

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~~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~~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 ~~on~~ 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 ~~1429~~ 1429 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 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.~~

2.4 ~~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 piles~~ 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 (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 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

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~~
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

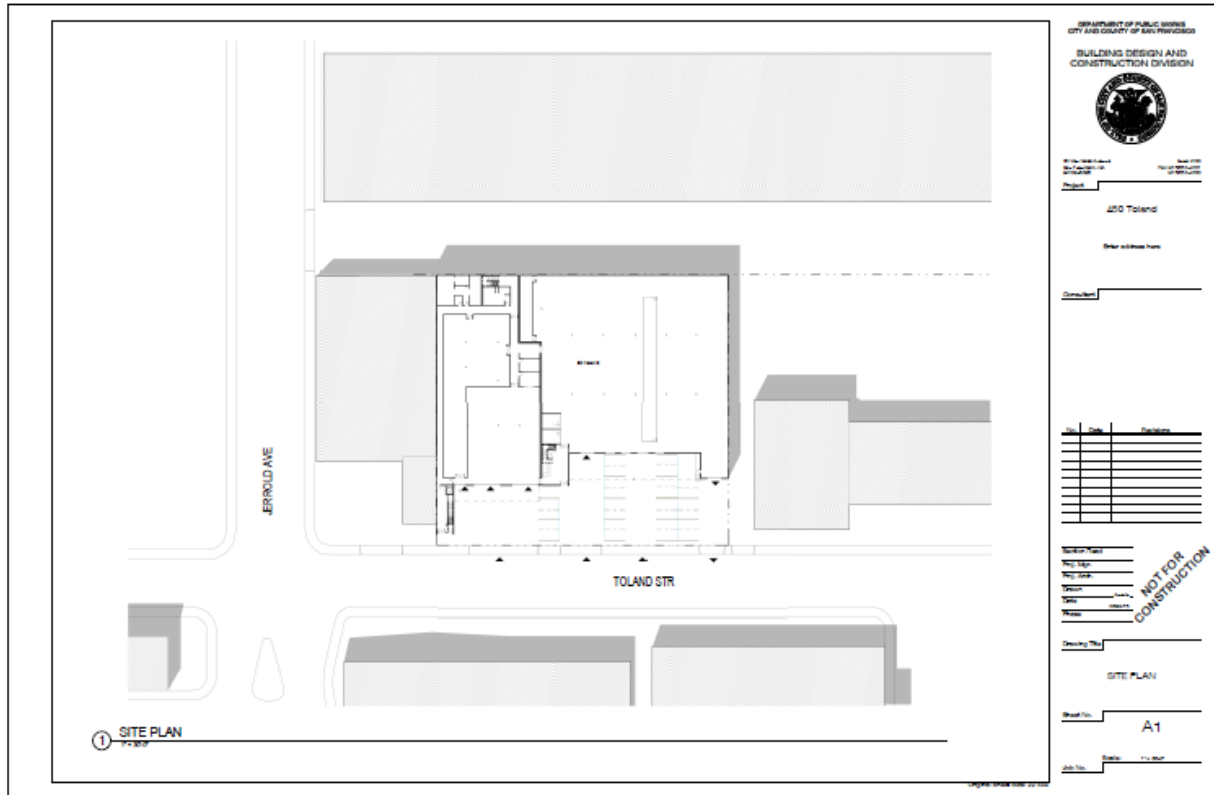


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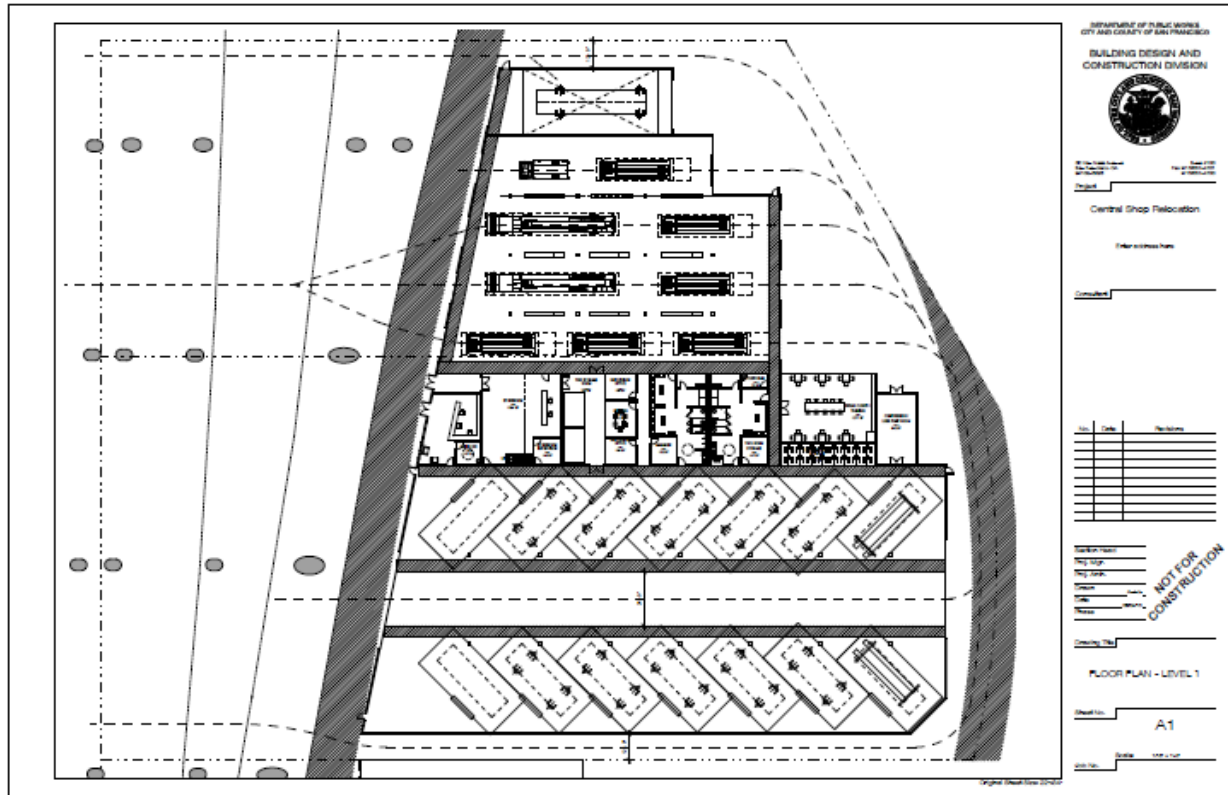


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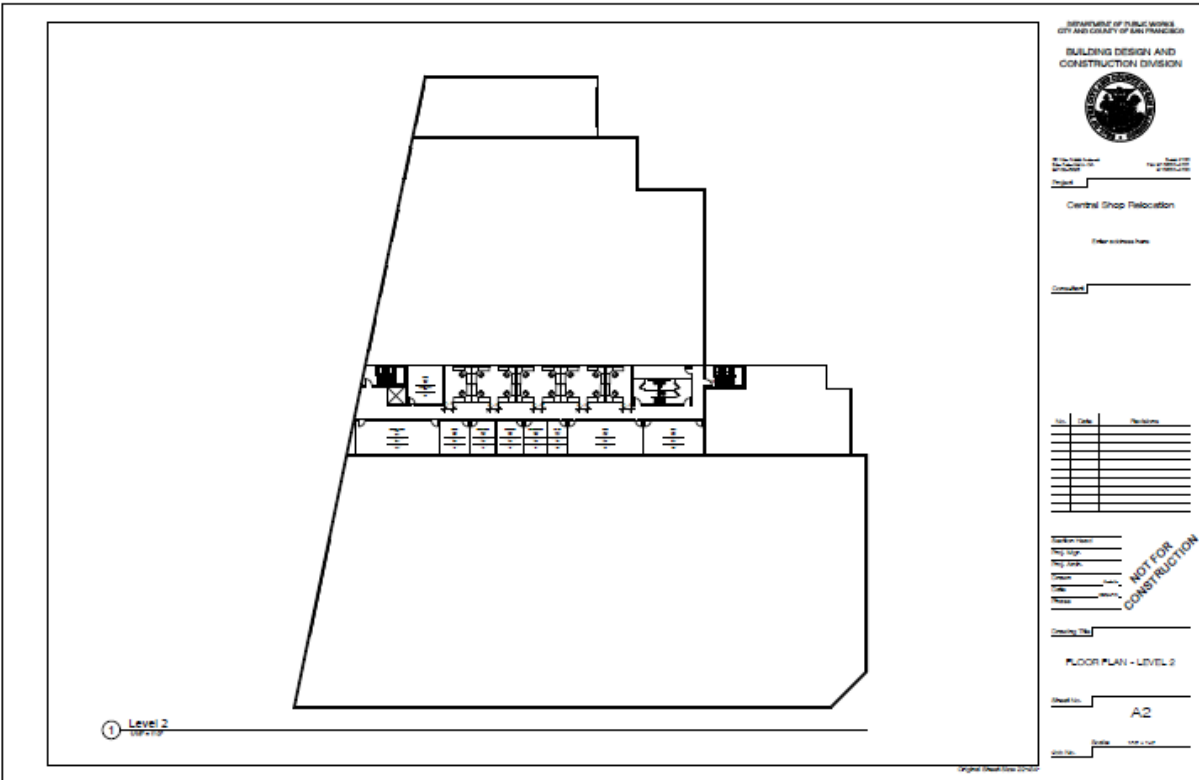


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GANNETT FLEMING, INC.
Suite 1900
3838 North Central Avenue
Phoenix, AZ 85012

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 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

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.



- 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

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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.



**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

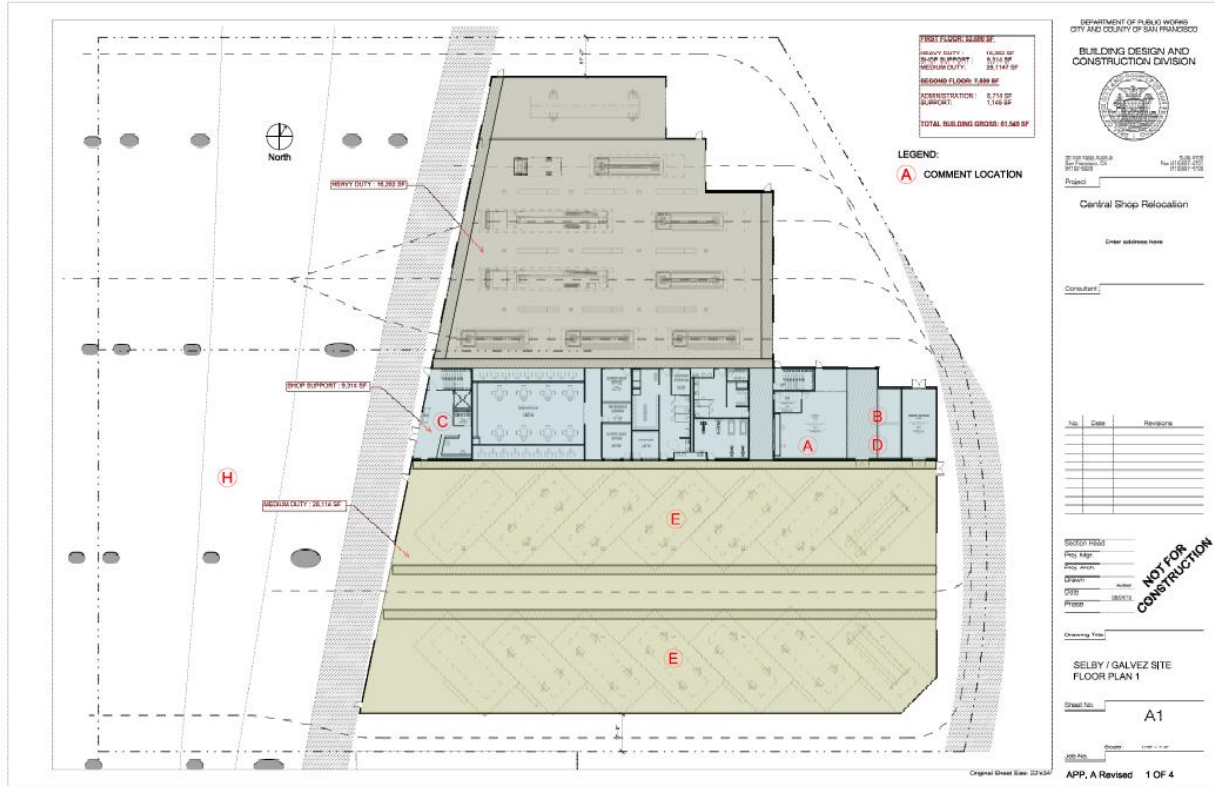


EXHIBIT B

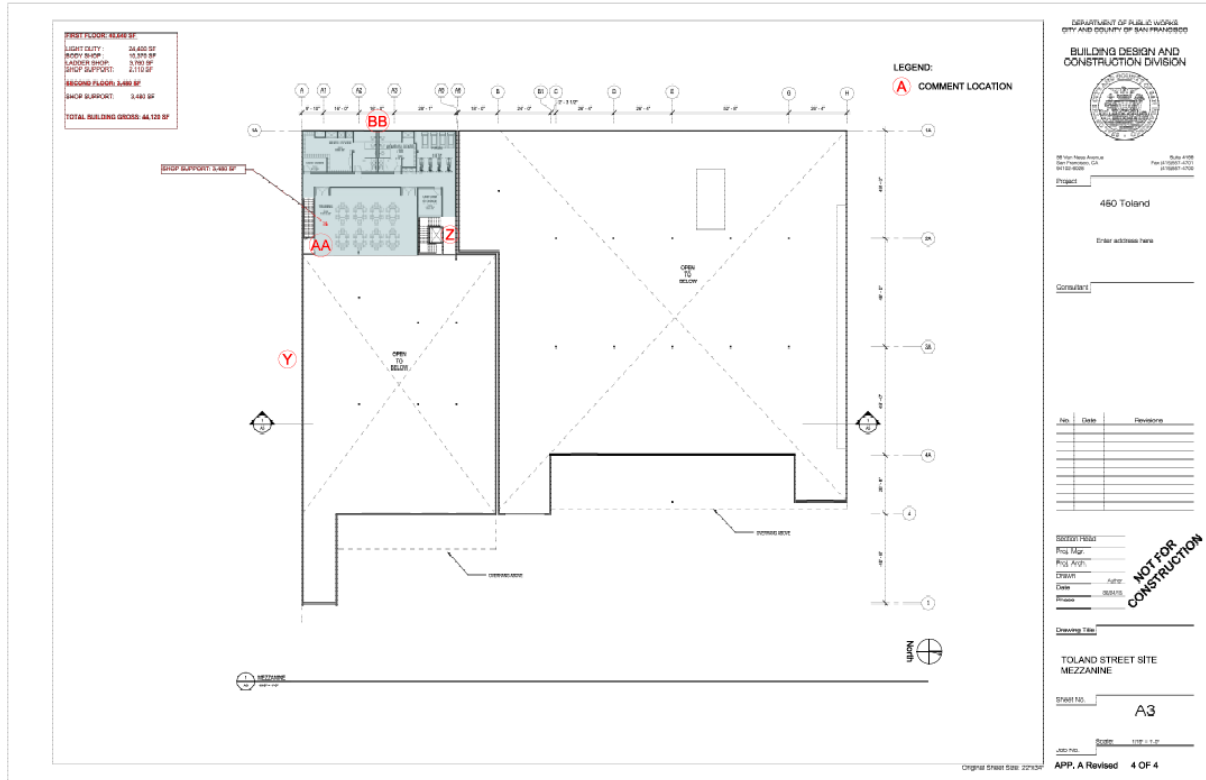


EXHIBIT B

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.

EXHIBIT C

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 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 C

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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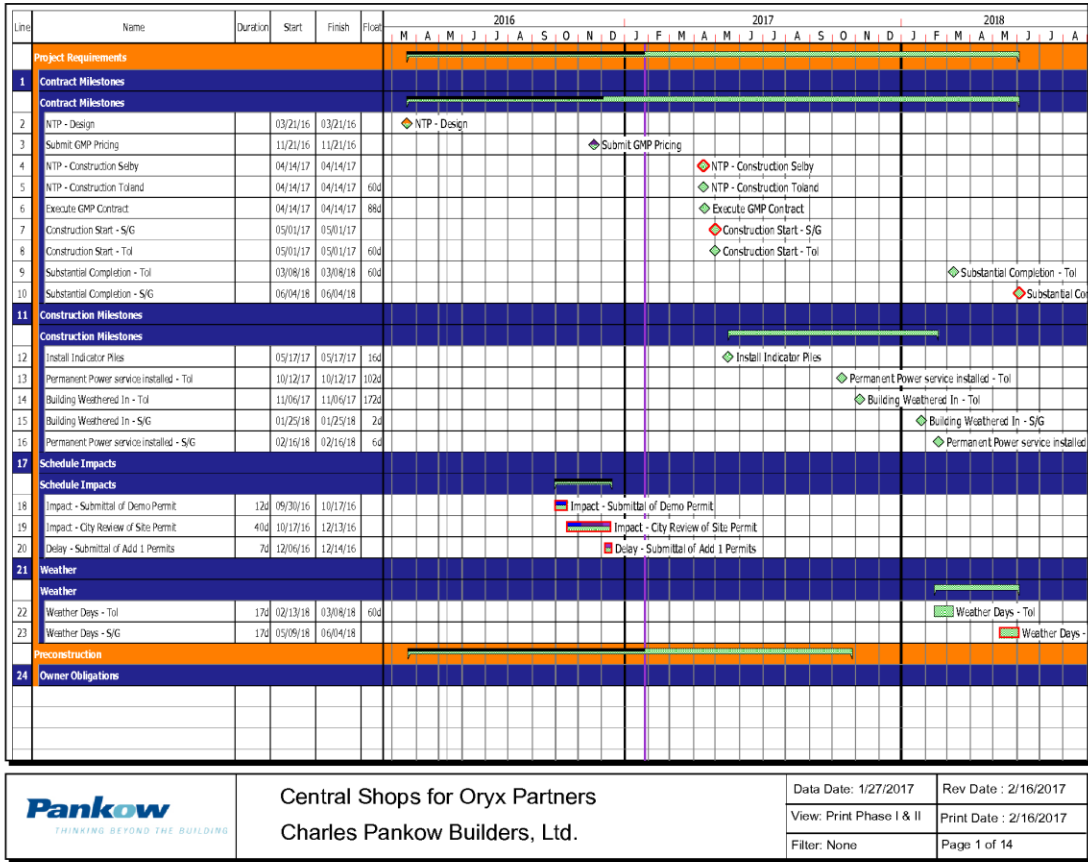
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EXHIBIT D

EXHIBIT D

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Central Shops for Oryx Partners
Charles Pankow Builders, Ltd.

Data Date: 1/27/2017

Rev Date: 2/16/2017

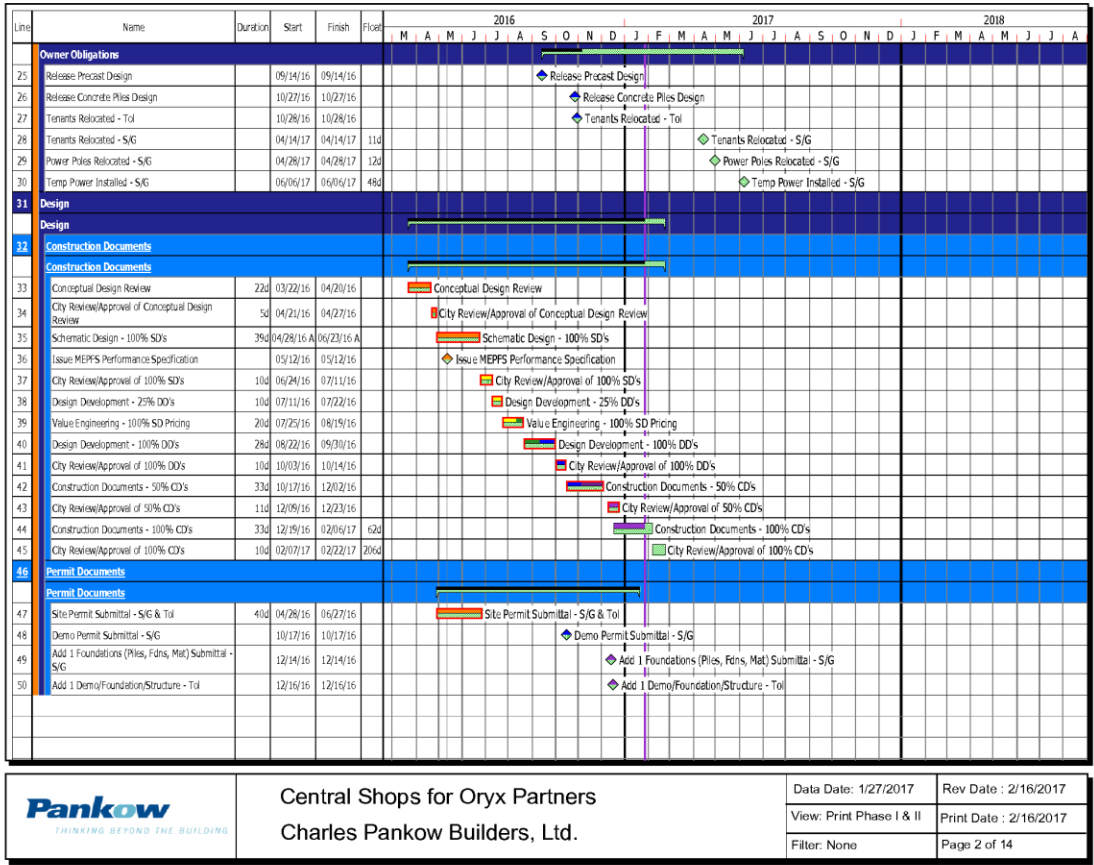
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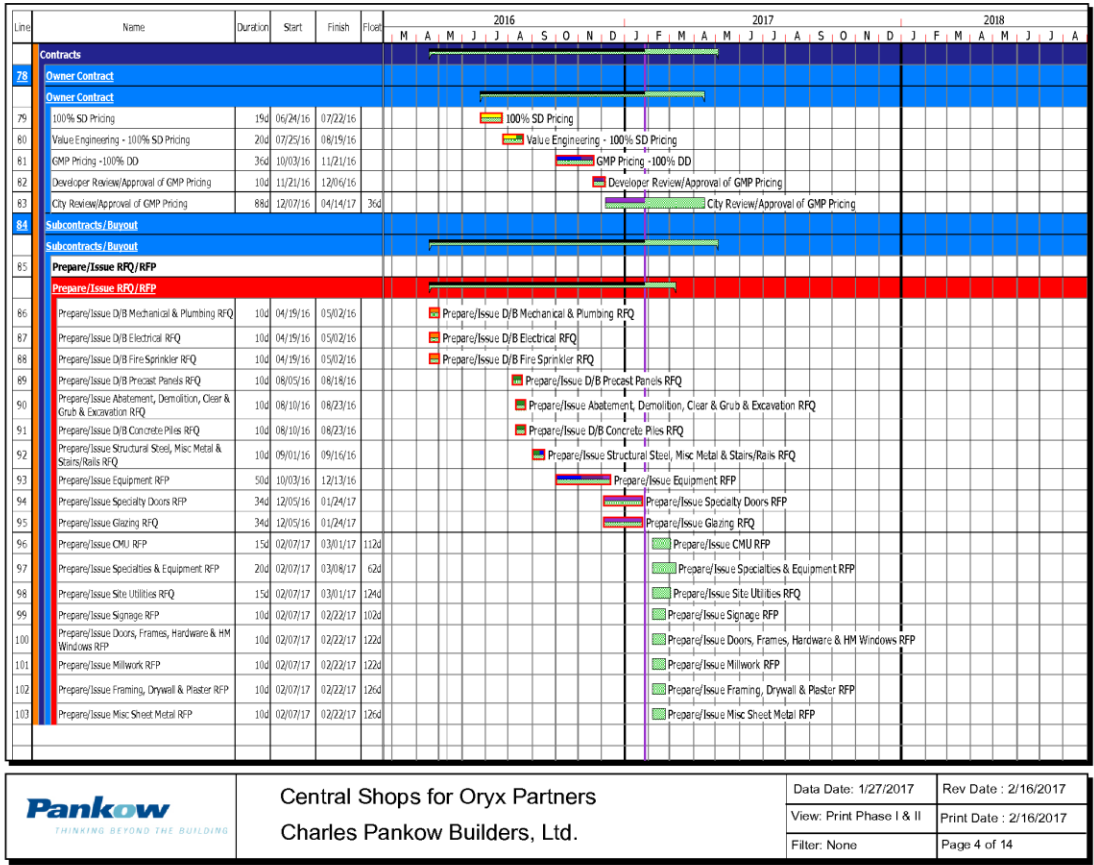
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Central Shops for Oryx Partners
Charles Pankow Builders, Ltd.

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Charles Pankow Builders, Ltd.

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EXHIBIT D

EXHIBIT E

Reserved

EXHIBIT E

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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 ~~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

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:

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

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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

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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 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.

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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.

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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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