagraph 6.05C, below (but does not have to submit a revised/new COR).

C. Claim Notification: Developer waives all costs exceeding the City's estimate for the Unilateral Change Order Work unless Developer submits a written Notice of Potential Claim in accordance with the requirements of Article 13. Said Notice shall be submitted no later than 10 working days after occurrence of one of the following potential claim events, whichever occurs first:

1. Developer submits an invoice for completion of the Unilateral Change Order Work; or
2. Upon Developer's receipt of written notice from the City that the City considers the Unilateral Change Order Work completed.

6.06 COST OF CHANGE ORDER WORK

A. For Change Order Work and Change Order Work proposal pricing, Developer will be paid the sum of the direct costs for labor, materials and equipment used in performing the Work as determined by the procedures set forth in this subparagraph 6.06A.

1. Labor. Developer will be paid the cost of labor for the workers used in the actual and direct performance of the Change Order Work. Working foremen will be considered a direct cost of the Change Order Work only if the individual is on Site physically installing the Work. The costs for all supervision, including general superintendents and

foremen, will not be considered a direct cost and shall be included the markup defined in subparagraph 6.06B, below. The cost of labor, whether the employer is Developer, a subcontractor, or other forces, will be the sum of the following:

a. Actual Wages. The actual wages paid shall include any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.

b. Labor Surchargeto the actual wages, as defined above, will be added a labor surcharge as set forth in the version of the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates which is in effect on the date upon which the extra work is accomplished and which is incorporated by reference as though set forth in full. That labor surcharge shall constitute full compensation to Developer for all of its costs for worker's compensation insurance, Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes. No other fixed labor burdens will be considered, unless approved in writing by the City.

c. Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workers.

2. Materials: The City will pay Developer on Change Orders only for those materials furnished by Developer and directly required for performing the Change Order Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Developer, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order Work. If a trade discount by an actual Supplier is available to Developer, such discount shall be credited to the City notwithstanding the fact that such discount may not have been taken. If the materials are obtained from a Supplier or source owned wholly or in part by Developer, payment thereof shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

3. Equipment: Payment for equipment costs on Change Orders will be made at the lesser of the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of: (i) the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) published by the California Department of Transportation and available for download at <http://www.dot.ca.gov/hq/construc/equipmnt.html>; or (ii) "Rental Rate Blue Book," published by

EquipmentWatch, a unit of Penton Media, Inc., 181 Metro Drive, Suite 410, San Jose, California 95110, phone (800)669-3282(see http://www.equipmentwatch.com/Marketing/RRBB_0verview.jsp for information).

Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under Developer's control through direct ownership, leasing, renting, or other method of acquisition; provided, however, for equipment rented or leased in arm's length transactions with outside vendors, Developer will be reimbursed at the actual rental or leased invoice rates when such rates are reasonably in line with the applicable rates specified in the publications identified above as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Developer has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Developer shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each PCO cost proposal.

For equipment that is not listed in the publications identified above, payment for equipment costs or the City' assessment of the reasonableness of rates in arm's length rental or lease transactions will be based on the lowest quote obtained by the City from either CALTRANS or EquipmentWatch. Developer shall provide all necessary equipment ownership and other information as requested by the City so that the City may obtain a quote. CALTRANS will quote rental rates at no cost to the City; however, EquipmentWatch charges for its quote service (a charge that will be paid by the City if the City seeks a quote from EquipmentWatch). Accordingly, if CALTRANS provides a quote for a rental rate, then the City, at its sole discretion, may elect not to seek a quote from EquipmentWatch and will use only the CALTRANS quote.

a. Daily, weekly, or monthly rates shall be used, whichever are lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, the cost shall be calculated at the rental rate for equipment of proper size and type.

b. The actual time to be paid for equipment shall be the time the equipment is in productive

operation on the Work under the Change Order. No payment will be made for time while equipment is inoperative due to breakdown or for non-work days. In addition, the rental time shall not include the time required to move the equipment to and from the Site. Loading and transportation costs will be paid, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. No mobilization or demobilization will be allowed for equipment already on the Site. Equipment that is idle, non-operating or in standby mode shall be reimbursed at the lesser of Caltrans' rates, as adjusted by Caltrans' Delay Factor, or EquipmentWatch's rates, as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.

c. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment are included as part of Developer's markup for overhead and profit as defined in subparagraph 6.06B.

d. Payment to Developer for the use of equipment as set forth herein shall constitute full compensation to Developer for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Developer incidental to the use of the equipment.

B. Costs Included as Part of Markup for Overhead and Profit: To the total of the direct costs computed as provided in subparagraph 6.06A there will be added a markup for overhead and profit as specified in subparagraph 6.06C. The markup shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically listed in subparagraph 6.06A as direct costs. No separate allowance or itemization for overhead costs shall be allowed. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:

1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspeople, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.

2. All field and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service at the Site, long-distance telephone calls, fax machines, computers and software, internet and e-mail services, temporary

utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1,000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to all regulatory requirements including compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs.

3. Administrative functions including, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.

4. Bond and insurance costs.

5. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06A.

C. Developer's Markup for Overhead and Profit: The following maximum percentage markups shall be applied to the total direct costs for each direct cost category. These markups provide for all indirect and overhead costs and profit:

Changed/Extra Work –Direct Costs	Markup Percentage
Developer direct labor	15%
Developer direct materials	15%
Developer direct equipment	15%
Subcontractor (of any tier) direct labor see Note 1 below.	15% or 35%
Subcontractor/Supplier (of any tier) direct materials	15%
Subcontractor/Supplier (of any tier) direct equipment	15%

Note 1: In the case of Subcontractor (of any tier) direct labor costs, upon Developer's request and at the City's sole discretion, taking into account the facts and circumstances of the Change Order Work, (including but not limited to the financial impact to such Subcontractor of delays to the project schedule resulting from such Change Order), the City may allow a 35% markup to the subject Change Order.

1. For Work performed by a Subcontractor, Developer shall receive a maximum 7.5% markup on the Subcontractor's total cost (total cost includes direct costs plus applicable markups specified above). Such additional 7.5% markup shall reimburse Developer for all additional indirect,

administrative and overhead costs associated with Change Order Work performed by the Subcontractor.

2. For Work performed by a Lower-Tier Subcontractor, Developer and Subcontractor shall each receive a maximum 7.5% markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 7.5% markup shall reimburse Developer and Subcontractor for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Lower-Tier Subcontractor.

3. In no case shall the sum of the individual markups specified in subparagraphs 6.06C.1 and 6.06D.1, above, exceed 25%, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.

D. For Work performed by a Subcontractor, Developer shall receive a maximum 7.5% markup on the Subcontractor's total cost (total cost includes direct costs plus applicable markups specified above). Such additional 7.5% markup shall reimburse Developer for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Subcontractor.

1. For Work performed by a Lower-Tier Subcontractor, Developer and Subcontractor shall each receive a maximum 7.5% markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 7.5% markup shall reimburse Developer and Subcontractor for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Lower-Tier Subcontractor.

2. In no case shall the sum of the individual markups specified in subparagraphs 6.06C and 6.06D.1, above, exceed 20%, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.

E. For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (i) Unit Prices stated in the Contract Documents; (ii) where Unit Prices are not applicable, a lump sum based upon the costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Paragraph 6.06, supported by a Cost Proposal as required by Paragraph 6.03. Neither Developer nor the Subcontractor shall receive a markup on their respective Lower-Tier Subcontractors to administer the credit Change Order.

1. When both additions and credits are involved in any one Change Order, Developer's markup shall be computed on the basis of its direct

costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

2. If the City issues written notice of deletion of a portion of Work after the commencement of such Work or after Developer has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Developer because it is unnecessary due to actual Site conditions, payment will be made to Developer for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06C.

3. Developer shall not be compensated for costs incurred after receipt of the City's written notice deleting the portion of Work.

4. Materials ordered by Developer prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, the material shall be returned and Developer will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

F. Costs Not Included in the Work: Developer shall be solely responsible for determining which of its Subcontractors and Suppliers receive Change Orders. No additional compensation will be provided Developer for the cost of its Subcontractors and Suppliers to review, post, coordinate, and perform related tasks to administer Change Orders which do not result in direct cost charges from such Subcontractors or Suppliers. Such costs shall be considered normal business costs, which are contractually determined between Developer and its Subcontractors and Suppliers prior to Proposal, and such costs shall be included in Developer's Total Proposal Price.

G. Records: Developer shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Developer.

6.07 FORCE ACCOUNT WORK

A. General: When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all direct costs itemized in

subparagraph 6.06A shall be subject to the approval of the City and compensation will be determined as set forth herein.

1. The City will direct Developer to proceed with the Work on a Force Account basis, and the City will establish a "not to exceed" budget.

2. All requirements regarding direct costs and markup for overhead and profit provided in Paragraph 6.06B shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.

3. Developer shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in subparagraph 6.06C.

B. Notification and Verification: Developer shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be witnessed, documented, and approved in writing by the City on the day that the Work is performed. Developer will not be compensated for Force Account Work if Developer fails to provide timely notice to the City before commencing the Force Account Work. In addition, Developer shall notify the City when the cumulative costs incurred by Developer for the Force Account Work equal 80% of the budget pre-established by the City. Developer will not be compensated for Force Account Work exceeding the "not to exceed" budget amount if Developer fails to provide the required notice before exceeding 80% of the Force Account budget.

C. Reports: Developer shall diligently proceed with the approved Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Developer's authorized representative shall complete and sign the report. Developer will not be compensated for Force Account Work for which said timely report is not completed and submitted to the City.

D. Records: Developer shall maintain detailed records of all Work done on a Force Account basis. Developer shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage

completion of the Force Account Work.

E. Agreement: If Developer and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Developer's signed written reports shall be discontinued and all previously signed reports shall become invalid.

6.08 UNIT PRICE WORK

A. General: Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price Bid for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. The Contract Sum will be adjusted based on the actual quantities of Work performed.

1. Each unit price on the Schedule of Bid Prices shall include an amount considered by Developer to cover Developer's markup for overhead and profit as defined in Paragraph 6.06.

B. Quantity Increases: Should the total quantity of any Item of Unit Price Work performed exceed the estimated quantity indicated on the Schedule of Bid Prices by more than 25%, the Work in excess of 125% of such estimated quantity will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined as follows, of the total quantity of Work performed under said Item. The actual unit cost will be determined based on the direct costs per unit less fixed costs, which will be deemed to have been recovered by Developer with the payments made for 125% of the quantity indicated on the Schedule of Bid Prices, and markup for overhead and profit as provided in Paragraph 6.06.

2. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125% of the quantity as indicated on the Schedule of Bid Price is less than \$5,000 at the unit price Bid therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except that an adjustment will be made if Developer submits a Change Order Request ("COR") in accordance with the requirements of Paragraph 6.03.

3. At the City's option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07 in lieu

of adjusting the unit price in accordance with subparagraphs 6.08B.1 or 6.08B.2 above.

C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75% of the estimated quantity indicated on the Schedule of Bid Prices, an adjustment in compensation will not be made unless Developer submits a COR in accordance with Paragraph 6.03. If Developer so requests, the quantity of said Item performed will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined based on the direct costs per unit, including fixed costs described under subparagraph 6.08B.1, and markup for overhead and profit as provided in Paragraph 6.06, of the total quantity of Work performed under said Item, provided however, that in no case shall the payment for such Work be less than that which would be made at the unit price Bid therefor.

2. The payment for the total pay quantity of such Item of Unit Price Work will in no case exceed the payment which would be made for the performance of 75% of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price Bid therefor.

3. At the City's option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08C.1 and 6.08C.2 above.

ARTICLE 7 – TIME

7.01 PROGRESS AND COMPLETION

A. Developer shall commence the Work of the Contract within 5 days from the start date established in the Notice to Proceed issued by the City for that Phase of Work and shall diligently and continuously prosecute that Phase of the Work to its completion.

B. No demolition, removal, or reconstruction Work at the Site shall be started until Developer has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and a Notice to Proceed has been issued by the City for Work to start.

C. The continuous prosecution of the Work by Developer shall be subject only to the delays defined in Paragraph 7.02. The start of Work shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions;

preparation and submittal of shop drawings, equipment lists, schedule of values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.

D. The Work of Phase 1 of this Agreement (Design and Site Work) shall be considered complete when the City approves the 100% Construction Documents and Developer completes site Work undertaken during the Design Phase to the City's satisfaction.

E. The Work of Phase 2 of this Contract shall be brought to Substantial Completion and Final Completion, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in the Agreement, from and after the official start date established in the written Notice to Proceed.

1. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by the authority having jurisdiction over the Work.

2. During the time between Substantial Completion and Final Completion, Developer shall complete the punch list work, but Developer shall not disrupt the City's beneficial occupancy of the Project or any public use of the Work.

3. Final Completion is a condition precedent to final payment. The City will issue final payment to Developer acknowledging that the Project is complete and the Work is acceptable to the City.

4. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 13.03.

F. Developer shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion of the Project within the specified limits of Contract Time required by the Contract Documents. Developer shall not start the Work unless it has sufficient equipment and materials available for the Project to allow diligent and continuous prosecution of the Work.

G. Developer shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. Developer is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its schedule and complete the Work within the specified limits of Contract Time. No additional compensation will be paid for such cooperation.

H. If, in the opinion of the City, Developer has fallen behind schedule according to Developer's most current and City-approved update of the progress schedule submitted as set forth in Paragraph 3.11, or if Developer delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Developer shall take some or all of the steps as follows to improve its progress at no additional cost to the City and shall submit operational plans to the City to demonstrate the manner in which the desired rate of progress will be regained:

1. increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;

2. increase, when permitted in writing by the City, the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;

3. reschedule activities to achieve maximum practical concurrence of accomplishment of activities;

4. expedite delivery of materials and equipment such as by airfreight;

5. accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with the Supplier should such priority lists exist as a normal course of its business; and

6. any other means deemed appropriate by the City.

I. The City may direct Developer to take steps enumerated in subparagraph 7.01H for the convenience of the City and if Developer is not at fault. Should the City Representative direct Developer to take measures previously described, the City will reimburse Developer for reasonable costs of complying.

J. Should Developer at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to enter Default and terminate the Contract for cause as set forth in Paragraph 14.01.

7.02 DELAYS AND EXTENSIONS OF TIME

A. Unavoidable Delays: Pursuant to section 6.22(h)2(C) of the Administrative Code and for the purposes of the Contract Documents the term

Unavoidable Delay shall mean an interruption of the Work beyond the control of Developer that could not have been avoided by Developer's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.11, Developer shall demonstrate that the Unavoidable Delay actually extends the most current Contract Substantial Completion date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Developer (i.e., Avoidable Delays).

1. Non-compensable Delay/Time Extension.

Developer will be entitled to only a non-compensable time extension for the following types of Unavoidable Delay: Acts of God (as used herein, includes only earthquakes in excess of a magnitude 3.5 on the Richter Scale and tidal waves); acts of the public enemy; adverse weather conditions (in excess of the number of days specified in Paragraph 7.02C); fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Developer to procure labor; material shortages; inability of Developer to procure material; fuel shortages; freight embargoes; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the Project; the prevention by the City of Developer from commencing or prosecuting the Work; the prevention of Developer from commencing or prosecuting the Work because of the acts of others, excepting Developer's Subcontractors and Suppliers of all tiers; the prevention of Developer from commencing or prosecuting the Work because of failure of the City to furnish the necessary materials, when required by the Contract Documents and when requested by Developer in the manner provided in the Contract Documents; and inability to procure or failure of public utility service.

a. Whenever Developer has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Developer shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.

b. In addition, Developer shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief, filing appropriate charges with the

National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may be appropriately utilized as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Developer fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Developer-caused delay under any and all applicable provisions of the Contract Documents.

2. Compensable Delay/Time Extension.

Developer shall be entitled to a compensable time extension for an Unavoidable Delay caused solely by (i) the failure of the City to furnish necessary rights-of-way in accordance with the schedule set forth in the Contract Documents; (ii) failure by the City to deliver materials or equipment shown in the Contract Documents to be furnished by the City in accordance with the schedule specified in the Contract Documents where such failure is not the result of any default or misconduct of Developer; (iii) the failure of the City to perform some other contract obligation where such failure is not the result of any default or misconduct of Developer; (iv) the suspension of the Work by the City for its own convenience or benefit where such decision is not the result of any default or misconduct of Developer; or (v) a materially differing site condition per Paragraph 3.05, provided such City-caused Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Developer-caused delay (Avoidable Delay) or other type of Unavoidable Delay as previously defined (not caused by the City). If for any reason one or more of the conditions prescribed above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining a compensable time extension. All other types of Unavoidable Delay shall not entitle Developer to a compensable time extension. Refer to Paragraph 7.03 for more information regarding compensable delay.

a. Float or slack time within the base line schedule belongs to the Project and is an expiring resource available to City or Developer as needed to meet Milestones or complete the Work within the Project Time. Accordingly, Developer acknowledges and agrees that any City-caused delays on the project may be offset by City-caused time savings (including, but not limited to, the return of critical path submittals in less time than allowed under the Contract Documents, approval of substitution or value engineering requests which result in savings of time along the Critical Path). In such event Developer shall not be entitled to receive a compensable time

extension until all City-caused time savings are exceeded and the Contract Time is also exceeded.

b. Early Completion Schedule: If Developer submits a base line schedule that shows a completion time that is earlier than the Contract Time, the float shall belong to the Project. Developer shall not be entitled to a compensable time extension for any Change Order, Unilateral Change Order or City-caused delay that causes the early completion date to be extended within the float.

3. Concurrent Delay: Developer shall be entitled to only a non-compensable time extension in the event that a City-caused (otherwise compensable) delay is concurrent with either a Developer-caused delay or a non-compensable Unavoidable Delay.

B. Avoidable Delays: The term Avoidable Delay shall include, but is not limited to, the following:

1. any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Developer or its subcontractors or suppliers of any tier; or

2. any delay in the prosecution of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or

3. any delay caused by the untimely review by Developer of the Contract Drawings and Specifications pursuant to subparagraph 3.03C; or

4. any delay resulting from the City responding to Developer-generated RFIs in accordance with subparagraph 6.02B; or

5. any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time.

6. Developer shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs or damages for delay, disruptions, hindrances or interferences (including without limitation interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of Avoidable Delay.

C. Adverse Weather Delays:

1. Adverse weather shall not be a prima facie

reason for the granting of a non-compensable time extension, and Developer shall make every effort to continue work under prevailing conditions. Such efforts by Developer shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.

2. The City may classify an adverse weather day as a non-compensable Unavoidable Delay, provided Developer made efforts to work during adverse weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and Developer is prevented by adverse weather or conditions from proceeding with at least 75% of the scheduled labor, material and equipment resources for at least 5 hours per work day on activities shown as critical on the most current and City-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and Developer will be granted a non-compensable time extension.

3. Regardless of the type and severity of the adverse weather, Developer shall be responsible for all costs of its efforts to mitigate the impacts of adverse weather to its schedule during the Contract Time.

4. Adverse weather shall mean rain, windstorm, flood, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather as provided herein and which are proven by Developer to be detrimental to the progress of the Work. Developer shall plan the Work to allow for the following number of days of inclement weather during normal working hours:

<u>Month</u>	<u>Rain Days</u>	<u>Month</u>	<u>Rain Days</u>
January	3	July	0
February	3	August	0
March	3	September	0
April	1	October	1
May	0	November	3
June	0	December	3

a. Developer's progress schedule shall incorporate prudent allowance for the anticipated number of days of inclement weather specified herein.

b. The Contract Time allowed for completion of Work specified in Contract Time and Liquidated Damages (Section 00 73 02) is predicated on the anticipated number of days of inclement weather specified herein.

c. Developer shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.

d. In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Developer has requested a time extension because of adverse weather.

e. In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Developer has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Developer shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.

D. Notice of Delay:

1. Pursuant to section 6.22(h)(2)(D) of the Administrative Code, Developer shall notify the City in writing promptly of all anticipated delays in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay. The City may take steps to prevent the occurrence or continuance of the delay, and the City may determine to what extent Substantial Completion is delayed thereby.

2. Said notice shall constitute an application for an extension of time and payment for a compensable time extension, if applicable, only if the notice requests such time extension, specifies whether Developer believes the time extension is compensable or non-compensable, sets forth Developer's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, and meets all requirements for a Notice of Potential Claim as set forth in Article 13, including the requirement that such Notice be submitted to the City within 10 days of the event which the Developer contends affected the performance of the Work.

3. The City's determination of whether an extension of time will be granted and whether the extension is compensable or non-compensable will be based on Developer's demonstration to the City's satisfaction that such Unavoidable Delays will extend Developer's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical

path.

4. If Developer does not submit a notice as set forth in subparagraph 7.02D.2, above, Developer thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Developer understands and agrees that no extension of time or adjustment of the Contract Sum will be granted by the City.

E. Extensions of Time:

1. In the event it is deemed necessary by the City to extend the time for completion of the Work to be performed under these Contract Documents beyond the specified limits of Contract Time specified in the Contract Documents, such extensions shall in no way release any guarantees or warranties given by Developer pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provision.

2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time.

3. The length of any extension of time shall be limited to the extent that the commencement, prosecution and completion of the Work are delayed by the event as determined by the City in accordance with section 6.22(h)(2)(D) of the Administrative Code.

4. Adjustments to the Contract Sum for compensable time extensions shall be per Paragraph 7.03.

5. Extensions of time that cumulatively extend the Contract Time in excess of 10% of the original contract duration as specified in the Agreement shall be subject to the approval of the Mayor (or the Mayor's designee).

6. In no event shall such extensions of time be granted subsequent to the date of Final Completion. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests which the City is entitled. Should Developer, any subcontractor of any tier or any supplier of any tier seek an extension of time for the completion of the Work under the provisions of this Paragraph 7.02, Developer and its subcontractor or supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.

7. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, the City Representative, the City's consultants, and their respective directors, officers, members, employees, and authorized representatives from responsibility of their own sole negligence, violation of law or other willful injury to the person or property of another.

7.03 ADJUSTMENTS TO THE CONTRACT SUM FOR COMPENSABLE DELAY/COMPENSABLE TIME EXTENSION

A. The Contract Sum will be adjusted for a compensable delay as specified in subparagraph 7.03C, below, if, and only if, Developer demonstrates that it is entitled to a compensable time extension per subparagraph 7.02A.2 and timely complies with the Notice of Delay requirements of these General Conditions.

B. Change Order, Unit Price and Force Account Work Excluded. The provisions of this Paragraph 7.03 and subparagraph 7.02A.2 do not apply to Change Order Work paid under Paragraphs 6.06(Cost of Change Order Work) or 6.08(Unit Price Work), or to Force Account Work performed under Paragraph 6.07. Developer's right to recovery of compensation, costs, expenses and damages for delay, disruption, hindrance and interference (including without limitation interruption of schedules, extended, excess or extraordinary field and home office overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of extras, changes, additions or deletions in the Work shall be limited to the adjustment of the Contract Sum (including without limitation the mark-ups specified) as set forth in Paragraphs 6.06 or 6.08 of these General Conditions. Those Paragraphs include markups to cover field and home office overhead costs. Overhead claims in excess of the markups specified are not allowed for Change Order Work, Force Account Work or Unit Price Work. The Contract Sum adjustment provisions set forth in Paragraphs 6.06 and 6.08 constitute the sole, exclusive and complete compensation that the City is obligated to pay Developer for all costs, expenses and damages incurred by Developer and its Subcontractors and Suppliers of all tiers associated with Change Order Work, Force Account Work or Unit Price Work.

C. Field Office Overhead – Daily Rate. If Developer meets the conditions for a compensable time extension specified in subparagraph 7.03A, above, then the City shall pay Developer such amount

as the City may find to be fair and reasonable compensation for such part of Developer's actual loss that was unavoidable. Fair and reasonable compensation shall be calculated as follows:

1. Within the time and in the format specified by the City, Developer shall submit a detailed listing of daily field office overhead cost components which are time related. The individual cost components shall represent costs which have been or will be incurred or increased as a sole or direct result of the compensable time extension. This listing may include without limitation onsite project management, supervision, engineering, and clerical salaries; onsite office utilities and rent; onsite company vehicles and their operating expenses; site maintenance, safety and security expenses.

2. The listing of the daily field office overhead cost components described above must be based on the Developer's actual field office overhead costs. This listing must be submitted with the first Notice of Delay that includes a request for a compensable time extension. If Developer's time-related daily field office overhead cost changes for subsequent compensable delays, then the Developer shall submit a new overhead rate based on the Developer's overhead costs at the time of the subsequent delay.

3. The daily field office overhead rate shall be multiplied by the number of days the Contract is to be extended. No markup for overhead and profit shall be allowed on the extended daily field office overhead cost.

4. The information submitted as required above shall be submitted in sufficient detail to allow review, and shall be prepared in accordance with generally accepted accounting principles. The City shall have the right to audit Developer's costs under Paragraph 2.08 of these General Conditions.

D. Extended Home Office Overhead. Absent extraordinary circumstances, extended home office overhead is not allowable. Extended home office overhead and its application to a compensable time extension will not be allowed unless Developer demonstrates to the satisfaction of the City that each and every of the following conditions apply to the delay period: (i) the delay was caused by the City and meets the conditions of Paragraph 7.02A.2; (ii) such City-caused delay was of an indefinite (unknown) duration; (iii) the City-caused delay suspended most, if not all, project Work; (iv) the City-caused delay resulted in a substantial disruption or decrease in the income stream from the project; (v) during the City-caused delay, Developer was required to remain ready to resume Contract Work immediately; and (vi) Developer was unable to secure comparable replacement work due solely to the said delay from this project during the impacted period to replace the

reduced cash flow from this project. If Developer believes that it may be entitled to extended home office overhead, it must notify the City through the Notice of Delay process specified in subparagraph 7.02D, above. Within the time and in the format specified by the City, Developer shall submit detailed evidence of entitlement and the requested rate, including all supporting evidence from which the City may make a determination (including an audit by a California-licensed Certified Public Accountant if the City so requests). Supporting evidence shall be prepared in accordance with generally accepted accounting principles, and the City shall have the right to audit Developer's submittal. If the City determines that extended home office overhead is available, then the City shall have the discretion to determine the methodology for calculation of the rate.

E. Credit for Change Order and Force Account Markups. If Developer timely requests additional compensation for a compensable delay in accordance with the Contract, and the City determines Developer entitlement to additional compensation for such delay, then the City will adjust the amount payable to Developer for the compensable delay by deducting a fair and reasonable credit to account for additional overhead paid to Developer under the markups specified in Paragraph 6.06 for Change Order Work and Force Account Work, including markups from changes performed and paid under bids items (i.e. unit priced and contingency allowance bid items). The baseline credit amount will be five (5) percent of the value of all Change Order Work and Force Account Work performed by Developer under the Contract prior to and during the compensable delay period (but excluding any future Change Order Work and Force Account Work). If the City seeks a credit in excess of five (5) percent, then the City will provide Developer with supporting documentation. Such supporting documentation may include, at the City's discretion, the results of an audit or examination of documents performed under Paragraph 2.05. If Developer seeks either a credit of less than five (5) percent or objects to the credit amount proposed by the City, then Developer shall timely provide the City with supporting documentation. Such supporting documentation shall include the results of an audit performed by a CPA at Developer's cost if so requested by the City.

7.04 LIQUIDATED DAMAGES

A. Determination of Damages:

1. The actual fact of the occurrence of damages and the actual amount of the damages which the City would suffer if the Work were not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual

damages.

2. Damages which the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City Representatives and consultants; costs of administration, inspection and supervision; and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.

B. Agreed Amount of Damages: It is understood and agreed by Developer and City that if all the Work specified or indicated in the Contract Documents is not completed within the specified limits of Contract Time, or within such time limits as extended in accordance with Paragraph 7.02, actual damages will be sustained by the City in the event of and by reason of such delay.

1. Developer and City agree that the amount of liquidated damages set forth in the Agreement represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in the Agreement for Substantial Completion, as such date may be modified in accordance with the Contract Documents.

2. Developer and City agree that the amount of liquidated damages set forth in the Agreement represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Agreement for completing the punch list of remedial Work and achieving Final Completion, as such date may be modified in accordance with the Contract Documents.

3. It is therefore agreed that Developer shall pay such amount of liquidated damages as specified in the Agreement, and in case such amount is not paid, Developer agrees that the City may deduct the amount therefor from any money due or that may become due Developer under the Contract.

C. Payment of Damages:

1. Should Developer become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments as provided in Paragraph 9.06 which would otherwise be due or become due Developer until the liability of Developer has finally been determined.

2. The City shall have the right to use and apply such retained percentages, in whole or in part,

to reimburse the City for all liquidated damages due or to become due to the City. Any remaining balance of such retained percentages shall be paid to Developer only after discharge in full of all liability incurred by Developer.

3. If the retained percentage is not sufficient to discharge all such liabilities of Developer, Developer and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full.

4. Should the retention of moneys due or to become due to Developer be insufficient to cover such damages, Developer shall pay forthwith the remainder to the City.

ARTICLE 8 – INSPECTION AND CORRECTION OF WORK

8.01 UNCOVERING OF WORK

A. No Work or portion of Work shall be covered until inspected by the City or other public authorities having jurisdiction as required by the Contract Documents.

B. If any part of the Work is covered contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Developer must, upon written request, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this subparagraph shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.

C. Should the City or other public authorities having jurisdiction wish to either (i) re-inspect a portion of the Work that has been covered by Developer in compliance with subparagraph 8.01A, above, or (ii) inspect a portion of the Work that has been covered by Developer which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Developer shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust

the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Developer shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

8.02 TESTS AND INSPECTIONS

A. All testing and inspection of the Work required by the Contract Documents (other than special inspections as set forth in subparagraph 8.02B below) shall be arranged and paid for by Developer through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.

B. Special inspections to be performed by the City as specified in the Contract Documents or as required to comply with the Code or other agency having jurisdiction shall be performed at the City's expense. Developer shall give the City Representative, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 10 working days notice, excluding weekends and City holidays, of when and where such special inspections are required so the City may arrange for the appropriate City representatives and inspectors, and representatives from other public authorities having jurisdiction, to be present to perform the necessary inspections or tests.

1. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.

C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in subparagraph 8.02A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City shall bear such costs except as otherwise provided in subparagraph 8.02D.

D. If such testing, inspection or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, Developer shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.

1. If the City's observation of any inspection or testing undertaken pursuant to this Paragraph 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (i) with the requirements of the Contract Documents or (ii) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction with respect to the performance of the Work, then the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable.

2. Developer shall bear all costs thereof, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Paragraph 8.02 nor any decision made by the City Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Developer, any subcontractor, or any of their agents or employees, or any other person performing any of the Work.

E. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Developer from Developer's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.

F. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective materials shall not be construed:

1. to imply acceptance of such Non-conforming Work or materials; or

2. as barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or

3. to relieve Developer from the responsibility of correcting Non-conforming Work or materials.

G. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by Developer and furnished to the City in accordance with the Specifications.

H. Developer shall provide promptly all facilities, labor, equipment, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid

unreasonable delay in the Work.

1. The City reserves the right to charge to Developer any additional cost of inspection, including travel, transportation, lodging, etc., or test when the Work, material or workmanship is not ready for testing or inspection at the specified time.

8.03 CORRECTION OF NON-CONFORMING WORK AND GUARANTEE TO REPAIR PERIOD

A. Developer shall (i) correct Non-conforming Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (ii) replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Non-conforming Work or correction of Non-conforming Work. Developer shall promptly commence such correction, replacement, repair, or restoration upon notice from the City Representative, but in no case later than 10 working days after receipt of such notice; and Developer shall diligently and continuously prosecute such correction to completion. Developer shall bear all costs of such correction, replacement, repair, or restoration, and all damages resulting from such Non-conforming Work, including without limitation additional testing, inspection, engineering, and compensation for City Representative's services and expenses (including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services). This Subparagraph shall not be interpreted to provide for recovery of attorney's fees.

B. The term "Guarantee to Repair Period" means a period of one (1) year, unless a longer period of time is specified in the General Requirements or other Contract Documents or prescribed by applicable laws and regulations, commencing as follows:

1. For any Work not described as incomplete in the Punch List / Final Completion, on the date of Substantial Completion.

2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion per Paragraph 9.07 (Partial Utilization), as established in a Notice of Partial Utilization.

3. For all Work other than B.1 and B.2, above, from the date of Final Completion.

C. The requirement to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced items, or such longer period as may be specified in the Contract Documents or mutually agreed to by Developer and City.

D. If Developer fails to commence correction of Non-conforming Work or fails to diligently prosecute such correction within 10 working days of the date of written notification from the City, the City may correct the Non-conforming Work or may remove it and store the salvageable materials or equipment at Developer's expense. If Developer does not pay the costs of such removal and storage within 5 working days after written notice, the City may sell, auction, or discard such materials and equipment. The City will credit Developer's account for the excess proceeds of such sale, if any. The City will deduct from Developer's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing such salvageable materials and equipment, and discarding the materials and equipment, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Developer shall reimburse the City

E. If immediate correction of Non-conforming Work is required for life safety or the protection of property and is performed by City or a separate contractor, Developer shall pay to the City all reasonable costs of correcting such Non-conforming Work. Developer shall replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such Non-conforming Work or the correction of such Non-conforming Work.

F. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of subcontractors of any tier or suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.

G. Developer's obligations under this Paragraph 8.03 are in addition to and not in limitation of its warranty obligations under Paragraph 3.19 or any other obligation of Developer under the Contract Documents. Enforcement of Developer's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Non-conforming Work. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of Developer under the Contract Documents. Establishment of correction periods for Non-conforming Work relate only to the specific obligations of Developer to correct the Work and in no way limits either Developer's liability for Non-conforming Work or the time within which proceedings may be commenced to enforce Developer's obligations under the Contract Documents.

8.04 ACCEPTANCE OF NON-CONFORMING WORK

If, in the sole and unfettered judgment of the City, it is undesirable or impractical to repair or replace any Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Developer shall rebate moneys previously paid by the City.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.01 CONTRACT SUM

A. Payment to Developer at the Contract Sum shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work; for performing and completing all Work in accordance with the requirements of the Contract Documents; and for all expenses incurred by Developer for any purpose incidental to performing and completing the Work.

B. Whenever the Contract Documents specify that Developer is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed or such materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such materials is included in Developer's Total Bid Price.

9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

A. Within 30 days after receipt of the Notice to Proceed, Developer shall submit a detailed cost breakdown items of the Work, coordinated with the progress schedule. This breakdown shall be referred to as the schedule of values and shall serve as the basis for progress payments for lump sum items. The City will not issue any progress payments until the City has reviewed and accepted Developer's schedule of values.

1. The specific format, detail and submittal requirements for the schedule of values shall be as directed by the City to facilitate and clarify progress payments to Developer for completed Work.

2. The sum of the individual costs listed in the schedule of values for each lump sum item shall equal the Contract Sum.

3. Unless otherwise provided in the Contract Documents, Developer's overhead, profit, insurance,

bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal the Contract Sum.

B. The City will review and return Developer's schedule of values with comments. Developer shall make all corrections requested by the City and resubmit for approval.

1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Developer's schedule of values.

2. Developer's schedule of values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Developer's Items as component parts of the Work.

C. Upon concurrence by the City, the City will issue a written formal approval of Developer's schedule of values. If the City later determines that the schedule of values is insufficient or incorrect, Developer shall make an adjustment as specified in subparagraph 9.02B.1.

9.03 PROGRESS PAYMENTS

A. Subject to the conditions set forth in these General Conditions, and to the authorization of the City or the authorized representatives of the City, payment shall be made upon demand of Developer and pursuant to the Contract Documents as follows.

B. On the 25th day of each month, Developer shall submit to the City for review an Application for Payment, on a form approved by the City and signed by Developer, covering the Work completed by Developer as of the date of the Application and accompanied by supporting documentation demonstrating completion of a specified portion of the Work.

1. The monthly value of Items of Work shall be estimated by Developer pursuant to the schedule of values prepared in accordance with Paragraph 9.02. Developer's estimates need not be based on strict measurements but shall consist of good-faith approximations and shall be proportional to the total amount, considering payments previously made, that becomes due for such Work satisfactorily completed in accordance with the requirements of the Contract Documents.

C. The Application for Payment shall identify the amount of Developer's total charges to date.

D. Monthly progress payment amounts to Developer shall be based upon completed Work or percentages of Work completed prior to the end of the payment period. Except as provided in subparagraph 9.10, no allowance will be made for materials or equipment not incorporated into the Work.

E. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by Developer. Submission of approved monthly progress schedule updates for same period as the Application for Payment shall be a condition precedent to making progress payment Applications. No partial progress payment shall be made to Developer until all cost information requested by the City is submitted and reviewed.

F. Consistent with San Francisco Mayor's Executive Directive 12-01, Developer shall include its Subcontractors' and Suppliers' acceptable invoices with the Monthly Application for Payment that it submits no later than 30 days after receipt of such invoices from its Subcontractors, and Suppliers.

G. As soon as practical after estimating the progress of the Work, the City will pay to Developer in a manner provided by law an amount based upon Contract prices, of labor and materials incorporated in the Work at the Site until midnight of the 25th day of the current month, less the aggregate of the amount of previous payments. Payments, however, may be withheld at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.06.

1. The City shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a payment request and the required documentation including, without limitation, certified payrolls, and Contract Monitoring Division program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in Administrative Code section 6.22(j)(7).

H. No inaccuracy or error in said monthly estimates shall operate to release Developer or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.

I. In accordance with the provisions of section 22300 of the California Public Contract Code, Developer will be permitted to substitute securities for any moneys withheld by the City to ensure performance under the Contract under the following conditions:

1. At the request and expense of Developer, securities listed in section 16430 of the California Government Code, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Developer which are equivalent to the amount

withheld under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Developer. Upon satisfactory completion of the Project and all Work under the Contract, the securities shall be returned to Developer.

2. Developer shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.

3. Developer shall enter into an escrow agreement with the City Controller using a form provided by the City (Escrow Agreement for Security Deposits in Lieu of Retention), specifying the amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Developer, and termination of escrow upon completion of the Contract.

J. The granting of any progress payment, or the receipt thereof by Developer, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of Developer to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.

K. It is mutually understood and agreed that the City may withhold from any payment otherwise due Developer such amounts as may be necessary to protect the City to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Developer shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.

1. If any payment or portion of payment is withheld by the City, City will notify Developer in writing of the cause(s) of such action.

L. Only Change Orders and undisputed portions of Unilateral Change Orders completely approved and executed by the City shall be included on the payment authorization, and only that portion of the Change Order Work actually performed shall be submitted for payment. Developer shall submit a breakdown for each Change Order by Change Order number on its Application for Payment.

M. Submission of Electronic Certified Payrolls. No monthly progress payments will be processed until Developer has submitted weekly certified payrolls to the City for the applicable time period. Certified payrolls shall be prepared pursuant to Section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and materials incorporated into the Work.

1. Developer shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the World Wide Web through a web browser. The Developer and each Subcontractor and Supplier will be assigned a log-on identification and password to access the PRS.

2. Use of the PRS may require Developer, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Developer's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.

3. The City will provide basic training in the use of the PRS at a scheduled training session. Developer and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.

4. Developer shall comply with the requirements of subparagraph 9.03M at no additional cost to the City.

5. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Developer's failure to make a timely and accurate submittal of certified payrolls.

N. No monthly progress payments will be processed until Developer has also submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period.

1. Developer shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR.

O. Developer Prompt Payment. Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of section 6.22(q) of the Administrative Code, Developer shall pay its Subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Developer and the Subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Developer to a Subcontractor, the Developer may withhold the disputed amount but shall pay the undisputed amount. If Developer violates the provisions of Section 6.22(q), then Developer shall pay to the Subcontractor directly the penalty specified in Section 6.22(q).

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 17-0028

WHEREAS, By Resolution No. 15-0241 on November 10, 2015, this Commission approved a Memorandum of Understanding (MOU) with the General Services Agency (GSA)'s Office of Contract Administration (OCA) of the City and County of San Francisco (City) and the GSA's Real Estate Division (RED), establishing the terms and conditions of the jurisdictional transfer of the property at 1800 Jerrold in San Francisco (1800 Jerrold) to the SFPUC, OCA and RED, agreeing to incur costs and pay OCA the total amount of \$73,700,000 to accomplish the jurisdictional transfer of 1800 Jerrold to the SFPUC, provided that OCA agrees to obtain or construct the necessary functionally equivalent facilities for Central Shops, and relocate by June 2018; and

WHEREAS, By Resolution 15-0265 on December 8, 2017, this Commission approved revisions to the MOU, and authorized SFPUC to enter into transactions to acquire the property interests necessary for the relocation of Central Shops, subject to Board of Supervisors approval. On December 22, 2015, the Board of Supervisors (Board File No. 151215) authorized the SFPUC to undertake the following property transactions to acquire sites for the replacement facilities for Central Shops: execution and acceptance of a ten-year lease by and between the City and Four Fifty Toland, LLC for a leased site at 450 Toland Street (Leased Site) with an initial rental amount of \$735,600 per year; the execution and acceptance of a Purchase and Sale Agreement by and between the City and the Selby and the Hudson Corporation, for the real property located at 555 Selby Street for \$6,300,000; the execution and acceptance of a Purchase and Sale Agreement by and between the City and W.Y.L. Five Star Service Industries, Inc. for the real property located at 1975 Galvez Avenue for \$5,000,000; and

WHEREAS, The purchased properties at 555 Selby Street and 1975 Galvez Street are referred to as the Acquired Sites, and there are currently tenants in possession on both Sites; and

WHEREAS, On February 10, 2016, the Board of Supervisors (Board File No. 151226) authorized the jurisdictional transfer of the Leased and Acquired Sites to OCA, and the transfer of 1800 Jerrold Avenue to SFPUC, subject to the terms of the MOU, as revised, and authorized OCA to execute a Project Development Agreement with Oryx LLC for Phase I of the development, design and construction of Central Shops replacement facilities, provided that Board approval is required for authorization to proceed with Phase II of the Agreement for construction; and

WHEREAS, On February 18, 2016, the Board of Supervisors (Board File No. 160021) authorized the appropriation of SFPUC funds in the amount of \$62,200,000 in FY 2015-16 for use by OCA to construct the new Central Shops facilities; and

WHEREAS, The Director of Property has determined that an amount not to exceed \$2,200,000 is required to obtain possession of the Acquired Sites; and

WHEREAS, Public Works has determined the negotiated Guaranteed Maximum Price (GMP) for Phase 2 of the Project Development Agreement is \$5,200,000 more than estimated due to development of design details, unforeseen site conditions, higher bids, escalation and expedited schedule costs due to site control delays; and

WHEREAS, SFPUC will designate \$250,000 for the relocation of existing PG&E service and a \$2,025,000 project contingency; and

WHEREAS, SFPUC staff, together with staff of GSA and PW negotiated the terms of the Amendment No. 1 to the MOU, (Amended MOU) on file with the Commission Secretary for this agenda item, which provides for revisions to certain specified terms and conditions of the proposed jurisdictional transfers; and

WHEREAS, The MOU, as so amended, provides that the SFPUC, GSA and PW will seek the approval by the Board of Supervisors and the Mayor, as required to implement the Central Shops jurisdictional transfer and Central Shops project construction and

WHEREAS, On October 28, 2015, the Environmental Review Officer determined the proposed jurisdictional transfer of 1800 Jerrold to the SFPUC is categorically exempt as Class 32: In-Fill Development categorical exemption under section 15332 of the California Environmental Quality Act (CEQA); now, therefore, be it

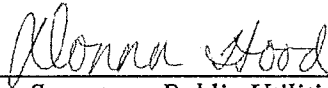
RESOLVED, That this Commission authorizes the General Manager to enter into the Amendment No. 1 to the MOU with OCA and RED, in substantially the form on file with the Commission Secretary, establishing the terms of the jurisdictional transfer of 1800 Jerrold in exchange for payment of not to exceed \$82,278,429 (Transfer Price) from Project Number CWWSIPRPL91 for relocation of Central Shops to functionally equivalent facilities, based upon the value determined by the City's Director of Property, subject to approval by the Board of Supervisors and the Mayor of the jurisdictional transfer of 1800 Jerrold to the SFPUC consistent with the terms of the Amended MOU, and approval of related actions necessary to implement the Amended MOU; and be it

FURTHER RESOLVED, That any deviation to this allocation of SFPUC funds transferred to OCA shall require the prior written approval of the SFPUC's General Manager; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to seek the approval of the Mayor and the Board of Supervisors of an appropriation in the amount of \$8,578,429 from Wastewater Enterprise Project Number CWWSIPRPL91 if necessary to implement the Amended MOU.

FURTHER RESOLVED, That this Commission approves the terms and conditions of Amendment No. 1 to the MOU and authorizes the General Manager of the SFPUC to execute Amendment No. 1 and enter into any amendments or modifications to the MOU, including without limitation, modification, addition, or deletion of exhibits and to enter into any related documents, instruments, memorandum, or other agreements reasonably necessary to consummate the transaction contemplated in the MOU, that the General Manager determines, in consultation with the City Attorney, are in the best interests of the City; do not materially increase the liabilities or obligations of the SFPUC or materially diminish the benefits to the SFPUC; are necessary or advisable to effectuate the purposes and intent of the MOU or this Resolution; and comply with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of February 14, 2017.



Secretary, Public Utilities Commission

AMENDED IN COMMITTEE

1/27/16

FILE NO. 151226

ORDINANCE NO. 8-16

1 [Waiver of Certain Contract Requirements for Project Delivery Agreement for New Central
2 Shops Facilities - Oryx Development I, LLC - \$55,000,000 Project Cost; Interdepartmental
3 Property Transfers]

4 **Ordinance approving and authorizing the Director of Property of the General Services**
5 **Agency's Real Estate Division ("RED") to execute a Project Delivery Agreement with**
6 **Oryx Development I, LLC, a Nevada limited liability company ("Developer" or "Oryx") for the**
7 **design and construction of proposed improvements to future City owned real estate at**
8 **555 Selby Street and 1975 Galvez Avenue (Assessors Block 5250, Lot 15, Assessors**
9 **Block 5250, Lot 16), and tenant improvements to future City leased property at 450**
10 **Toland Street (Assessors Block 5230, Lot 18), to create new facilities for the relocation**
11 **of the City's Central Fleet Maintenance Shop ("Central Shops") from 1800 Jerrold**
12 **Street (portions of Assessors Blocks 5262 and 5270), with total anticipated project**
13 **delivery cost of \$55,000,000 from San Francisco Public Utilities Commission ("SFPUC")**
14 **Wastewater Enterprise funds; exempting the project from certain contracting**
15 **requirements in Administrative Code Chapter 6 by waiving the requirements of**
16 **Administrative Code Sections 6.61(b) and 6.61(c)(1) – (4), and approving the selection**
17 **of Oryx Development I, LLC as Developer, and Developer's selection of FM&E**
18 **Architecture & Design as a Subcontractor to serve as the Project Architect and Charles**
19 **Pankow Builders, Ltd. as a Subcontractor to serve as General Contractor, without**
20 **competitive bidding; authorizing the jurisdictional transfer of 1800 Jerrold Street, from**
21 **General Services Agency's Office of Contract Administration ("OCA") to the SFPUC**
22 **Wastewater Enterprise, and the jurisdictional transfer of 555 Selby Street and 1975**
23 **Galvez Avenue, and the leasehold of 450 Toland Street, from the SFPUC to OCA,**
24 **subject to the terms and conditions of the Memorandum of Understanding entered into**
25 **between the RED, OCA and SFPUC; and finding the proposed transactions are in**

1 conformance with the City's General Plan, and the eight priority policies of Planning
2 Code, Section 101.1.

3 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
4 **Additions to Codes** are in *single-underline italics Times New Roman font*.
5 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
6 **Board amendment additions** are in double-underlined Arial font.
7 **Board amendment deletions** are in ~~Arial font~~.
8 **Asterisks (* * * *)** indicate the omission of unchanged Code
9 subsections or parts of tables.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. Findings.

12 A. Under companion legislation on file with the Clerk of the Board of Supervisors in
13 File No. 151215 (the "Companion Resolution"), the Director of Property would be authorized
14 to acquire real property located at 555 Selby Street and 1975 Galvez Avenue (Assessors
15 Block 5250, Lot 15, Assessors Block 5250, Lot 16), and execute a lease for property located
16 at 450 Toland Street (Assessors Block 5230, Lot 18) (collectively, the "Project Site") using
17 SFPUC Wastewater Enterprise ("WWE") funds for WWE purposes. If the Companion
18 Resolution and this Ordinance are adopted and final, jurisdiction over the Project Site would
19 be transferred to OCA to create new facilities for the relocation of the City's Central Shops
20 from 1800 Jerrold Avenue (portions of Assessors Blocks 5262 and 5270), to facilitate the
21 timely jurisdictional transfer of 1800 Jerrold Avenue to the SFPUC Wastewater Enterprise.

22 B. In 1946, the City acquired real property for the construction of the North Point
23 Sludge Treatment Plant near Islais Creek, now commonly known as the Southeast Water
24 Pollution Control Plant ("Southeast Plant"), including purchase of Assessor's Block 5262 in its
25 entirety, and later the City purchased the portion of Assessor's Block 5270 for that same
purpose. Since the 1960's, the City's Central Shops, a facility providing repair services to the
City's non-revenue vehicle fleet, has been located on a portion of Assessor's Block 5262, Lot

1 No. 009, with an address of 1800 Jerrold Avenue. The OCA holds jurisdiction over 1800
2 Jerrold Avenue, where the City's Department of Technology Public Safety Division is also
3 located.

4 C. The City owned property at 1800 Jerrold Avenue is approximately 6 acres in
5 size and located adjacent to the Southeast Plant. The Southeast Plant facilities are in need of
6 substantial maintenance, repair and replacement, and the adopted WWE Capital Plan
7 includes an allocation over the next ten years of \$164,000,000 toward treatment plant
8 improvements, together with various other allocations for repairs and replacements. The
9 SFPUC seeks to secure a large parcel of land in proximity to the Southeast Plant to support
10 capital improvements necessary to maintain essential utility services, and there is a very
11 limited supply of such available land. OCA would consent to a jurisdictional transfer of 1800
12 Jerrold Avenue to the SFPUC, provided that OCA receives compensation sufficient to enable
13 occupancy of functionally equivalent facilities and for necessary incurred relocation expenses.

14 D. The OCA, SFPUC and RED have entered into a Memorandum of
15 Understanding, which is on file with the Clerk of the Board of Supervisors under File No.
16 151226 (the "MOU"), to establish the terms and conditions of such jurisdictional transfers.
17 The City's Director of Property has determined that the current fair market value of 1800
18 Jerrold Avenue is less than the reasonable and necessary expense required to relocate
19 Central Shops to facilities that are functionally equivalent to Central Shops' existing facilities,
20 including property acquisition costs, rent, development, design and construction of
21 replacement improvements.

22 E. City staff have developed a conceptual design for the Project Site that meets the
23 operational needs of Central Shops, and involves the demolition of all existing improvements
24 at 555 Selby Street and 1975 Galvez Avenue, and new construction of an approximately
25 54,000 square foot, 35-foot-high building to be used for maintenance and repair of medium

1 and heavy duty vehicles, such as fire trucks, heavy equipment transporters, dump trucks,
2 and street sweepers, as well as for administrative offices, support functions, and employee
3 amenities; and tenant improvements to 450 Toland Street modifying the existing
4 approximately 45,000 square foot building's interior to provide for three functional programs
5 (Light Duty Vehicle Shop, Body/Paint Shop, and Ladder Shop), associated building systems, and
6 related employee amenities (collectively, the "Proposed Project"). The MOU provides that
7 SFPUC will pay OCA not to exceed \$55,000,000 for the cost of OCA's Proposed Project on the
8 Project Site, inclusive of contingencies and Developer fee.

9 F. On October 28, 2015, the Planning Department's CEQA Coordinator Timothy
10 Johnston issued a notice that this project is categorically exempt under California
11 Environmental Quality Act (CEQA) Guidelines Section 15332 (Infill Development, Class 32).
12 The Planning Department, through General Plan Referral letter dated November 5, 2015,
13 which is on file with the Clerk of the Board of Supervisors under File No. 151226, has verified
14 that the City's acquisition of 1975 Galvez Avenue and 555 Selby Street, and lease of 450
15 Toland Street, together with the jurisdictional assignments and transfers noted herein, are all
16 consistent with the General Plan and the Eight Priority Policies under the Planning Code
17 Section 101.1.

18 G. Due to time constraints brought on by the challenges of finding suitable relocation
19 sites for Central Shops in the current extraordinarily competitive real estate market for industrial
20 land, and the SFPUC's pressing need for land to accommodate its WWE capital improvement
21 program by the summer of 2017, the Director of Property informally approached entities
22 capable of executing the Proposed Project and identified one team reasonably available and
23 deemed capable of carrying out the Proposed Project within the time frame required and
24 within the budget developed. The City ~~and~~ Oryx, LLC, the Developer, subsequently
25 entered into negotiations for a Project Delivery Agreement (the "PDA") for Oryx to complete

1 the development, design and construction of the Proposed Project, subject to obtaining
2 authorization to waive the competitive selection requirements in Administrative Code Chapter
3 6, Sections 6.61(b) and 6.61(c) (1) – (4).

4 H. Under the proposed PDA, Oryx shall enter into, manage, monitor, and oversee
5 all contracts required to complete the Proposed Project for the City (the “Developer
6 Services”). The Developer has selected, subject to City approval, FM&E Architecture and
7 Design (the “Architect”) as the architect and Charles Pankow Builders, Ltd, (the “General
8 Contractor”), as the general contractor for the Proposed Project. The Developer shall
9 negotiate, with assistance from the Director of Property consulting with the Director of Public
10 Works, contracts with the Architect and the General Contractor for the design and
11 construction of the Proposed Project. Such contracts, and all other contracts required for the
12 completion of the Proposed Project (the “Project Contracts”), will be entered into by Developer
13 as set forth in the proposed PDA.

14 I. The OCA, RED and SFPUC have determined that the design-build project
15 delivery method is necessary and appropriate to achieve anticipated time efficiencies and that
16 the use of the design-build project delivery method is in the public’s best interest. The
17 proposed PDA is a design-build agreement with two phases. During the first phase, for a
18 negotiated price of ~~not more than teneight million threefour~~ hundred thirty thousand dollars
19 (\$~~810,300~~430,000), the Developer and its approved subcontractors will completed design of
20 the proposed improvements, permitting and initial construction work to prepare the Project
21 Site and install piles. The proposed PDA would obligate the Developer to design the project
22 based on RED and OCA’s budget of fifty five million dollars (\$55,000,000), and in recognition
23 of the City’s desire to obtain beneficial occupancy by June 29, 2017. When its Architect
24 completes 100% construction drawing to the City’s satisfaction, the Developer will provide the
25 City with a proposed Guaranteed Maximum Price and schedule establishing the duration for

1 completion of the construction work. If the Guaranteed Maximum Price does not exceed \$55
2 million, and the schedule is acceptable, the City may authorize the second phase of the
3 contract, and issue a Notice to Proceed to the Developer for the construction, subject to
4 approval by the Mayor and Board of Supervisors, in their sole and separate discretion. If the
5 Guaranteed Maximum Price of the Proposed Project exceeds the \$55 million in SFPUC funds
6 as provided in the MOU, then OCA and RED will work with the Developer to amend the scope
7 of the Proposed Project to bring it within budget, or seek the Mayor and Board's approval of
8 supplemental authorization.

9 J. Entering into the PDA with Oryx is appropriate and in the City's best interests. If
10 the Proposed Project is developed, the City would functionally replace existing Central Shops
11 at 1800 Jerrold Avenue with a state of the art facility in close proximity to the existing
12 operation. The development would involve significant participation of local trades and
13 businesses to bolster the local economy. ~~Based upon the information provided by the Office~~
14 ~~of Public Finance and the Real Estate Director~~ The Proposed Project is required in order to
15 meet the needs of the SFPUC Wastewater Enterprise capital program, as determined by the
16 SFPUC in Commission Resolution No. 15-0241, and SFPUC is funding the Proposed Project
17 under the terms of the MOU, therefore, the Board finds that the Proposed Project is exempt
18 from the provisions of financially feasible consistent with Administrative Code Chapter 29,
19 pursuant to Section 29.1(c)(4) of Chapter 29.

20 K. The SFPUC unanimously approved Resolution No. 15-0241 on November 10,
21 2015, authorizing the SFPUC General Manager to execute the MOU, subject to approval by
22 the Board of Supervisors and the Mayor of the jurisdictional transfer of 1800 Jerrold Avenue to
23 the SFPUC consistent with the terms of the MOU, and setting forth the total amount of costs
24 to be incurred and paid by SFPUC of seventy three million, seven hundred thousand dollars
25 (\$73,700,000), which is the not to exceed sum agreed upon in the MOU to acquire and lease

1 the Project Site and complete necessary improvements and relocate Central Shops to
2 functionally equivalent facilities. On December 8, 2015, the SFPUC will consider a revised
3 resolution, consistent with this Ordinance, and if approved, that SFPUC resolution will be on
4 file with the Clerk of the Board of Supervisors under File No. 151226. If both the proposed
5 Companion Resolution and the Proposed Ordinance become effective, the Project Site
6 acquired by the SFPUC will be placed under the jurisdiction of OCA, subject to the condition
7 that if Central Shops fails to occupy, vacates, or ceases to use the acquired property for
8 Central Shop functions (the "Triggering Event"), OCA will owe payment to SFPUC within thirty
9 (30) days after the Triggering Event in an amount equal to the unamortized value of the
10 acquisition and improvement cost of 555 Selby Street and 1975 Galvez Avenue. The
11 amortization schedule shall be straight-line depreciation of land and improvements over thirty
12 (30) years, commencing on the date of receipt of a Temporary Certificate of Occupancy
13 ("TCO"), with a first year value of \$50,000,000. For example purposes only, should the TCO
14 date be June 1, 2017, and the Triggering Event date be June 1, 2037, the payment amount
15 due SFPUC shall be \$16,666,666 (20 years of 30 years total = 0.33 remaining life,
16 \$50,000,000 x 0.33 = \$16,666,666).

17 L. The Director of Property, SFPUC General Manager, and Director of Purchasing
18 all recommended to the Mayor that the SFPUC can more advantageously use 1800 Jerrold
19 Avenue and that jurisdiction to 1800 Jerrold Avenue be transferred to SFPUC, and that
20 jurisdiction to the Project Site be assigned to OCA, in accordance with the terms and
21 conditions of the MOU.

22 Section 2. Waiver of Administrative Code Chapter 6, Section 6.61 (b) and 6.61(c) (1) –
23 (4). The Board of Supervisors recognizes that this Proposed Project is slated to occur at one
24 of the most robust construction periods in the history of San Francisco, and as such, there are
25 limited availabilities of design and construction teams led by a developer entity willing and

1 able to perform the Proposed Project within the budget and timeline provided by the City.
2 Accordingly, the design and construction of the Proposed Project by Developer shall not be
3 subject to the requirements of Administrative Code Chapter 6, Sections 6.61(b) and 6.61(c)(1)
4 – (4), which would otherwise require a competitive selection process for the proposed design-
5 build PDA. The Board of Supervisors approves the selection of the Developer, the Architect,
6 and the General Contractor as set forth in the PDA, without competitive bidding, and
7 authorizes OCA and RED to enter into the proposed PDA, subject to the Mayor's approval.
8 Competitive bidding for subcontracting opportunities shall be as set forth in the subcontract
9 between Developer and the General Contractor, as approved by the City in accordance with
10 the terms of the proposed PDA, and that subcontract will comply with the procedures and
11 requirements regarding procurement of trade work (subcontractors) consistent with
12 Administrative Code Chapter 6, Section 6.61(c)(5). The proposed PDA shall also require
13 compliance with Administrative Code Chapter 6, Sections 6.61, subsections (d) (e) (f) and (g),
14 among other provisions, which incorporate by reference City requirements governing contract
15 terms and working conditions in Administrative Code Chapter 6, Section 6.22, including but
16 not limited to provisions for Insurance, Prevailing Wage, Local Hiring, Liquidated Damages,
17 Bonds, City Right to Terminate for Convenience, Employment of Apprentices, Contractor
18 Prompt Payment to Subcontractors, and Administrative Code Chapters 12 and 14.

19 Section 3. Jurisdictional Transfers between SFPUC and OCA. The Planning
20 Department, through General Plan Referral letter dated November 5, 2015 ("Planning Letter"),
21 which is on file with the Clerk of the Board of Supervisors under File No. 151226, has verified
22 that the City's acquisition of 1975 Galvez Avenue and 555 Selby Street, and lease of 450
23 Toland Street, together with the jurisdictional assignments and transfers noted herein, are all
24 consistent with the General Plan and the Eight Priority Policies under the Planning Code
25 Section 101.1. The Board finds that the Proposed Project, and jurisdictional transfers of 1800

1 Jerrold Avenue from OCA to SFPUC and the Project Site from SFPUC to OCA, subject to the
2 terms and conditions of the MOU, is consistent with the City's General Plan and Eight Priority
3 Policies of Planning Code Section 101.1 and incorporates the Planning Letter by this
4 reference as though fully set forth in this Ordinance. Based on the recommendation of the
5 Directors of Property and Purchasing, the SFPUC General Manager, and the Mayor, the
6 jurisdiction of 1800 Jerrold Avenue shall be transferred to the SFPUC, and the jurisdiction of
7 the Project Site shall be transferred to OCA, subject to the terms and conditions of the MOU.

8 Section 4. Additions, Amendments, and Modifications. The Board of Supervisors
9 authorizes the Director of Property to enter into any additions, amendments, or other
10 modifications to the PDA, and any other documents or instruments in connection with same,
11 that the Director of Property and the City Administrator determine, following consultation with
12 the City Attorney, are in the City's best interests, do not materially decrease the City's benefits
13 or materially increase the City's obligations or liabilities, and are appropriate and advisable to
14 complete the proposed transaction, such determination to be conclusively evidenced by the
15 execution and delivery by the Director of Property and the City Administrator of any such
16 additions, amendments, or other modifications.

17 Section 5. Effective and Operative Dates. This ordinance shall become effective 30
18 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
19 returns the ordinance unsigned or does not sign the ordinance within 10 days of receiving it,
20 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall

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become operative upon its effective date or upon adoption of the Companion Resolution,
whichever is later.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Noreen Ambrose
Deputy City Attorney

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City and County of San Francisco

Tails Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 151226

Date Passed: February 09, 2016

Ordinance approving and authorizing the Director of Property of the General Services Agency's Real Estate Division ("RED") to execute a Project Delivery Agreement with Oryx Development I, LLC, a Nevada limited liability company ("Developer" or "Oryx"), for the design and construction of proposed improvements to future City owned real estate at 555 Selby Street and 1975 Galvez Avenue (Assessor's Block No. 5250, Lot No. 15, Assessor's Block No. 5250, Lot No. 16), and tenant improvements to future City leased property at 450 Toland Street (Assessor's Block No. 5230, Lot No. 18), to create new facilities for the relocation of the City's Central Fleet Maintenance Shop ("Central Shops") from 1800 Jerrold Street (portions of Assessor's Block Nos. 5262 and 5270), with total anticipated project delivery cost of \$55,000,000 from San Francisco Public Utilities Commission ("SFPUC") Wastewater Enterprise funds; exempting the project from certain contracting requirements in Administrative Code, Chapter 6, by waiving the requirements of Administrative Code, Sections 6.61(b) and 6.61(c)(1) - (4), and approving the selection of Oryx Development I, LLC as Developer, and Developer's selection of FM&E Architecture & Design as a Subcontractor to serve as the Project Architect, and Charles Pankow Builders, Ltd. as a Subcontractor to serve as General Contractor, without competitive bidding; authorizing the jurisdictional transfer of 1800 Jerrold Street, from General Services Agency's Office of Contract Administration ("OCA") to the SFPUC Wastewater Enterprise, and the jurisdictional transfer of 555 Selby Street and 1975 Galvez Avenue, and the leasehold of 450 Toland Street, from the SFPUC to OCA, subject to the terms and conditions of the Memorandum of Understanding entered into between the RED, OCA and SFPUC; and finding the proposed transactions are in conformance with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

January 27, 2016 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

January 27, 2016 Budget and Finance Committee - RECOMMENDED AS AMENDED

February 02, 2016 Board of Supervisors - PASSED ON FIRST READING

Ayes: 8 - Breed, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

Noes: 3 - Avalos, Campos and Peskin

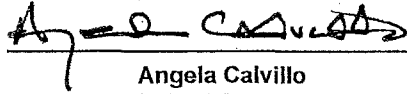
February 09, 2016 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Breed, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

Noes: 3 - Avalos, Campos and Peskin

File No. 151226

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/9/2016 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



Mayor

2/10/16

Date Approved

AMENDED IN COMMITTEE

12/9/15

FILE NO. 151215

RESOLUTION NO. 525-15

1 [Real Property Lease - 450 Toland Street - Four Fifty Toland, LLC - \$735,600 per Year -
2 Purchase and Sale Agreements - 555 Selby Street, and 1975 Galvez Avenue - Selby and
3 Hudson Corporation, W.Y.L. Five Star Service Industries - \$6,300,000 and \$5,000,000]

4 **Resolution authorizing the execution and acceptance of a Lease by and**
5 **between the City and County of San Francisco and Four Fifty Toland, LLC, a**
6 **California Limited Liability Company, for the real property located at 450 Toland**
7 **Street with an initial lease amount of \$735,600 per year; the execution and**
8 **acceptance of a Purchase and Sale Agreement by and between City and Selby**
9 **and Hudson Corporation, a California corporation, for the real property located**
10 **at 555 Selby Street for \$6,300,000; the execution and acceptance of a Purchase**
11 **and Sale Agreement by and between the City and W.Y.L. Five Star Service**
12 **Industries, Inc., a California corporation, for the real property located at 1975**
13 **Galvez Avenue for \$5,000,000; and finding the proposed transactions are in**
14 **conformance with the City's General Plan, and the eight priority policies of**
15 **Planning Code, Section 101.1.**

16
17 WHEREAS, The SFPUC now seeks to secure land necessary to support its
18 current and future obligation to provide essential utility services, and there is a very
19 limited supply of such available land in the vicinity of its existing facilities; and

20 WHEREAS, The Real Estate Division has identified, through both leasing and
21 purchase, of three separate properties, consisting of the purchases of 555 Selby
22 Street and 1975 Galvez Avenue ("Acquisition Sites") and a long-term lease of 450
23 Toland Street ("Leased Site"); and

24 WHEREAS, On October 28, 2015, The Planning Department's CEQA
25 Coordinator Timothy Johnston issued a notice that this project is categorically exempt

1 under California Environmental Quality Act (CEQA) Guidelines Section 15332 (Infill
2 Development, Class 32); and

3 WHEREAS, The Planning Department, through General Plan Referral letter
4 dated November 5, 2015, ("Planning Letter"), which is on file with the Clerk of the
5 Board of Supervisors under File No. 151215, has verified that the City's acquisition of
6 1975 Galvez Avenue and 555 Selby Street, and lease of 450 Toland Street are all
7 consistent with the General Plan, and the eight priority policies under Planning Code,
8 Section 101.1; and

9 WHEREAS, The Director of Property, in consultation with the SFPUC,
10 negotiated a proposed Purchase and Sale Agreement for 555 Selby Street
11 (Assessor's Block No. 5250, Lot No. 015), which is on file with the Clerk of the Board
12 of Supervisors under File No. 151215 ("Selby Agreement"), with a purchase price of
13 \$6,300,000; and

14 WHEREAS, The Director of Property, in consultation with the SFPUC,
15 negotiated a proposed Purchase and Sale Agreement for 1975 Galvez Avenue
16 (Assessor's Block No. 5250, Lot No. 016), which is on file with the Clerk of the Board
17 of Supervisors under File No. 151215 ("Galvez Agreement"), with a purchase price of
18 \$5,000,000; and

19 WHEREAS, The Director of Property, pursuant to review of an independent
20 third party appraisal of 555 Selby Street, considering adjustments for time of sale,
21 determined that the proposed purchase prices in the Selby Agreement and Galvez
22 Agreement are reasonable and represent fair market value for the respective
23 properties to be acquired; and

24 WHEREAS, The Director of Property, in consultation with the SFPUC,
25 negotiated a proposed ten-year Lease Agreement for 450 Toland Street (Assessor's

1 Block No. 5230, Lot No. 018), which is on file with the Clerk of the Board of
2 Supervisors under File No. 1215 ("Toland Agreement"), with an initial year base lease
3 rate of \$735,600 per year, increasing 3% per year with two (2) additional five-year
4 renewal option terms; and

5 WHEREAS, The Director of Property, pursuant to review of available leasing
6 data in the Bayview submarket, determined that the proposed lease rate and terms in
7 the Toland Agreement are reasonable and represent fair market rental value for the
8 property to be leased; now, therefore, be it

9 RESOLVED, That the Board of Supervisors hereby finds that the acquisition of
10 555 Selby Street and 1975 Galvez Avenue, and lease of 450 Toland Street is
11 consistent with the City's General Plan and Eight Priority Policies of Planning Code
12 Section 101.1 and hereby incorporates such findings by reference as though fully set
13 forth in this Resolution; and, be it

14 FURTHER RESOLVED, That in accordance with the recommendation of the
15 Directors of Property, and the SFPUC General Manager, the jurisdiction of the
16 Acquisition Sites be assigned upon close of escrow to the SFPUC; and, be it

17 FURTHER RESOLVED, That the execution, delivery and performance of the
18 Lease is hereby approved and the Director of Property (or his designee) and the
19 Controller (or his designee) are hereby authorized to execute the Lease, in
20 substantially the form of Lease referenced herein, on behalf of the City and any such
21 other documents that are necessary or advisable to complete the transaction
22 contemplated by the Lease and effectuate the purpose and intent of this Resolution;
23 and, be it

24 FURTHER RESOLVED, That the execution, delivery and performance of the
25 Selby Agreement and Galvez Agreement is hereby approved and the Director of

1 Property (or his designee) and the Controller (or his designee) are hereby authorized
2 to execute the appropriate Purchase and Sale Agreements, in substantially the form
3 of Agreement referenced herein, on behalf of the City and any such other documents
4 that are necessary or advisable to complete the transaction contemplated by the
5 Agreement and effectuate the purpose and intent of this Resolution; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director
7 of Property (or his designee), in consultation with the City Attorney, and with the
8 approval of the Controller, to enter into any additions, amendments or other
9 modifications to the Lease and Purchase Agreements and any other documents or
10 instruments necessary in connection therewith, that the Director of Property
11 determines are in the best interests of the City, do not materially decrease the
12 benefits to the City with respect to the Property, do not materially increase the
13 obligations or liabilities of the City, and are necessary or advisable to complete the
14 transaction contemplated in the Lease and Purchase Agreements and that effectuate
15 the purpose and intent of this Resolution, such determination to be conclusively
16 evidenced by the execution and delivery by the Director of Property (or his designee)
17 of any such additions, amendments, or other modifications; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs
19 the Clerk of the Board of Supervisors, the Director of Property, the Controller, and the
20 SFPUC General Manager, and any other officer of the City involved in the
21 jurisdictional transfer to take all action necessary or appropriate to effectuate the
22 purpose of this Resolution; and, be it

23 FURTHER RESOLVED, That all actions authorized and directed by this
24 Resolution and heretofore taken are hereby ratified, approved and confirmed by this
25 Board of Supervisors; and, be it



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 151215

Date Passed: December 15, 2015

Resolution authorizing the execution and acceptance of a Lease by and between the City and County of San Francisco and Four Fifty Toland, LLC, a California Limited Liability Company, for the real property located at 450 Toland Street with an initial lease amount of \$735,600 per year; the execution and acceptance of a Purchase and Sale Agreement by and between City and Selby and Hudson Corporation, a California corporation, for the real property located at 555 Selby Street for \$6,300,000; the execution and acceptance of a Purchase and Sale Agreement by and between the City and W.Y.L. Five Star Service Industries, Inc., a California corporation, for the real property located at 1975 Galvez Avenue for \$5,000,000; and finding the proposed transactions are in conformance with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

December 09, 2015 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

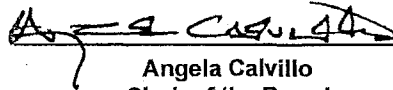
December 09, 2015 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 15, 2015 Board of Supervisors - ADOPTED

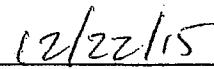
Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 151215

I hereby certify that the foregoing Resolution was ADOPTED on 12/15/2015 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved



RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO

2017 FEB 17 AM 11:50

TO: Angela Calvillo, Clerk of the Board
FROM: John Scarpulla, Policy and Government Affairs
DATE: February 17, 2016
SUBJECT: Amended Terms Interdepartmental Property Transfer –
 Increasing SFPUC’s Transfer Price to General Services
 Agency by \$8,578,429; Authorize Construction Phase Under
 Project Delivery Agreement with Oryx Development I, LLC

Attached please find an original and one copy of a proposed resolution authorizing the jurisdictional transfer of 1800 Jerrold Street, (portions of Assessors Blocks 5262 and 5270) from General Services Agency’s Office of Contract Administration (“OCA”) to the San Francisco Public Utilities Commission (“SFPUC”) Wastewater Enterprise, and the jurisdictional transfer of 555 Selby Street and 1975 Galvez Avenue (Assessors Block 5250, Lot 15, Assessors Block 5250, Lot 16), and the leasehold of 450 Toland Street (Assessors Block 5230, Lot 18) (collectively “Project Site”), from the SFPUC to OCA, subject to the amended terms and conditions of the Memorandum of Understanding entered into between the RED, OCA and SFPUC, increasing the total Transfer Price by \$8,578,429 to an amount not to exceed \$82,278,429, from SFPUC Wastewater Enterprise funds, to create functionally equivalent facilities for the relocation of the City’s Central Fleet Maintenance Shop (“Central Shops”) from 1800 Jerrold Street; authorizing the issuance of a Notice to Proceed for the construction phase under a Board of Supervisors’ authorized design-build Project Delivery Agreement with Oryx Development I, LLC (“Developer”) for the construction of facilities for relocation of Central Shops on the Project Site; and finding the proposed transactions are in conformance with the City’s General Plan, and the eight priority policies of Planning Code, Section 101.1.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. BOS Ordinance No. 8-16
3. SFPUC Resolution No. 17-0028
4. Original Memorandum of Understanding
5. Amendment No. 1 to the Memorandum of Understanding
6. Project Delivery Agreement
7. Amended and Restated Project Delivery Agreement
8. Redlined Amended and Restated Project Delivery Agreement
9. BOS Resolution No. 525-15

Please contact John Scarpulla at (415) 934-5782 if you need additional information on these items.

Edwin M. Lee
 Mayor
 Francesca Vietor
 President
 Anson Moran
 Vice President
 Ann Moller Caen
 Commissioner
 Vince Courtney
 Commissioner
 Ike Kwon
 Commissioner
 Harlan L. Kelly, Jr.
 General Manager



