CENTRAL SHOPS REPLACEMENT FACILITIES PROJECT

CONTRACT NO. 7994A

PROJECT DELIVERY AGREEMENT

Between

CITY AND COUNTY OF SAN FRANCISCO,

a charter city and county,

as the City

and

ORYX DEVELOPMENT I, LLC,

a Nevada limited liability company,

as Developer

Dated as of March 21, 2016

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EXHIBITS AND SCHEDULES ATTACHED HERETO

PROJECT DELIVERY AGREEMENT

THIS PROJECT DELIVERY AGREEMENT ("Agreement"), is made for the convenience of the parties this 22 day of March, 2016, by and between Oryx Development I, LLC, located at 1001 Van Ness Avenue, San Francisco, California ("Developer"), and the City and County of San Francisco, State of California (the "City"), acting through its Director of Real Estate ("Director").

RECITALS

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

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

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

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

acceptance of the Contract Time and the Contract Sum as being sufficient for completion of Phase One of the Work as hereinafter defined and development of proposals for Provision of Phase Two of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

1. Developer's Responsibilities

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

1.2 General Responsibilities.

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

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

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

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

(e) Developer shall Provide the City with all Phase One Work as set forth herein (Project design and construction of approved pre-Construction Phase site work),

including, but not limited to, all applicable investigations, analyses, surveys, engineering, design, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

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

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

1.3 Design Services.

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

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

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

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

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

(i) Mechanical,

(ii) Electrical,

(iii) Plumbing,

(iv) Fire Protection/Fire Suppression,

(v) Building Envelope/Curtain Wall,

(vi) Steel/Rebar,

(vii) Elevators,

(viii) Earthwork & Grading,

(ix) Site Utilities,

(x) Deep Foundations,

(xi) Abatement, and

(xii) Demolition

1.4 Construction Services.

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

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

1.5 Procurement and Award of Trade Subcontracts.

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

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

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

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

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

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

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

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

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

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

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

1.6 Developer Services. During the term of this Agreement, Developer shall Provide all Developer Services necessary for the Project's management, design, construction, completion, and delivery of the completed Project to the City. Developer shall Provide all design and construction services necessary for receipt of all occupancy permits and

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

(a) Developer shall timely pay any and all fees, charges, costs, expenses and other amounts properly due and payable by Developer under this Agreement.

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

1.7 Project Contracts.

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

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

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

1.8 Project Coordinator. Developer shall cooperate with the City in order to perform the Developer Services to ensure compliance with applicable deadlines and to cause the expeditious and timely completion of the Project. Developer designates Laura Billings as its representative who will serve as the primary contact with the City (the "Project Coordinator"). The Project Coordinator shall attend regularly scheduled preconstruction, construction and related meetings relating to the Project and report to the City regarding the same. In addition, Developer shall organize, prepare agendas and lead construction progress meetings on a regular basis for the City's personnel assigned to the Project, no less than weekly. Developer shall keep the City informed of all material matters relating to or affecting the Project. In such regard, the Project Coordinator shall communicate directly with the "City's Representative" on a regular basis, informing such person of all material events relating to the Project. In addition, Developer shall promptly and in a timely manner answer all inquiries the City may have with respect to the Project. Developer may change the designated Project Coordinator during the term of this Agreement with City's consent, which shall not be unreasonably withheld.

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

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

Developer shall be entitled to a non-compensable time extension, and the parties shall make an equitable adjustment to the Project Schedule.

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

2. Contract Sum

2.1 Contract Sum. The Contract Sum for Phase One is $10,300,000 as set forth on Exhibit A, which consists of the following amounts for specified portions of the Work:

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

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

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

(i) City shall pay Developer a Base Fee, which shall be calculated as 3.5% of project costs excluding costs for insurance, bonds, Management Fee, Change Orders, and unused contingencies (the "Base Fee"). The Base Fee for Phase One shall be paid in installments commencing with the first Application for Payment and monthly thereafter for a total of 14 payments of $70,500 each (the "Monthly Payments"). In the event that Phase One is completed prior to the payment of all of the Monthly Payments referred to above and if the City has not issued a NTP with construction for Phase Two to Developer, then all of the remaining unpaid Monthly Payments shall be due and payable at the completion of Phase One. If the City issues a NTP for Phase Two, the City shall pay Developer Base Fee amounts applicable to Phase Two. The City will pay Developer the Base Fee for Phase Two in prorated equal monthly installments until Final Completion.

(ii) The Bonus Fee applicable to Phase One (the "Phase One Bonus Fee") shall be lump sum of $393,000. The Phase One Bonus Fee shall be earned and payable only if Developer has completed all of its Phase One obligations hereunder within the Contract Time and for an amount equal to or less than the Contract Sum set forth in Section 2.1 herein. The Bonus Fee applicable to Phase Two (the "Phase Two Bonus Fee") shall be equal to 1.5% of project costs excluding costs for insurance, bonds, Management Fee, Change Orders, and unused contingencies for the performance of the Work under the Contract Documents for Phase One and Phase Two, less the amount of the Bonus Fee actually paid in connection with Phase One, so long as Developer has completed all of its Phase Two obligations within the Contract Time for Phase Two and for an amount equal or less than the Contract Sum for Phase Two.

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

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

2.3 Contingency Reserves: The GMP, the Phase One and Phase Two Budgets contain the following contingency reserves: Contractor's Contingency, Developer's Contingency and Indirect Costs Contingency (collectively the "Contingencies" or "Contingency Reserves") to cover unforeseeable changes in market conditions, cost to repair defective work not recovered from subcontractors or suppliers contingent on first exhausting all other potential avenues for

recovery such as insurance, errors in plans and drawings but only if the Architect's performance of the Work of creating the plans and drawings does not fall below the standard of care for design professionals performing similar work in the San Francisco bay area, purchasing gaps but only if Developer has first made diligent efforts to resolve the problem with the supplier, overtime and schedule acceleration if required to maintain or recover schedule delays not associated with Owner changes, and unanticipated costs arising from changes in circumstances that are beyond the reasonable control of and could not have been reasonably anticipated by Developer. The Developer's Contingency shall also include reserves to cover unforeseen conditions discovered after the commencement of the Work; provided, however, that none of the Contingencies shall be used to cover additional costs associated with Differing Site Conditions In addition, the Contingencies shall not be used to fund any increase in the cost of the Work associated with changes requested by the City to the Scope of Work or the Criteria Package, additional General Conditions, overtime and extended overhead, failures of subcontractors or supplier, subcontractor disputes directed at Developer, or losses beyond Developer's insurance coverage..

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

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

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

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

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

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

2.5 Trade Package Sets

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

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

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

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

(ii) Trade Package Allowances: Trade Package Allowances are amounts proposed by Developer and approved by the City to cover Work determined to be unquantifiable for a Trade Package. The amount shall be stated as an allowance for the Trade Package. The unquantifiable Work is to be clearly identified as a Trade Package Allowance item

within the detailed line item construction budget and within the applicable Trade Package. Any unspent balance of any such allowance will accrue to the City.

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

(iv) During the construction phase after award of Trade Package subcontracts, costs savings from value engineering ideas proposed by Developer and approved by the City will be shared between the Parties as follows: (1) if the value engineering idea was proposed by Developer, then saving will be shared equally by the City and Developer; (2) if the value engineering idea was proposed by the General Contractor, then 50% of the savings shall accrue to the benefit of the City and 25% of the savings shall accrue to the benefit of the Developer and 25% of the savings shall accrue to the benefit of the General Contractor; or (3) if the value engineering idea was proposed by a Lower-Tier Subcontractor, then 40% of the savings shall accrue to the benefit of the City, and the Developer, General Contractor, and Lower-Tier Subcontractor that proposed the value engineering idea shall each be credited with 20% of the savings amount.

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

2.7 Contract Closeout. Upon Final Completion of the Work, any unused Trade Package Allowances shall accrue to the benefit of the City, including the Developer's Fee associated with unused Trade Package Set Allowances, and the Contract Sum shall be adjusted by deductive Change Order.

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

3. Contract Time and Liquidated Damages

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

(a) The Design Phase shall include Site Work at the Selby Galvez Site only, including abatement, demolition, grading, sitework and piles. This work requires plans stamped by the appropriate design professional, approved by the regulatory authorities with jurisdiction,

and the City's issuance of a Notice to Proceed with such Work. The Work must be performed by individuals or entities holding the appropriate license.

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

(c) The total contract duration for the Design Phase, including the City's approval of the 100% Construction Documents, receipt of all required regulatory approvals, and completion of the Site Work is 437 consecutive calendar Days, subject to extensions of time resulting from Unavoidable Delays.

(d) If the City is delayed in its ability to deliver the Purchased Site to Developer and issuance of the NTP with Site Work in Phase One is delayed, City shall grant Developer a non-compensable time extension for completion of the Site Work portion of the Design Phase, which shall be Developer's sole remedy for any such delay in issuance of the NTP with Site Work. If there is such a delay in the issuance of the NTP with Site Work, the total contract duration for completion of 100% Construction Documents and receipt of all required regulatory approvals shall remain unchanged. City's payment obligations for Site Work shall not arise until Developer has completed the applicable portion of the Site Work as designated on the Schedule of Values.

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

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

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

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

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

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

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

4. Obligations of the City

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

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

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

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

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

5. Indemnity; Exculpation

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

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

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

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

5.5 Liability for Use of Equipment. The Developer shall be liable, and the City shall not be liable, for any damage to persons or property as a result of the use, misuse or failure of

any equipment used by Developer, or any of its Subcontractors, or by any of their employees, subcontractors, or agents, even though such equipment is furnished, rented or loaned by the City.

6. Dispute Resolution

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

6.2 Non-Binding Mediation.

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

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

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

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

7. Project Signage

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

8. Insurance

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

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

9. Assignment

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

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

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

10. Rights in Deliverables

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

10.2 Works for Hire. If, in connection with the Work, Developer or its Subcontractors or lower-tier subcontractors create Deliverables including, without limitation, artwork, copy,

posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City effective upon the Final Completion of the Project or earlier termination of this Agreement. If any Deliverables created by Developer or its Subcontractors or their subcontractors under this Agreement are ever determined not to be works for hire under U.S. law, Developer and its Subcontractors, effective upon the Final Completion of the Project or earlier termination of this Agreement, hereby assign all Developer's and its Subcontractors' copyrights to such Deliverables to the City, agree to provide any material and execute any documents necessary to effectuate such assignment, and agree to a clause in every subcontract imposing the same duties upon subcontractors.

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

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

11. Additional Requirements; Certain Requirements Incorporated by Reference

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

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

Subcontractors and their lower-tier subcontractors providing Work on the Project shall all be bound the same as Developer for compliance with all requirements of this Section 11.

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

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

11.5 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

11.6 Nondiscrimination Requirements.

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

(b) Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Developer does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property

owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

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

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

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

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

11.11 Limitations on Contributions. By executing this Agreement, Developer acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of

negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective Party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any Subcontractor retained by Developer to provide services for the Project; and any committee that is sponsored or controlled by Developer. Developer must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to the City.

11.12 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

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

11.15 Compliance with Laws. Developer shall use commercially reasonable efforts to cause each Subcontractor and all lower-tier subcontractors to become and remain fully informed

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

12. Notices

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

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

the City:	Public Works The City and County of San Francisco 30 Van Ness, Suite 4100 San Francisco, California 94102 Attn: Patricia Solis Re: Central Shops Project Facsimile No.: (415)557-4701
with copy to:	Randy Parent Deputy City Attorney Office of the City Attorney The City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Re: Central Shops Project Facsimile No.: (415) 554-4755
Developer:	Oryx Development I, LLC P.O. 14315 San Francisco, CA 94114 Attn: JC Wallace Facsimile No.: (408) 693-3836
with a copies to:	Farella Braun + Martel LLP 235 Montgomery Street San Francisco, CA 94111 Attention: CJ Higley, Esq. Telephone No.: (415) 954-4942 Fax No.: (415) 954-4480

13. Compliance with Americans with Disabilities Act

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

14. Modification of This Agreement

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

15. Applicable Law

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

16. Severability

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

17. Counterparts

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

18. Benefits and Obligations

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

19. Integration

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

20. Further Assurances

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

21. Headings

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

22. Survival

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

23. No Waiver

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

24. Ownership of Work Product

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

25. Sunshine Ordinance

Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code section 6250 et seq.), this Agreement and any and all records, information, and materials

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

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

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

27. MacBride Principles -Northern Ireland

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

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: Naomi Kelly
Name: John Updike
Title: Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, CITY ATTORNEY

By: Elaine M. O'Neil
Name:
Deputy the City Attorney

DEVELOPER

ORYX Development I, LLC,
a Nevada limited liability company

BY: ORYX Partners, LLC
a Delaware limited liability company

By:
Name: Juan Carlos Wallace
Title: Managing Member

EXHIBIT A

PROJECT BUDGET

EXHIBIT A

Project: Central Shops Relocation, GSA

Phase One Project Budget (as of 2/12/16)
ref: CSPh1-021516

		$	
Acquisition Due Diligence Costs		25,000	Allowance for misc. follow-up on reports from City's due diligence
A&E - Architect & Subconsultants		2,419,488	A&E design budget for primary architect and subconsultants, Includes 4 mo of CA
A&E - Design-Build Subs		479,737	MEP & F&LS design-build sub-contractors (DD/CD phase)
Pre-construction Services (Pankow)		627,000	Pre construction services from contractor (SD/DD/CD)
Permits and Fees		925,475	Preliminary Estimate - includes both filing and issuance fees
Legal, insurance, accounting and misc admin		215,000	Legal costs include Dev Agmt, A&E & Const Contracts, Subcontracts, Insurance, Accounting
Development Management Base Fee (Phase 1)		987,000	Through GMP / CDs (14 months)
Development Management Bonus (Phase 1)		393,000	Bonus due upon completion of Phase 1 Deliverables
Abatement/Demolition/Grading/Sitework/Piles		3,286,960	Initial site-work (Selby Galvez)
Contingency	10%	941,340	% of Pre-Development Costs
TOTAL PHASE ONE BUDGET		10,300,000	

CENTRAL SHOPS - PROJECT BUDGET (as of 11/18/2015)

NOVEMBER 18, 2015
Preliminary: based on information available to Oryx as of November 18, 2015
ref CS0111815

	$
DIRECT COSTS	
GENERAL REQUIREMENTS	5,089,995
DEMO	730,645
EXCAVATION, PILES & EXTERIOR	5,677,336
BUILDING	21,924,118
EQUIPMENT	7,038,116
TOTAL	40,460,210
GC FEE	1,891,515
DIRECT BUILDING COSTS	**42,351,725**
GC CONTINGENCY	4,235,172
TOTAL BEFORE OWNERS CONTINGENCY	46,586,897
DEVELOPER'S CONTINGENCY	1,993,897
TOTAL DIRECT BUILDING COSTS	48,580,795
INDIRECT COSTS	
A&E	1,820,000
MANAGEMENT FEE (Base + Bonus)	2,629,699
OTHER	1,417,585
CONTINGENCY	551,921
TOTAL INDIRECT COSTS	**6,419,205**
TOTAL PROJECT COSTS	**55,000,000**

EXHIBIT 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 "Gannet 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 Gannet Fleming Memorandum. The City further acknowledges that (i) the comments and concerns raised by the Gannet 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.

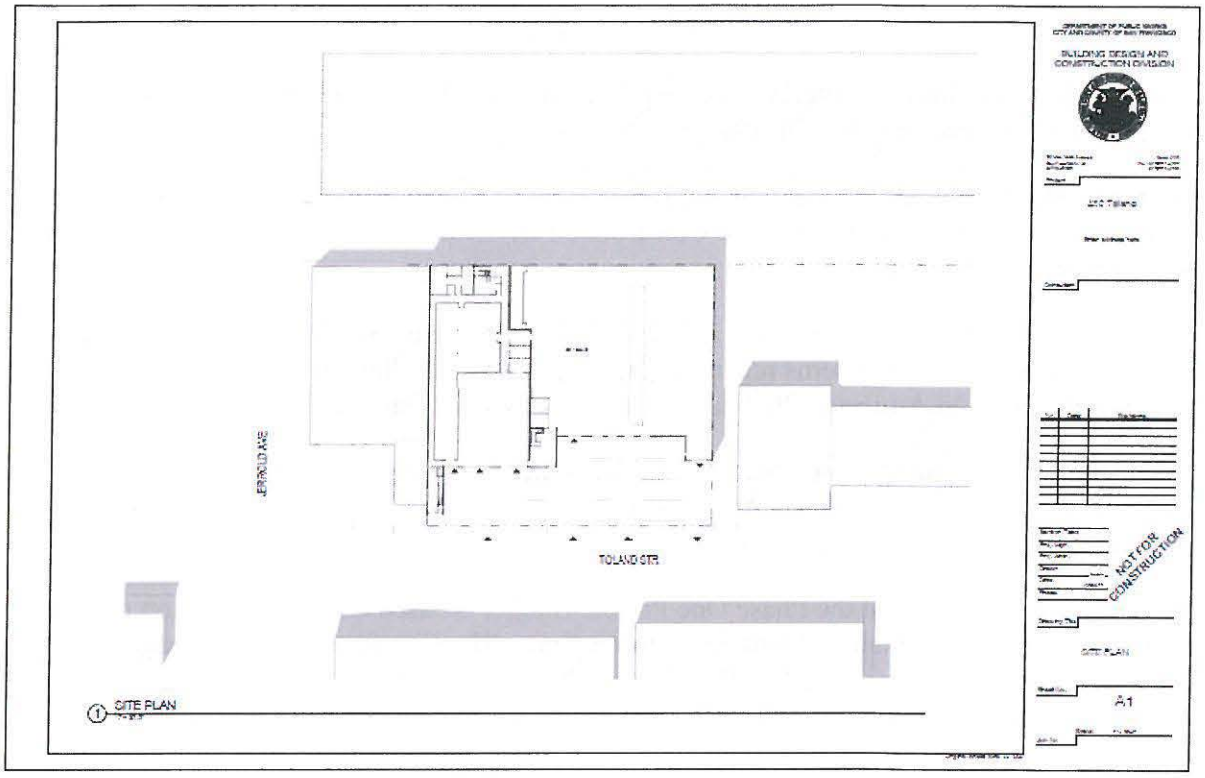
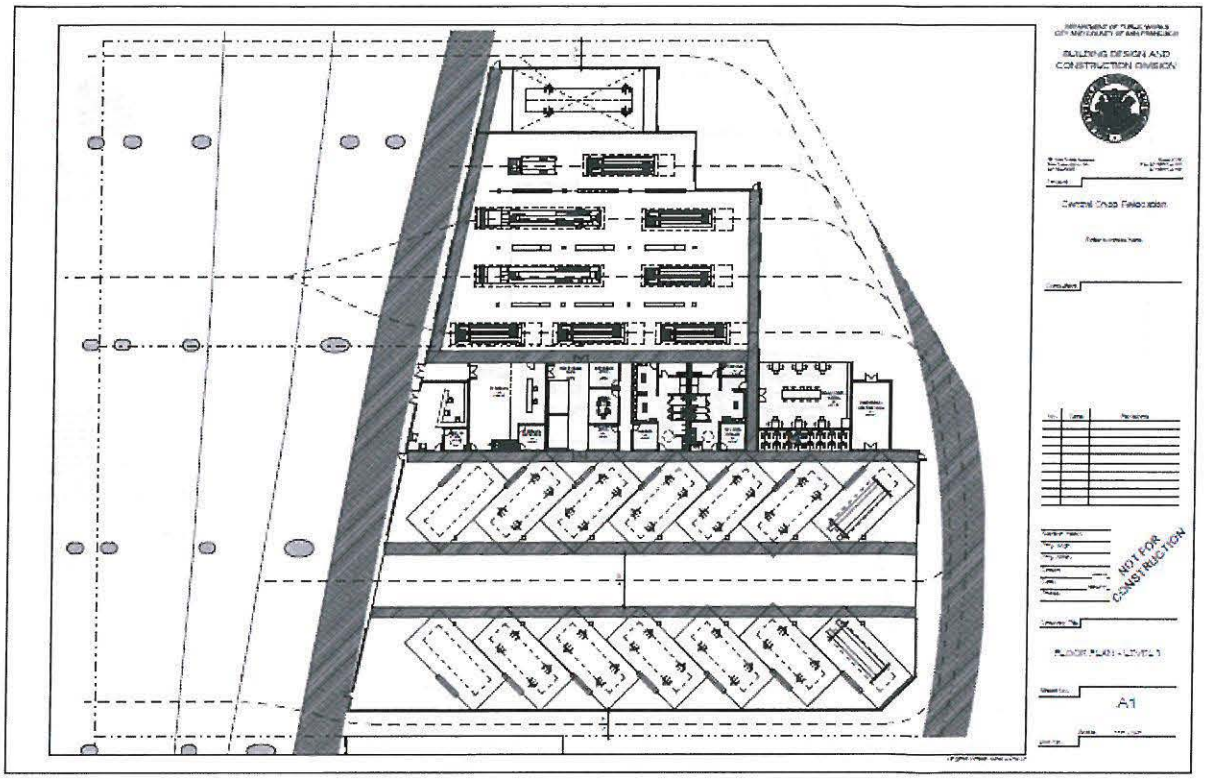


EXHIBIT B



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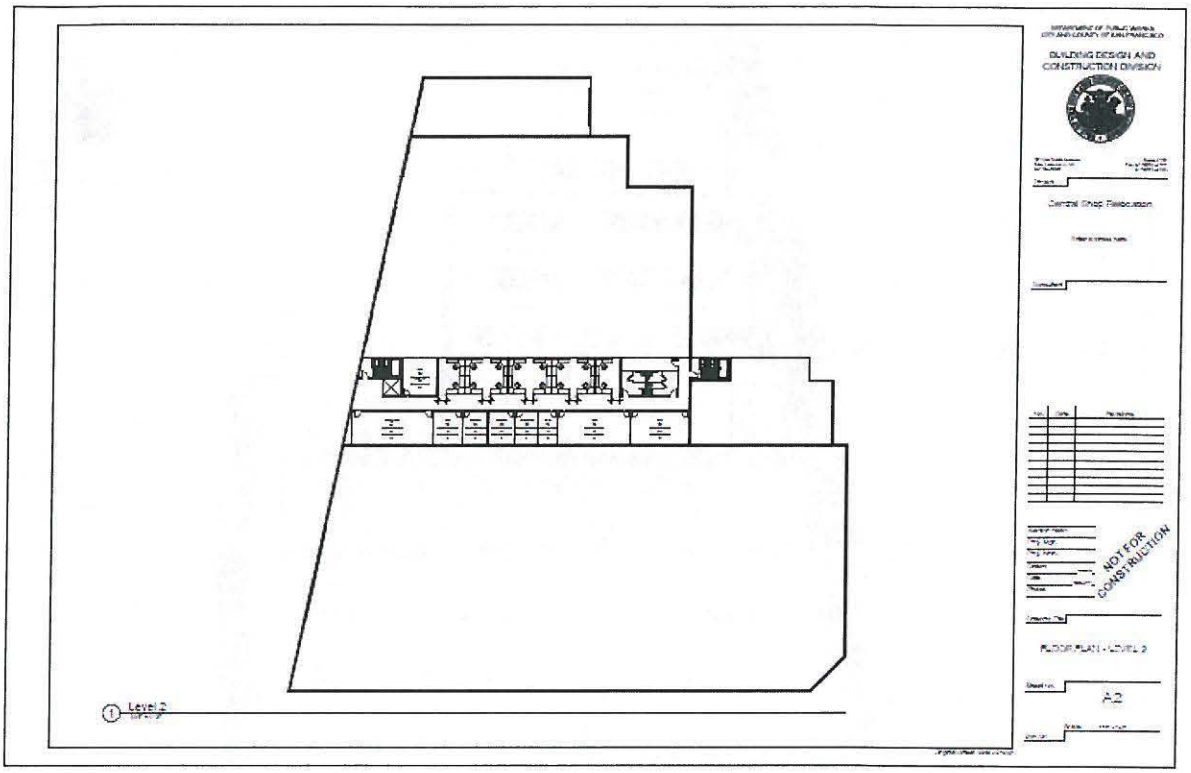

EXHIBIT B

Gannett Fleming

GANNETT FLEMING, INC.
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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

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*

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

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

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

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 McKanna 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

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.

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.

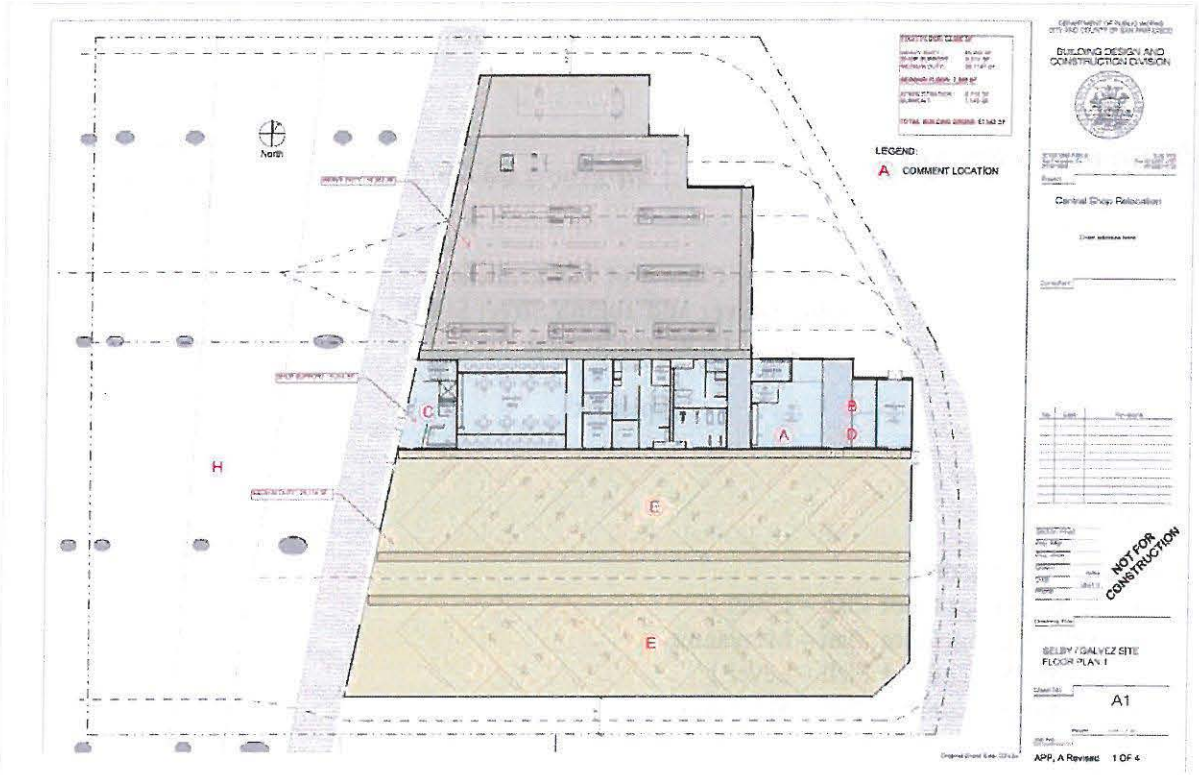
City and County of San Francisco
Selby/Galvez and Toland Street Sites
Technical Review

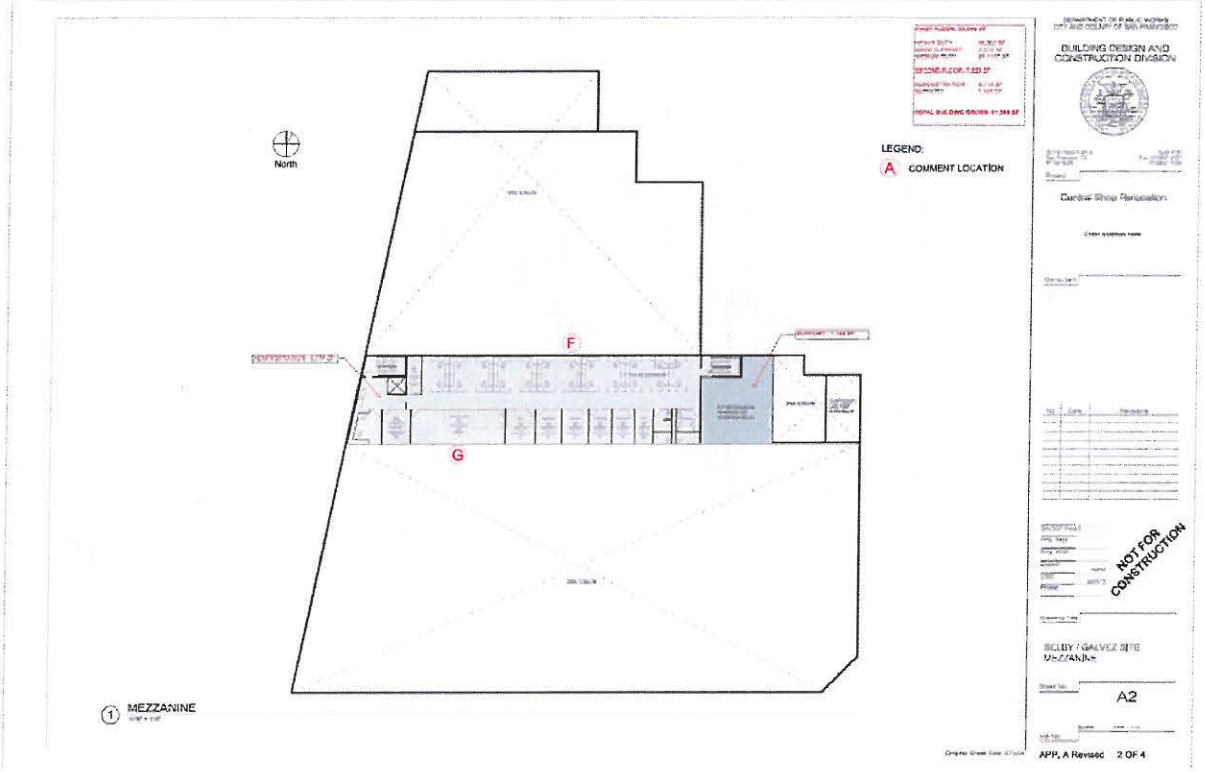
Appendix

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





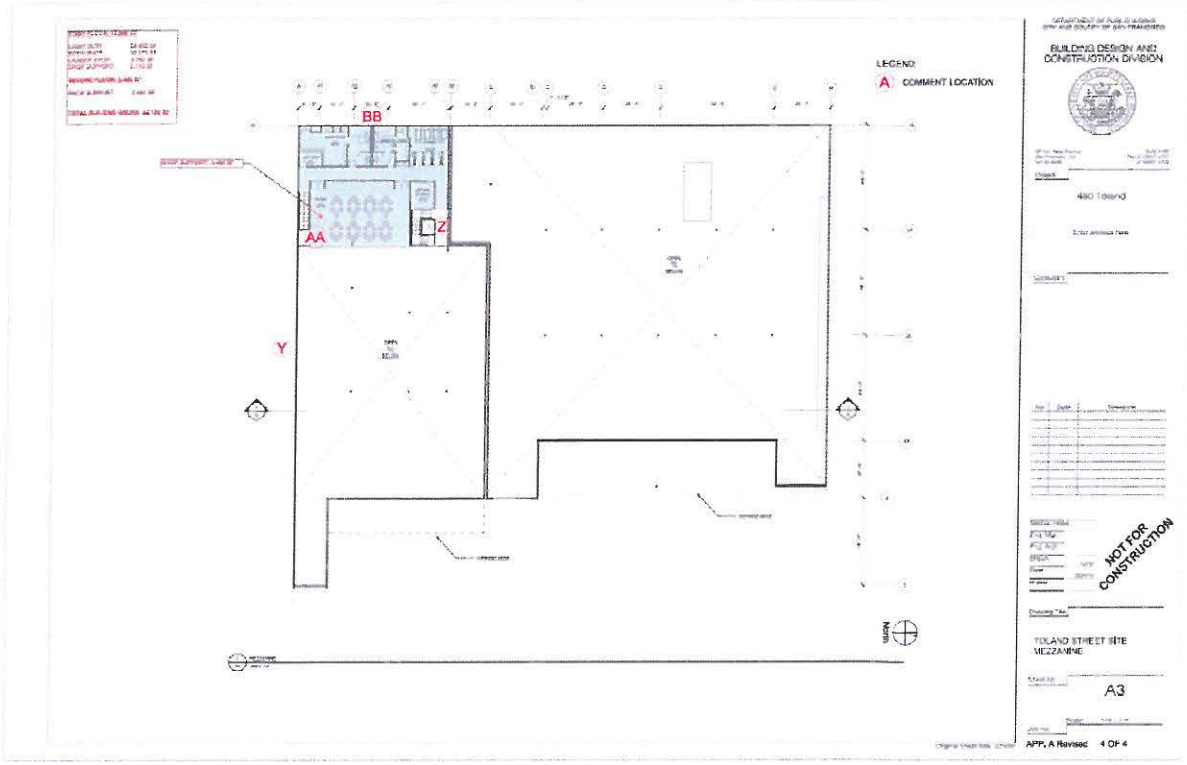


EXHIBIT C

SCOPE OF DEVELOPER SERVICES

I. DESCRIPTION OF GENERAL SERVICES

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

1. Administration and Coordination

(i) In conjunction with the City, prepare the Project Plan for the City's approval. The Project Plan shall include, but not be limited to, Site logistics, measures to keep the Site secure, a defined Site perimeter, and progressive Site clean-up. Developer shall update or modify the Project Plan from time to time upon the request of the City or when Developer deems necessary, and all such revisions to the Project Plan shall be subject to the City's approval.

(ii) Establish and implement procedures for coordination of all aspects of the Project between the City, Developer, and Developer's subcontractors of all tiers.

(iii) Negotiate contracts and agreements for all contracted services, including site development, architectural, construction, engineering, testing and consulting services, and provide written recommendations to the City to approve contracts or agreements.

(iv) Coordinate the services and activities of the General Contractor, Architect, and the Lower-Tier Subcontractors and Suppliers, to facilitate cooperative efforts in the development and implementation of the Project Plan.

(v) Negotiate any documents, instruments or agreements or amendments thereto necessary or appropriate for the implementation of the Project and services related thereto, to the extent such documents, instruments or agreements, or amendments thereto, are consistent with the Project Plan. Except as otherwise provided in this Agreement, all material documents, instruments, agreements or amendments are subject to the reasonable approval of the City.

2. Management Control Procedures

(i) Coordinate the performance of all budgeting, billing and payment application review/assimilation functions as necessary or appropriate for and in connection with the coordination of the design and construction activities being conducted pursuant to the Project Plan. Such functions shall include, without limitation, the preparation and submittal to the City of a monthly single, comprehensive application for payment in form and substance satisfactory to the City, representing work completed in accordance with Article 9 of the General Conditions. The form of application for payment shall include and incorporate, without limitation, the Developer's pay application for any period in which the Developer has submitted such application for payment for work performed. The form of application for payment shall also include (i) a statement of the Development Services Fee for such month, (ii) a statement of Developer's Reimbursable Expenses for such month, (iii) invoices establishing all other payables for such month, and (iv) such lien releases and other documentation as may be required for payment in accordance with the terms of the agreements with the Architect, General Contractor, Lower Tier Subcontractors, and any other Project team members.

(ii) Establish and implement administration and reporting procedures for the Project, including finance, budget and cost controls, as well as supervision of accounting.

(iii) Coordinate the development and implementation of a procedure/system of Project cost control and track actual and projected costs.

(iv) Oversee the activities of the Subcontractors regarding their performance in accordance with their respective agreements. Upon receipt of knowledge thereof, notify the City of all material deviations and coordinate the implementation of the necessary procedures to rectify the same.

(v) Coordinate the scheduling of meetings on a regular basis, or more frequently as the City may reasonably elect, among the City, the Architect, the General Contractor and such other parties as the City may deem necessary or appropriate concerning the Project.

(vi) Consistent with industry standards for similar projects, monitor, manage and oversee the Architect's work throughout design and construction of the Project.

(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.

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

II. PHASES OF WORK

PART 1 - DESIGN PHASES

1.01 GENERAL REQUIREMENTS

A. Developer shall not commence the Design Phases outlined below, which includes Site Work (abatement, demolition, grading, sitework and piles), until the City issues a Notice to Proceed ("NTP") with Design.

B. Developer shall not commence the Site Work until the City issues a Notice to Proceed ("NTP") for the Site Work.

C. Throughout all design phases, Developer shall collaborate with the Project Team and shall update all submitted plans, schedules, and reports.

D. Developer shall provide a schedule indicating the critical path for the Project duration and update this schedule throughout all design phases.

1.02 CONCEPTUAL DESIGN PHASE

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

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

1.03 SCHEMATIC DESIGN PHASE

A. Based on the Criteria Package, Developer shall develop the 100% Schematic Design Documents for City approval, which shall be given within 10 working days of delivery of the said documents to the City. The 100% SD package shall include at a minimum:

1. Architectural site, floor plans, reflected ceiling, and equipment plans, exterior and interior elevations, column grids, vehicle access/egress, vertical conveyance systems including elevator lobby(s), pedestrian access/egress, etc.
2. Interior design plans and other supporting documents to illustrate the graphic design layouts.

3. Refined building systems, material, and products selections.
4. Refined MEP, Special Systems, Fire Protection, and Exterior Skin and other systems floor plans, diagrams and text to describe these systems.

B. Developer shall develop BIM Model for detailed MEP, Special Systems, and other systems floor plans, diagrams, and text to describe these systems

C. Prepare a Schematic Design phase report to document and summarize the Schematic Design phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

D. Developer shall perform and document constructability review.

E. Prepare initial trade bid packages (BIM model (if applicable), drawings, specifications, instructions to bidders).

1.04 DESIGN DEVELOPMENT PHASE

A. Developer shall refine the approved 100% Schematic Design Documents to fully integrate all required Project design elements and issue a 50% and 100% Design Development Package, order to provide sufficient information to develop the Construction Documents for the Trade Packages. City shall approve the 50% and 100% Design Development Packages within 10 working days of delivery of the respective Design Development Packages to the City.

B. Update BIM Models.

C. Document the constructability review, including an evaluation of the design documents to identify value engineering opportunities, identification of long lead items, availability of labor, and other factors affecting construction.

D. Prepare a Design Development phase report to document and summarize the Design Development phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

1.05 CONSTRUCTION DOCUMENTS PHASE

A. Based on the approved Design Development documents, Developer shall prepare 50% and 100% Construction Documents to fully describe the Work for each Trade Package that, at a minimum, should include drawings, diagrams, calculations, 3D models, renderings, schedules, and a Project Manual that includes the General and Supplementary Conditions, Divisions 00 and 01, and Technical Specifications. The City Representative shall provide all City comments on the 50% and 100% CD packages within 10 working days.

B. In accordance with the provisions of Section 1.10, Developer shall obtain and document all required approvals for the Construction Documents from regulatory authorities having jurisdiction over the Project, which are necessary to obtain a Temporary Certificate of Occupancy.

C. Prepare a Construction Document phase report to document and summarize the Construction Document phase decisions and outcomes, including deviations from the Criteria Package that are approved by the City.

PART 2 - CONSTRUCTION PHASE

2.01 GENERAL SCOPE OF WORK

A. Developer shall not commence with the Construction Phase unless and until the city issues a Notice To Proceed with Construction.

B. Developer shall furnish and install mock ups as identified and determined during Programming for performance, acceptance of size, circulation, and FF&E as determined in the approved Project Schedule. The mock-ups may be constructed in-place and/or off-site as determined during Programming.

C. Construction Work activities will be authorized by the City upon award of each Trade Package Set. Developer shall perform all Work and construction administration services necessary to achieve an exceptional project outcome that meets the Programming Phase requirements with approved deviances; construct the Project in accordance with the design-build delivery method; and render the Project with all its components operational, functional, and usable.

D. Developer shall plan for authorities with jurisdiction to inspect the Work. The City Representative has final authority over coordination, use of premises, and access to site.

E. Developer shall provide qualified staff to manage construction as required by the Contract Documents, including:

1. Administration: Developer shall provide required administrative services.
2. Superintendence: Developer shall provide a qualified management team.
3. Quality Control: Developer shall implement a Quality Control (QC) Program.
4. Cost Control: Developer shall provide cost estimating, cost control, and cost management.
5. Scheduling: Continuous updating of the critical path schedule in conformance with requirements in the Contract Documents.
6. Reporting: Developer shall provide reporting services related to cost, schedule, and critical issues facing the Project.
7. Document Control/Project Records: Developer shall provide Document Control services and maintain Project Records.
8. Project Meetings: Developer shall schedule and attend weekly Project meetings.
9. Security: Developer shall secure the Project site and Work.

F. Developer shall perform the Work in phases and utilize Trade Packages as needed to achieve the Project schedule.

G. Developer shall report on the progress of the Project including information on Developer and its Architect's and General Developer's Work, percentage of completion of the Work, current estimates, forecasted contract growth, subcontract buyouts, updated monthly schedules, including projected time to completion and estimated cost to complete the Work, digital progress photographs, logs for Requests for Information, submittals and shop drawings, pending and approved change orders, meetings minutes, and other project metrics as requested by the City.

H. Developer shall develop and implement a process to procure Trade Packages in conformance with the Contract Documents:

1. Maximize both competition and the involvement of small businesses.
2. Develop subcontractor and supplier interest for each division of the Work.
3. Use best efforts to obtain bids for each Trade Package that are less than the final cost estimates.
4. Conduct bid openings in the presence of the City Representative. All bid documents shall be circulated and viewed by those present. Developer shall provide the City with a copy of its preliminary bid tabulation and, if requested, a copy of all bids.
5. Determine final bid amounts, having reviewed and clarified the scope of Work in detail with the apparent low responsive bidders to determine that their bids are complete but do not include duplicate scope items.
6. Prepare and furnish to the City a final bid tabulation summary that includes by subcontract, trade and/or bid division, the applicable final estimated cost and the related final bid amount and the details of all scope clarifications for City's review and approval.
7. Identify to the City in writing the subcontractors to which the Developer recommends award of subcontracts, and when authorized by the City, award and enter into subcontracts.

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

2.02 ACTIVATION/COMMISSIONING /MAINTENANCE TRAINING PHASE

A. Developer is responsible for performing the requirements of the commissioning process including those responsibilities assigned to subconsultants, subcontractors, vendors, manufacturers, or their representatives. The Developer shall insure that all subconsultants, subcontracts or purchase orders for systems, inclusive of all of the system components to be commissioned, include provisions for compliance with this Document.

B. The requirements of this Document are additional to the requirements of the General Conditions. If this Document requires additional labor, coordination, or documentation, including submittal data, the Developer shall comply with this

Document and if any requirement of this Document conflicts with other provisions of the Contract requirements, the Developer shall request formal clarification of the Contract requirements.

C. Under the Direction of the City, Developer shall commission all systems and equipment in order to achieve the following specific objectives:

1. Verify and document that the building enclosure, systems and equipment are documented in the Design and Construction Documents in accordance with the Criteria Package.
2. Verify and document that equipment is designed, installed, started, and operates properly pursuant to the requirements of the Contract and manufacturer's specifications, instructions and recommendations.
3. Verify and document building enclosure mockups and installation perform as designed and as intended.
4. Identify deficient building enclosure, equipment, systems and installations as early as possible to facilitate timely corrective action minimizing schedule impact.
5. Verify and document that the building enclosure, equipment, and systems receive complete operational checkout by installing subcontractors, vendors and manufacturers.
6. Verify and document building enclosure, equipment and system performance.
7. Verify and validate that the City's operating personnel are adequately trained on the Operation and Maintenance of building equipment and systems.
8. Verify Operations and Maintenance Data for systems and equipment is complete and usable, and provided in the format as required by the City.

D. The commissioning process does not reduce the responsibility of the Developer, its Architect or subconsultants, General Contractor or its subcontractors, or vendors to perform and complete all Work in accordance with the requirements of the Contract.

2.03 SUBSTANTIAL COMPLETION

A. Prior to Substantial Completion, Developer shall submit all Equipment Inventory Sheets

B. In advance of Substantial Completion, Developer shall obtain the Temporary Certificate of Occupancy.

C. Developer shall demobilize from the Project Site.

2.04 FINAL COMPLETION

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

EXHIBIT D

PROJECT SCHEDULE – WORK BY PHASE

The Project will be accomplished in two phases: (1) the Design Phase; and (2) the Construction Phase. The Design Phase shall include Site Work at the Development Sites comprising abatement, demolition, grading, sitework and piles. At the time this Agreement is executed, only the Design Phase will have been approved by the City's Board of Supervisors.

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

Proceeding with the Construction Phase requires the approval of the City's Board of Supervisors of the Phase Two Budget and approval for the City to issue the NTP with construction. If the City does not issue a NTP with construction, the Agreement shall be terminated under the provisions authorizing Termination by the City for Convenience (General Conditions, Article 14.03).

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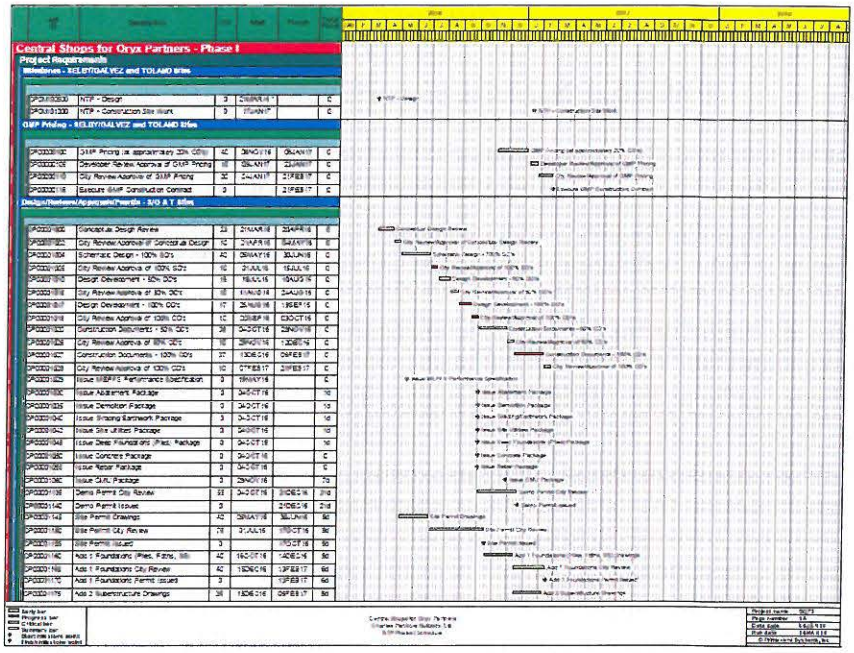

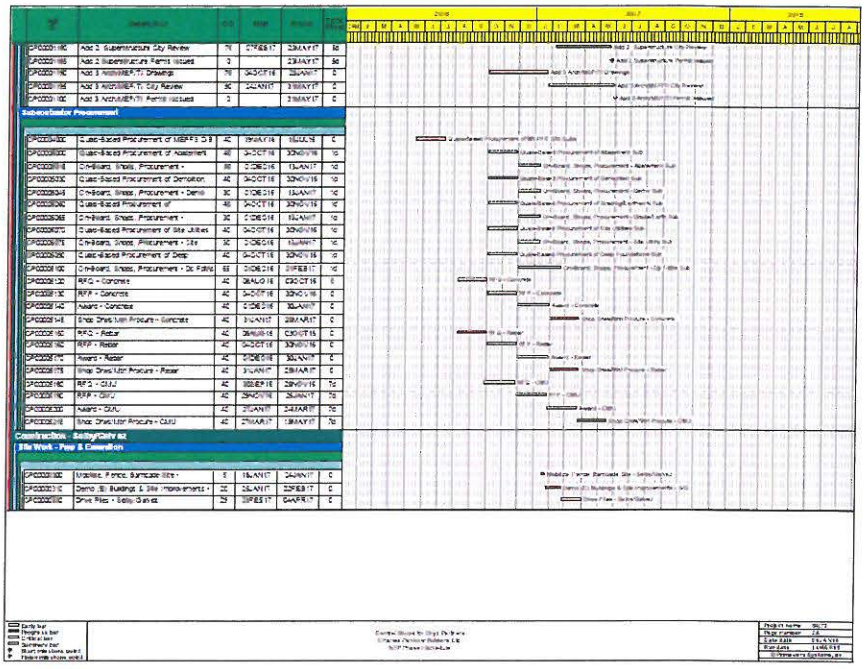

END OF DOCUMENT

EXHIBIT E

Reserved

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,

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

2. Period of Coverage: Developer shall provide evidence of Builder's Risk Insurance coverage in accordance with the requirements set forth herein within five (5) days of City's issuance of the Notice to Proceed with the Site Work (in Phase One).

3. Additional Premium: If, due to change orders or project term extensions authorized by the City, the Builder's Risk policy becomes subject to additional premium, the City will reimburse Developer the actual cost of such additional premium, without markup, provided that the Developer submits to the City proof of payment of such additional premium and either:

   (a) copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk Policy is issued on a declared-project basis; or
   (b) copy of Evidence of Property Insurance if the Builder's Risk policy is placed on a reporting form basis.

4. Parties Covered: The Builder's Risk policy shall identify the City and County of San Francisco as the sole loss payee. The policy shall name as insured the City and County of San Francisco, the Developer and its subcontractors of every tier.

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

5. Included Coverage: The Builder's Risk Insurance shall include, but shall not be limited to, the following coverages:

   (a) All damages or loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction Site and temporary structures.
   (b) The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and water damage.
   (c) The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and any applicable law, ordinance, or regulation. Limit for such coverage shall be no less than 25 per cent of full construction value.
   (d) Start up and testing and machinery breakdown including electrical arcing.
   (e) Consequential loss (lost revenues and costs of funding or financing when a covered risk causes delay in completing the Work). In the event the City receives coverage specifically for a consequential loss associated

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,

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

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

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

EXHIBIT G

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

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.

(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

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.

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.

13. Resource Efficient City Buildings and Pilot Projects

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

14. Liability for Use of Equipment

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

15. Copyright Infringement

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

EXHIBIT H

DESIGN PROFESSIONAL CONTRACT PROVISIONS

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

1. Design Professional Services

   A. This provision sets forth basic Design Professional services to be provided by Architect or other Design Professional for the Project. Refer to the Agreement and the Criteria Package for additional, project-specific requirements.

   B. The Design Professionals shall be licensed in the State of California and shall have the necessary expertise and experience required to prepare such design documents to permit the General Contractor to complete its Work in accordance with the requirements of the Contract Documents.

      1. All design work shall be performed and stamped by licensed architects or engineers, as appropriate.

   C. Design Professionals may be replaced only with the approval of the City.

   D. The standard of care for all design services performed or furnished under the Agreement will be the care and skill ordinarily used by members of the engineering or architectural professions practicing under similar conditions, for projects of similar size and complexity, at the same time and locality. Notwithstanding the above, in the event that the Contract Documents specify that portions of the work be performed in accordance with specific performance standards, the design services shall be performed so as to achieve such specific standards.

   E. Design Professionals to be responsible without limitation for the following:

      1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.

      2. Before undertaking each part of the work, review the Contract Documents, including the Criteria Package, and existing reference documents and studies of the proposed site and other data furnished to the Design Professional, and advise the City and Developer whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Architect shall notify the Developer in writing promptly upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect.

      3. Request additional surveys, studies, investigations, reports and information related to the site, which the Design Professional deems necessary for the performance of the work.

      4. Provide design-related services for preparing Schematic Design ("SD"), Design Development ("DD"), and Construction Documents necessary for the General

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

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

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

EXHIBIT I

LOCAL HIRE, FIRST SOURCE AND LOCAL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

1. Local Hiring Requirement.

1.1. General Provisions.

1.1.1. Developer shall comply with all applicable requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in section 6.22(G) of the San Francisco Administrative Code. The provisions of the Policy are incorporated by references into this Agreement. Developer agrees that Developer has had a full and fair opportunity to review and understand the terms of the Policy.

1.1.2. Developer shall require the General Contractor and all subcontractors of every tier performing construction work on behalf of the Developer as part of the Project to comply with all applicable requirements of the Policy.

1.1.3. Developer agrees that the Office of Economic and Workforce Development ("OEWD") will have the authority to enforce all terms of the Policy. Further information on the Policy and its implementation may be found at the OEWD website at: www.workforcedevelopmentsf.org.

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

1.2.1. Local Hire by Construction Trade: Mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.

1.2.2. Local Apprentices: At least 50% of the Project Work Hours performed by apprentices within each construction trade shall be performed by local residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Economically Disadvantaged Workers.

1.2.3. Construction Contracts: Developer, shall include the terms of this Policy in the contract with the General Contractor and in every construction contract and subcontract entered in to for construction of the Project. Developer shall notify OEWD immediately upon execution of all construction contracts.

1.2.4. Preconstruction Meeting: Prior to commencement of construction, Developer and all construction subcontractors shall attend a preconstruction meeting convened OEWD staff. Representatives from Developer and all construction subcontractors who attend the pre-construction meeting must have hiring authority.

1.2.5. Forms and Payroll Submittal: General Contractor and all construction subcontractors shall utilize the City's web based payroll system to submit all of OEWD's required Local Hiring Forms and Certified Payroll Reports. The General

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

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

3.1. Purpose. Developer agrees to partner with the Contract Monitoring Division ("CMD") to provide Local Business Enterprises ("LBE") with meaningful opportunities to participate in the construction of the Project.

3.2. LBE Participation Goal. Developer, on behalf of itself and its General Contractor and Architect, agrees to work with CMD on developing separate LBE Subconsulting and subcontracting goals and to perform good faith efforts (see attached) to award 20% of the cost of all professional services and 20% of the cost of all construction contracts awarded by Developer as part of the Project to small and/or micro LBE businesses certified by CMD pursuant to Chapter 14B of the Administrative Code.

3.3. Reporting. Beginning as of the PSA Ratification Date and every quarterly thereafter, Developer shall report in writing to the City Representative with a copy to the Director of CMD a summary of Developer's attainment of the LBE Participation Goal.

EXHIBIT J

ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES AND OTHER INTANGIBLE PROPERTY

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

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

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

B. any intangible personal property now or hereafter owned by Assignor and used in the ownership, use or operation of the Parcel, including the Assumed Contracts listed in Schedule 1.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

3. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

ASSIGNOR:

_____

By:_____
[NAME]
Its:_____

ASSIGNEE:

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

By:_____
[NAME]
Its:_____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

EXHIBIT K

PARTNERING REQUIREMENTS

PART 1 - GENERAL

1.1 PARTNERING LEVEL

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

1.2 SUMMARY

A. This Document specifies the requirements for establishing a collaborative partnering process. The partnering process will assist the City and Developer to develop a collaborative environment so that communication, coordination, and cooperation are the norm, and to encourage resolution of conflicts at the lowest responsible management level.

B. The partnering process is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Developer.

C. This specification does not supersede or modify any other provisions of the Contract, nor does it reduce or change the respective rights and duties of the City and Developer under the Contract, or supersede contractual procedures for the resolution of disputes.

1.3 DEFINITIONS

A. **Partnering Charter ("Charter"):** The Charter is the guiding focus for the Project Team. It documents the team's vision and commitment to work openly and cooperatively together toward mutual success during the life of the project. The charter helps to maintain accountability and clarity of agreements made and allows for broader communication of the team's distinct goals and partnering process. The partnering charter includes the following elements:

1. Mutual goals
2. Partnering maintenance and close-out plan
3. Dispute resolution plan with Escalation Resolution Ladder
4. Team commitment statement and signatures

B. **Collaborative Partnering:** A structured and scalable process made up of elements that develop and grow a culture (value system) of trust among the parties of a construction contract. Together, the combination of elements including the Partnering Charter, Executive Sponsorship, partnering meetings, an accountability tool for the Project Team (Scorecards), and a Facilitator, if employed, create a collaborative atmosphere on each project.

C. **Core Team Partnering:** On Level Four or greater construction projects, a core team is identified from those Project Team members who are a part of the project for its duration, including the following (not in order of hierarchy):

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

D. **Executive Partnering Team:** The senior leaders of the City and Developer who may form a project board of directors and are charged with steering the project to success.

E. **Executive Sponsorship:** Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.

F. **Field-Level Decision Making:** Decisions made by those who are running the day-to-day work in the field – this is typically the inspector or resident engineer.

G. **Internal Facilitator**: A trained employee or representative of the City who provides partnering facilitation services for Level 1, 2 or 3 projects.

H. **Kick-off Partnering Workshop:** The initial partnering session where the team develops their initial partnering Charter and officially starts the partnering process.

I. **Multi-Tiered Partnering** (Executive - Core Team - Stakeholder): Quarterly partnering workshops can be divided into multiple sessions including an Executive Session, Core Team Session and Stakeholder Session. For very large projects, a best practice is to use the Executive Team as a "project board of directors" who provide vision and steer the project. The Core Team is the central group of key individuals who are on the project throughout the duration.

J. **Partnering Level**: The desired level of engagement in the partnering process may vary depending on a Contract's size or a construction project's complexity, location or other risk factor. If a project encounters any of the following risk factors, the City may consider elevating the partnering process to the next higher level.

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

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
	IIII	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.

U. **Subcontractor on-boarding/off-boarding**: At the various stages of construction various key subcontractors (trades) as determined by City and Developer will roll in and roll out as their work comes available and is completed.

V. **Third-Party Facilitator Agreement**: An agreement, appended to this Specification, to which the Professional Neutral Facilitator, the City and the Developer are parties, which establishes a budget for fees and expenses of the Facilitator and workshop site costs, if any, and the terms of the Facilitator's role for this Project consistent with the requirements of this Specification.

1.4 PURPOSE/GOALS

A. The goals of project partnering are to:

1. Use early and regular communication with involved parties;

2. Establish and maintain a relationship of shared trust, equity and commitment;

3. Identify, quantify, and support attainment of mutual goals;

4. Develop strategies for using risk management concepts and identify potential project efficiencies;

5. Implement timely communication and decision-making;

6. Resolve potential problems at the lowest possible level to avoid negative impacts;

7. Hold periodic partnering meetings and workshops throughout the life of the project to maintain the benefits of a partnered relationship;

8. Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

1.5 COSTS

A. The fees and expenses of the Facilitator and workshop site costs, if any, shall be shared equally by the City and the Developer as set forth in the Third Party Agreement.

B. The Developer shall pay the invoices of the Facilitator and/or workshop site costs after approval by both parties. Upon receipt of satisfactory evidence of payment of the invoices of the Facilitator by the Developer, the City will then reimburse the Developer for 50% of such invoices from a fixed cash allowance included as a bid item in the Bid Prices. No mark-up, overhead or other fees shall be added to the partnering costs. If the total cost of the partnering differs from the allowance amount, the Contract Sum shall be adjusted by Change Order for the difference between the total actual cost and the amount included in the Bid, as an additional amount due the Developer or a credit to the City, as appropriate. If the Developer fails or refuses to pay the Facilitator invoices, the City may pay such invoices and deduct the Developer's portion from any amount that is due or may become due under the Contract.

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

PART 2 - EXECUTION

2.1 PARTNERING INITIATION

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

2.2 PARTNERING ELEMENTS

A. The required partnering elements for all levels of partnering include:

1. **Internal or External Professional Neutral Facilitator**. City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.

2. **Kick-off Partnering Workshop**. The City, Developer, and Facilitator if any, shall meet to mutually develop a strategy for a successful partnering process and to develop their initial partnering charter.

3. **Partnering Charter and/or mission statement.** The City and Developer shall agree to create a partnering charter that includes:

   (a) Mutual goals, including core project goals and may also include project-specific goals and mutually-supported individual goals. The required core project goals relate to project schedule, budget, quality, and safety.

   (b) Partnering maintenance and close-out plan, including partnering session attendees and frequency of meetings.

   (c) Dispute resolution plan that includes an Escalation Resolution Ladder.

   (d) Team commitment statement and signatures.

4. **Minimum Two Partnering Workshops or Sessions** (including Kick-off Workshop). The partnering team may participate in additional workshops or sessions during the life of the project as they mutually agree is necessary and appropriate.

5. **Executive Sponsorship**. Commitment to and support of the partnering process from the senior most levels of the City and Developer organizations.

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

B. For Level 2 Projects add the following elements:

1. **Internal or External Professional Neutral Facilitator**. City and Developer shall retain either an Internal Facilitator or a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the partnering meetings or

workshops. If an Internal or External Professional Neutral is employed, the Facilitator shall be mutually agreed to by the City and Developer.

2. **Minimum Two Project Scorecards**. City and Developer shall participate in periodic partnering evaluation surveys to measure progress on mutual goals and short-term key issues as they arise.

C. For Level 3 Projects add the following elements:

1. **Professional Neutral Facilitator for Kick-off and Quarterly Partnering Sessions**. City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below for the Kick-off partnering workshop and quarterly partnering meetings. Additional meetings, workshops, or sessions may be facilitated by a mutually agreed internal facilitator or may be self-directed.

2. **Quarterly Partnering Sessions**. The partnering team shall convene partnering sessions quarterly throughout the duration of Contract.

3. **Quarterly Project Scorecards**. City and Developer shall participate in minimum quarterly partnering evaluation surveys (monthly recommended).

D. For Level 4 Projects add the following elements:

1. **Professional Neutral Facilitator**. City and Developer will retain a Professional Neutral Facilitator according to the process listed in subparagraph 3.3 below.

2. **Multi-tiered Partnering (Executive – Core Team – Stakeholder)**. Partnering team will divide into smaller groups and convene multiple sessions including an Executive Session, Core Team Session and Stakeholder Session.

3. **Monthly Project Scorecards**. City and Developer shall participate in monthly partnering evaluation surveys.

4. **Stakeholder On-Boarding/Off-Boarding**. Various key stakeholder groups will be invited to participate in partnering sessions as necessary throughout the duration of the project.

5. **Key Subcontractor On-Boarding/Off-Boarding**. Key subcontractors will be invited to participate in the partnering sessions as necessary as determined by City and Developer as their participation in the project work becomes relevant.

E. For Level 5 Projects add the following elements:

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

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

2.3 SELECTION OF A PROFESSIONAL NEUTRAL FACILITATOR

A. If a Professional Neutral Facilitator will be retained, the City and Developer shall meet as soon as practicable after award of Contract, but in no case later than 30 days after the

Notice to Proceed (NTP), to mutually select a Facilitator. The City and Developer shall also schedule the Kick-off Workshop, determine the workshop site and duration, and agree to other administrative details.

B. The City, the Developer, and the selected Facilitator shall execute a Third-Party Facilitator Agreement within 30 days of NTP.

C. The Facilitator shall lead the Kick-Off Partnering Workshop and other partnering sessions as necessary or required.

2.4 FACILITATOR QUALIFICATIONS AND REQUIREMENTS; EVALUATIONS

A. The Facilitator shall be trained in the recognized principles of partnering.

B. The Facilitator shall have the following professional experience and qualifications:

1. At least 3 years experience in partnering facilitation with a demonstrated track record, including public sector construction for a city or other municipal agency; and,

2. Skill set that may include construction management, negotiations, labor-management mediation, and/or human relations.

C. The Facilitator shall be evaluated by the partnering team: (1) at the end of the Kick-off Partnering Workshop; and (2) at the project close-out partnering session.

END OF SECTION

SECTION 00 72 00.20

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 – GENERAL

1.01 DEFINITIONS

A. Wherever a word or phrase defined below, or a pronoun used in place thereof, is used in the Contract Documents (as defined in Paragraph 1.02), it shall have the meaning set forth in this Paragraph 1.01. References to related Paragraphs or Documents are provided for convenience but not to exclude other Paragraphs or Documents where such terms may be used. The colon (":") is employed in this Paragraph as a symbol for "shall mean." A colon also may be employed in these General Conditions or elsewhere in the Contract Documents to set off a paragraph title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows.

1. **Accepted, Approved**: Accepted or approved, or satisfactory for the Work, as determined in writing by the City, unless otherwise specified. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, proposals and reports by Developer, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Conditions. In no case shall the City's approval be interpreted as a release of Developer from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of any City's right under the Contract.

2. **Agreement**: See Project Delivery Agreement.

3. **Application for Payment**: Written request submitted by Developer to City for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Article 9, Payments and Completion.

4. **Approved Equal**: Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the City Representative. The burden of proof of equality is the responsibility of Developer.

5. **Bonds**: Performance and payment (labor and materials) bonds and other instruments of security acceptable to the City. Developer must submit Bonds on the City's form.

6. **Bulletin**: Refer to "Field Order."

7. **By Others**: Work on this Project that is outside the scope of Work to be performed by Developer under this Contract, but that will be performed by the City, other entities, or other means and at other expense.

8. **Change Order**: A written instrument prepared by the City issued after the effective date of the Project Delivery Agreement and executed in writing by the City and Developer, stating their agreement upon all of the following: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Sum, if any; (iii) the extent of the adjustment in the Contract Time, if any; and (iv) an amendment to any other Contract term or condition. Refer to Article 6, Clarifications and Changes in the Work.

9. **Change Order Request ("COR")**: Refer to Paragraph 6.03, Change Order Requests and Proposed Change Orders.

10. **City**: The City and County of San Francisco, California, identified as such in the Project Delivery Agreement and referred to throughout the Contract Documents as if singular in number. The term "Owner" means the City and its authorized agent or representative.

11. **City Representative**: The authorized on-Site representative of the City, identified by the City in writing who will act as the City's representative with respect to Developer's performance of on-Site inspection and administration of the Contract. All liaisons between the City and Developer shall be directed through the City Representative.

12. **Claim**: A written demand or assertion by Developer seeking an adjustment or interpretation of the terms of the Contract Documents, an adjustment in the Contract Sum or Contract Time, or both, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Developer arising out of or related to the Contract Documents of the performance of the Work, which is submitted in accordance with the requirements of the Contract Documents. Refer to Article 13.

13. **Clarification**: A document consisting of supplementary details, instructions or information issued by the City which clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work, Contract Sum or an

extension of Contract Times unless requested by Developer and approved by the City in accordance with the Contract Documents. Refer to Article 6, Clarifications and Changes in the Work.

14. **Code**: The latest editions of the San Francisco Municipal Code or the San Francisco Administrative Code, as well as any State of California, Federal, or local law, statute, ordinance, rule or regulation having jurisdiction or application to the Project.

15. **Contract**: Refer to "Contract Documents."

16. **Contract Documents**: Refer to Paragraph 1.02, Contract Documents and Contracting Requirements.

17. **Contract Sum**: The sum stated in the Project Delivery Agreement and, including authorized adjustments, the total amount payable by the City to Developer for the performance of the Work under the Contract Documents. Refer to the Project Delivery Agreement.

18. **Contract Time(s)**: The number of consecutive days following the City's issuance of a Notice to Proceed to: (i) achieve completion of a phase of the Work as designated in the Project Delivery Agreement; (ii) achieve Substantial Completion; (iii) complete the Work so that it is ready for final acceptance as evidenced by the City's issuance of written acceptance as required by section 6.22(k) of the Administrative Code; or (iv) achieve any interim Milestones specified in the Contract Documents.

19. **Contracting Requirements**: The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Section 00 72 00) and the Project Delivery Agreement.

20. **Critical Path**: A continuous chain of activities with zero float running from the start event to the finish event in the schedule.

21. **Critical Path Method ("CPM")**: Refers to the critical path method scheduling technique.

22. **Day**: Reference to "day" shall be construed to mean a calendar day of 24 hours, unless otherwise specified.

23. **Default**: Refer to Paragraph 14.01, Notice of Default; Termination by the City for Cause.

24. **Delivery**: In reference to an item specified or indicated shall mean for the Developer, Subcontractor, and/or Supplier to have delivered and to unload and store with proper protection at the Site. Refer to Paragraph 9.03, Progress Payments, for delivery to another (off-Site) location.

25. **Department Head**: The contracting officer for the Agreement (e.g., San Francisco Director of Property), or his/her designee, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Section 00 52 00, Project Delivery Agreement Form.

26. **Designer or Design Professional**: A person or entity that is a Subcontractor to Developer that is lawfully entitled to practice architecture or engineering in the State of California that will provide design services for the Project. The Designer is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "the Designer" means any such professional Engineer or Architect and its/their authorized representatives and agents, employees, successors and assigns, and any persons or entities who work by, though, or for any of them.

27. **Design Requirements**: The design-related work and construction support services required to be Provided by Developer as set forth in the Contract Documents and required to be performed by properly licensed design professionals as a Subcontractor to Developer.

28. **Design Submittal**: Documents, usually drawings and/or specifications, submitted to the City to indicate how the Developer intends to build the Project, and which will eventually become the Construction Documents.

29. **Designated, Determined, Directed**: Required by the City, unless otherwise specified. Refer to Paragraph 2.01, Administration of the Contract.

30. **Developer** (sometimes referred to as "Developer" or "Contractor"): The person or entity selected by the City to Provide for the design and construction of the Project and with whom the City has executed the Agreement. Developer or Developer is referred to throughout the Contract Documents as if singular in number and neuter in gender.

The term "Developer" means Developer and its authorized representatives and agents, employees, successors and assigns, and any persons or entities who work by, though, or for any of them.

Developer is not a licensed architect, engineer, or general contractor. All work necessary to meet Developer's obligations related to: (1) design of the Project; and (2) construction of the Project, shall be performed by Subcontractors holding valid licenses issued by the State of California permitting the Subcontractor to perform such Work. The City

acknowledges that Developer does not hold such licenses and will not perform design or construction Work through its own employees.; rather, such Work shall be performed by Subcontractors. Notwithstanding, the fact that a Subcontractor completes Work that Developer is obligated to Provide shall not relieve Developer of its obligations to meet all of its responsibilities under the Contract Documents.

31. **Differing Site Conditions**: Refer to Paragraph 3.05, Differing Site Conditions.

32. **Division**: A grouping of sections of the Specifications describing related construction products and activities.

33. **Drawings**: The graphic and pictorial portions of the Construction Documents to be prepared by the Developer's properly licensed Subcontractor and approved by the City showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

34. **Effective Date of the Agreement**: The date indicated in the Project Delivery Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Project Delivery Agreement is signed by the last of the two parties to sign, or when the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.

35. **Field Order**: A written order issued by the City which provides instructions or requires minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Paragraph 6.02, Requests for Information, Clarifications and Field Orders.

36. **Final Completion**: The date of written acceptance of the Work by the City, issued in accordance with section 6.22(k) of the Administrative Code, when the Contract Work has been fully and satisfactorily completed in accordance with the Contract Documents.

37. **Force Account Work**: Change Order Work to be paid for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Paragraph 6.07, Force Account Work.

38. **Furnish**: Purchase and deliver to the Site, including proper storage only; no installation is included. The term "Furnish" also means to Supply and Deliver to the Site.

39. **General Requirements**: The General Requirements include all Documents referenced in these General Conditions or the Agreement, and govern the execution of the Work of all sections of the Specifications.

40. **Guarantee To Repair Period**: The period specified in Paragraph 8.03 during which Developer must correct Non-conforming Work.

41. **Indicated**: Shown or noted on the Drawings or written in the Specifications.

42. **Install**: Apply, connect or erect items for incorporation into the Project; Furnishing or Supplying is not included. The term "Install" also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

43. **Installer**: A person or entity engaged by Developer, its Subcontractor or Lower-Tier Subcontractor for performance of a particular element of construction at the Site, including installation, erection, application and similar required operations.

44. **Item**: A separate, distinct portion of the whole Work, which may comprise material, equipment, article, or process.

45. **Lower-Tier Subcontractor or Supplier**: A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to furnish materials or equipment to be incorporated in the Work by a Subcontractor or Lower-Tier Subcontractor, as applicable.

46. **Milestone:** A principal date or time specified in the Contract Documents relating to an intermediate event prior to Substantial Completion or completion of a phase of the Work as specified in the Agreement.

47. **Modification**: A document incorporating one or more Change Orders approved by the City to comply with the Certification by Controller requirements of the City's Charter as stated in the Agreement.

48. **Non-conforming Work**: Work that is unsatisfactory, faulty, defective, omitted, incomplete or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referred to in the Contract Documents; or Work that has been damaged or disturbed by Developer's operations contrary to the Contract Documents prior to Final Completion.

49. **Notice of Default**: Refer to Paragraph 14.01, Notice of Default; Termination by the City for

Cause.

50. **Notice of Potential Claim**: Refer to Paragraph 13.02, Notice of Potential Claim.

51. **Notice of Substantial Completion**: The written notice issued by the City to Developer acknowledging that the Work of Construction Phase is Complete as determined by the City. Said Notice shall not be considered as final acceptance of any portion of the Work or relieve Developer from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.

52. **Notice to Proceed or "NTP"**: The written notice issued by the City to Developer authorizing Developer to proceed with the Work or a Phase of the Work and establishing the date of commencement of the Contract Time. The Contract Documents may specify more than one NTP applicable to different Phases of the Work.

53. **Owner**: Refer to "City."

54. **Paragraph**: A paragraph under an Article of these General Conditions. Refer to "General Conditions–Table of Contents" for a listing of Article and Paragraph numbers and titles.

55. **Partial Utilization**: Right of the City to use a portion of the Work prior to Substantial Completion of the Work.

56. **Phase**:The Project will be accomplished in two phasesL (1) the Desigh Phase; and (2) the Construction Phase. See Exhibit D to the Agreement.

57. **Project**: Refer to "Work."

58. **Project Delivery Agreement** ("Agreement"): The Project Deilvery Agreement to be entered into by and between the City and Developer relating to the design and construction of the Project. These General Conditions and other Contract Documents are incorporated into and made part of the Agreement.

59. **Project Manual**: The bound written portion of the Contract Documents prepared for constructing the Work.

60. **Proposed Change Order ("PCO")**: A document prepared by the City requesting a quotation of cost or time from Developer for additions, deletions or revisions in the Work initiated by the City or Developer.

61. **Provide**: Furnish and Install or Supply and Install complete in place at the Site. Whenever the word or term "provide," "to be provided," "provision," or similar phrase is used in the Contract Documents, in regard to any and all items or things or any part of the Project to be Provided under the Agreement by Developer, this word or these phrases shall mean that properly licensed design and construction Subcontractors to Developer shall perform all tasks and take all steps necessary for Developer to Provide the Project such service, item, or thing new, if required to be performed by a licensed design provisional or licensed contractor, complete, and in satisfactory operating condition as called for by the Criteria Package or elsewhere in the Contract Documents, at no additional cost to the City and without any change in the Contract Sum or Contract Time. In this regard, "Delivery" shall be interpreted to include, but shall not be limited to, all design, re-design, engineering, re-engineering, coordinating, drafting, programming, administration, supervision, monitoring, management, overhead and profit, procurement, shipping and handling, delivery, installation, erection, assembly, construction, adjusting, testing, balancing, connecting, procurement, and/or rental of equipment with the necessary appurtenances, tools, devices, computer hardware and software, provision of labor and materials, or any other item necessary to perform all tasks associated with and necessary to the Work, including all remedial and corrective measures, and payment of all necessary permits and fees.

62. **Punch List/Final Completion**: A punch list prepared by the City identifying deficient Items to be corrected by Developer prior to Final Completion. Refer to Paragraph 9.09, Final Completion and Final Payment.

63. **Punch List/Substantial Completion**: The list provided by the City identifying Items that shall be corrected or completed before the City considers the Work Substantially Complete. Refer to Paragraph 9.08, Substantial Completion.

64. **Quality Assurance ("QA")**: All those planned and systematic actions necessary to provide adequate confidence that a Quality Control Program has been applied.

65. **Quality Control ("QC")**: Those actions that control and measure the characteristics of an item, process, or facility against established requirements to ensure that a product or service will satisfy given requirements for quality.

66. **Reference Documents**: Refer to Criteria Package for Reference Documents, if any.

67. **Regular Working Hours**: 7:00 a.m. to 5:00 p.m., Monday through Friday, except City legal holidays.

68. **Request for Information ("RFI")**: A

document prepared by Developer requesting information from the City regarding the Project or Contract Documents.

69. **Request for Product Substitution ("RFPS")**: A request from Developer to substitute a material, product, thing or service specified in the Contract Documents with an equal material, product, thing or service. Refer to Paragraph 3.13, Substitutions, and Section 00 49 18, Request for Product Substitution form.

70. **Required**: In accordance with the requirements of the Contract Documents.

71. **Resident Engineer**: See "City Representative."

72. **Samples**: Physical examples of materials, equipment, or workmanship that are submitted for adjudication of their compliance with the specification.

73. **Shop Drawings**: All drawings, diagrams, illustrations, schedules and other data or information which are prepared or assembled by or for Developer and submitted to City.

74. **Site**: Geographical location of the Project as indicated elsewhere in the Contract Documents.

75. **Specifications**: The portion of the Project Manual to be Provided by Developer during the Design Phase comprising Division 01 through Division 48 consisting of requirements and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related administrative services.

76. **Specified**: Written or indicated in the Contract Documents.

77. **Subcontractor**: A person or entity who has a direct contract with Developer to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" shall also include contracts assigned to Developer by the City, if any. Unless a Contract Document expressly states to the contrary, the term "Subcontractor" includes a person or entity who has a direct contract with the Developer: (1) to provide professional services in connection with the Work such as (but not limited to) engineering services, design professional services and/or construction administration services; or (2) construction services.

78. **Submittal**: A written or graphic document prepared by Developer that is required by the Contract Documents to be submitted to the City by Developer. Submittals may include Drawings, Specifications, progress and submittal schedules, shop drawings, product data, samples, design data, test reports and certificates. Submittals other than Drawings or Specifications are not Contract Documents.

79. **Substantial Completion**: The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents including receipt of a temporary certificate of occupancy, if applicable, issued by the agency having jurisdiction over the Work so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

80. **Supplier**: A manufacturer, fabricator, distributor, or vendor having a direct contract with Developer or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.

81. **Supply**: Refer to "Furnish."

82. **Team**: The essential personnel on Developer's team, which will be agreed upon by Developer and the City prior to the start of each phase of Work. Developer and its Subcontractors and Subconsultants agree that said individuals will not be transferred or removed from the Project without the prior written permission or direction of the City, which will not be unreasonably withheld.

83. **Testing Agencies**: An independent entity engaged by the City or Developer to perform any required inspections or tests, either at the Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

84. **Unavoidable Delay**: Refer to Paragraph 7.02, Delays and Extensions of Time.

85. **Unilateral Change Order**: A written Change Order issued by the City to Developer after the effective date of the Project Delivery Agreement in accordance with Paragraph 6.05.

86. **Unit Price Work**: Work to be paid for on the basis of unit prices and actual quantities of Work. Refer to Paragraph 6.08.

87. **Work**: The performance by Developer of all its responsibilities and obligations set forth in the Contract Documents. Work shall include, but not be limited to, providing all labor, materials, equipment, administrative services, design services, Commissioning services, and documentation required by the Contract Documents for the design and construction of the Project. References in the

Contract Documents to "Work" may be to items of Work. Refer to Paragraph 1.03.

88. **Working Day**: Any day of the week except Saturdays, Sundays and statutory holidays.

1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS

A. The Contract Documents form the entire Contract for the design and construction of the Work, and consist of the following:

1. The Project Delivery Agreement and other documents listed in the Agreement;

2. The Criteria Package, including all appendices and attachments;

3. TheseGeneral Conditions;

4. the Drawings, Project Manual, and all Addenda thereto, that are prepared by Developer during the Design Phase;

5. The Construction Documents, which will be prepared by Developer and Accepted by the City; and

6. Change Orders, Unilateral Change Orders, Clarifications, and Field Orders issued after execution of the Agreement.

7. Nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier or a person or entity other than the City and Developer.

1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS

A. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract Documents will be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the city and/or county where the Project is located.

B. The intent of the Contract Documents is to describe and provide for a functionally complete and operational Project (or part thereof) to be designed, constructed and turned over in a new, complete and satisfactory operating condition in accordance with the Contract Documents including but not limited to, the Criteria Package. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Developer with no change in the Contract Sum or Contract Time.

C. Arrangement and titles of Drawings, and organization of the Specifications into Divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among subcontractors, or establishing the extent of Work to be performed by any trade. Developer may arrange and delegate its Work in conformance with trade practices, but Developer shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Specifications. The City assumes no responsibility to act as arbiter to establish subcontract limits between portions of the Work.

D. In interpreting the Contract Documents, words describing materials or Work with a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.

E. In the event of a conflict in the Contract Documents regarding the quality of a product, Developer shall request Clarification from the City as provided in Paragraph 6.02 before procuring said product or proceeding with the Work affected thereby.

F. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings shall be prepared by Developer to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations, i.e. relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interferences, are the responsibility of Developer without change to the Contract Time or Contract Sum. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work; shall be performed in such sequence and manner as to avoid conflicts; shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.

G. Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for

dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, Developer shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.

H. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

I. When there is a conflict between existing on-Site conditions and information indicated on information that the City provides to Developer, other than Differing Site Conditions as defined in Paragraph 3.05, the existing condition shall govern. Developer shall perform the Work and adjust to the existing condition at no additional cost to the City, provided Developer should have known of such conflicts based on its reasonable investigation of the Site prior to executing the Agreement.

J. All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action or determination of the City Representative for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in subparagraph 1.03B. Such determinations of the City Representative shall be final and conclusive.

1.04 AMENDMENT OF CONTRACT DOCUMENTS

A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) Change Order; (ii) Modification, or (iii) Unilateral Change Order.

B. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (i) a Field Order; (ii) a Clarification, written interpretation or other bulletin issued by the City; or (iii) the City's review and acceptance of a shop drawing or sample in accordance with Paragraph 3.12.

1.05 RESOLUTION OF CONFLICTING TERMS; PRECEDENCE OF CONTRACT DOCUMENTS

A. The Contract Documents are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the extent possible.

B. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail (listed in order of highest to lowest precedence):

1. Modifications, Change Orders, and Unilateral Change Orders in inverse chronological order, and in same order as specific portions they are modifying.

2. Written Clarifications and Field Orders.

3. Executed Agreement.

4. These General Conditions.

5. Other Contracting Requirements.

6. Divisions 2 through 48 of the Specifications.

7. Drawings.

C. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):

1. Written numbers over figures, unless obviously incorrect.

2. Figured dimensions over scaled dimensions.

3. Large-scale Drawings over small-scale Drawings.

4. Schedules on Drawings or in Project Manual over conflicting information on other portions of Drawings.

5. Detail Drawings govern over general Drawings.

6. Drawing with highest revision number prevails.

1.06 REUSE OF CONTRACT DOCUMENTS

The Contract Documents are and shall be prepared for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the City. Any unauthorized use of the Contract Documents is at the sole liability of the user.

ARTICLE 2 – CITY'S RESPONSIBILITIES AND RIGHTS

2.01 ADMINISTRATION OF THE CONTRACT

A. The City shall administer the Agreement as described in the Contract Documents.

B. The City will designate in writing an authorized representative with limited authority to act on behalf of the City. The City may at any time during the performance of this Contract make changes in the authority of any representative or may designate additional representatives in accordance with the City's Charter and codes. These changes will be communicated to Developer in writing. Developer assumes all risks and consequences of performing work pursuant to any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.

C. During the design phase, the review, approval, or other action taken by the City upon Developer's Design Submittals shall apply only as to whether the design, drawings and specifications are in conformance with the intent and requirements of the Criteria Package. During the construction phase, the review, approval, or other action taken by the City upon Developer's Construction Submittals shall be for strict compliance with the Construction Documents.

The City's review, approval, or other action will be taken with reasonable promptness provided that Developer shall provide the City with reasonable time to permit adequate review. The City will make best efforts to expedite its responses. The Parties will collaborate at weekly team meetings to establish a scheduled time in which the city will respond. Such actions of the City shall in no way relieve Developer from its responsibility to complete a fully functional and operational project, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper and timely execution of the Work.

Should the City request a change that affects the cost or time of performance to a Developer's Submittal that was previously approved by the City, and the Submittal conforms to the requirements of the Criteria Package or incorporates deviations from the Criteria Package specifically approved by the City, Developer may submit a Claim in accordance with Article 13. Developer shall be responsible to provide design and engineering or other costs necessary to prepare the Submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of approving a change in the requirements of the Criteria Package, from obtaining a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

2.02 INFORMATION AND SERVICES

A. The City shall make the Site available to Developer so that Developer can inspect the Site and perform the Work.

B. The City shall make available to the Developer as Reference Documents only, information available to the City concerning the Site and the Project. The City will provide assistance with, but will not be responsible for, the filing of documents as is required to obtain necessary approvals of governmental authorities, jurisdictional agencies, or utility companies having jurisdiction over the Project. Such assistance may be in the form of executing permits where owner's signature is required or in the providing of information that would not otherwise be available to Developer. Payment for related services, fees or taxes is not the responsibility of the City except as noted below in Paragraph 3.08.

C. The City will be responsible for paying all real property taxes and assessments applicable during the performance of the Work or portions thereof.

D. The City shall apply and pay for the building permit if required for the Work and shall pay all permanent utility service connection fees. All other permits, easements, approvals, temporary utility charges, and other charges required for construction shall be secured and paid for by Developer in accordance with Paragraph 3.08.

1. The City's responsibility with respect to certain inspections, tests, and approvals is set forth in Article 8.

2.03 RIGHT TO STOP THE WORK; DEVELOPER'S FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH CONTRACT

A. In the event of material breaches of the Agreement by Developer, the City may order Developer to stop the Work, or a portion thereof, until the cause for such order has been eliminated. Any such order to stop the Work shall be in writing, provide Developer with an effective date for stopping Work, and shall be signed by the City Representative. Unless otherwise agreed to by the City, Developer shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of an order to stop the Work.

B. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Developer or other person or entity.

C. Reasons for ordering Developer to stop the Work, or a portion thereof, include but are not limited to the following:

1. Developer fails to correct Work which is not in accordance with the requirements of the Contract Documents; or

2. Developer fails to carry out Work in accordance with the Contract Documents; or

3. Developer disregards the authority of the authorized City Representative; or

4. Developer disregards the Laws or orders of a public body having jurisdiction over the Project; or

5. Developer violates any material provisions of the Contract Documents; or

6. Developer fails to maintain current certificates of insurance on file with the City; or

7. Developer is proceeding with original Contract Work, which will be modified by a pending Change Order.

D. In the event the City intends to order Developer to stop Work, the City shall issue a written notice to Developer. The notice shall identify the ground(s) for ordering Developer to stop Work and provide the Developer with a 14-day cure period to complete necessary corrective Work and/or actions. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Developer or its Subconsultants, Subcontractors and Suppliers, Developer shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence diligently the corrective Work and/or actions. The City, after accepting Developer's proposed schedule, will amend the stop work notice in writing to set forth the agreed-upon cure period. If Developer fails to completely cure the ground(s) for stopping Work either (i) within the 14-day cure period set forth in the notice; or (ii) within the agreed-upon cure period set forth in an amended notice, the City may, without prejudice to any other rights or remedies that the City may have, order Developer to stop the Work until the cause for such order has been eliminated.

E. In the event that Developer (i) fails to maintain current certificates of insurance on file with the City; (ii) commits criminal or unlawful acts; (iii) creates safety hazards; or (iv) commits acts or creates conditions that would have an immediate adverse impact on the well-being of the Project, the City, the public, Developer's employees, a Subcontractor's employees, or a lower-tier subcontractor or supplier's employees, the City shall have the right to order Developer to stop the Work immediately, without prior notice.

2.04 RIGHT TO CARRY OUT THE WORK

A. In the event that Developer fails to carry out the Work in accordance with the Contract Documents and fails to promptly correct or prosecute the Work within a 3-day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies.

B. In such case the City will deduct all costs of such corrections, including the costs of City staff and consultants, from amounts due Developer. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Developer shall reimburse the City.

2.05 EXAMINATION OF RECORDS; AUDIT

A. The City shall have the right to examine, copy and audit all documents, whether paper, electronic, or other media, and electronically stored information, including but not limited to, any and all books, estimates, records, contracts, documents, proposal documents, proposal cost data, subcontracts, schedules, job cost reports, and other data including computations and projections of Developer, Subconsultants, Subcontractors, Lower-Tier Subconsultants, Lower-Tier Subcontractors and Suppliers related to proposing, negotiating, pricing, or performing the Work covered by: (i) a Proposed Change Order Cost Proposal; (ii) a Proposed Change Order Time Adjustment Proposal; (iii) Force Account Work; or (iv) a Contract Claim. In the event that Developer is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.

B. Upon written notice by the City, Developer immediately shall make available at its office at all reasonable times the materials noted in subparagraph 2.05(A) for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five-days' notice of the examination and/or audit. The City may take possession of the records and materials noted in subparagraph (A) by reproducing documents for off-site review or audit. When requested in the City's written notice of examination and/or audit, Developer shall provide the City with copies of electronic documents and electronically stored information in a reasonably usable format that allows the City to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Developer shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and

information.

C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

D. The City may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until three years after final payment under this Agreement.

E. Failure by the Developer to make available any of the records or materials noted in subparagraph (A) or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination For Cause.

F. Developer shall insert and require the insertion of a clause containing all the provisions of this Paragraph in all subcontracts with Subconsultants, Subcontractors, and Suppliers of all tiers in excess of $10,000.

2.06 NO WAIVER OF RIGHTS

A. None of the following shall operate as a waiver of any provision of the Contract Documents or of any power herein reserved by the City or any right to damages herein provided:

1. inspection by the City or its authorized agents or representatives; or

2. any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or

3. any extension of time; or

4. any position taken by the City or its authorized agents or representatives.

2.07 CITY NOT LIABLE FOR CONSEQUENTIAL DAMAGES

The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Developer for any type of special, consequential or incidental damages arising out of or connected with Developer's Work.

2.08 RIGHT TO CHANGE, SUSPEND OR DELAY THE WORK

By executing this Agreement, Developer agrees that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties: (i) order changes, additions, deletions and extras to the Work after execution of the Contract and issued from time to time throughout the period of construction, regardless of their scope, number, cumulative value, or complexity, to correct errors, omissions, conflicts and ambiguities in the Contract Documents, or to implement discretionary changes to the scope of Work requested by the City; (ii) issue changes, additions, deletions and extras in a manner that is not in sequence with the as-built or as-planned progress of the Work; (iii) issue changes due to Unforeseen or Differing Conditions; or (iv) suspend the Work, or parts thereof, or limit access to portions of or all of the Work, for the convenience of the City or in the interests of the Project; and (v) delay or disrupt the Work due to failure of the City to timely perform any contractual obligation.

ARTICLE 3 – DEVELOPER'S RESPONSIBILITIES

3.01 GENERAL DESIGN AND CONSTRUCTION RESPONSIBILITIES

A. Developer shall be responsible for its licensed Subcontractors to perform or furnish all design, construction and related services as set forth in the Contract Documents. Developer shall Provide all design and construction services necessary for receipt of all occupancy permits and authorizations to operate for a facility meeting or exceeding all design and specification requirements that have been agreed upon between the City and Developer as set forth in the Criteria Package, including, but not limited to, compliance with all industry standards and all applicable codes and regulations. Developer assumes responsibility for on-budget, on-schedule delivery of the Project regardless of its contractual agreements with parties other than City.

B. Developer shall provide the City, its employees, consultants, and other representatives, and representatives of other authorities having jurisdiction, with full cooperation in the performance of their duties and responsibilities related to the Work covered by the Agreement. Such cooperation may take the form of providing appropriate personnel to attend meetings, reviews, hearings, inspections, or similar project-related functions, and to provide documents as requested.

C. All construction Work for the Project shall be performed by contractor(s) holding the appropriate license issued by the California Contractors State License Board for the Work being performed and having the necessary expertise and experience required to enable Developer to complete the Project in accordance with the requirements of the Contract Documents.

3.02 DESIGN PROFESSIONAL SERVICES

A. This Paragraph sets forth basic Design

Professional services to be provided by Developer for the Project. Refer to the Criteria Package for additional, specific requirements.

B. All design Work for the Project shall be performed by Design Professional(s) who are licensed in the State of California and have the necessary expertise and experience required to prepare design documents to enable Developer to complete the Project in accordance with the requirements of the Contract Documents.

1. All design work shall be stamped by licensed architects or engineers, as appropriate.

C. Such Design Professional(s) shall be vested with the authority to act on behalf of Developer in all matters relating to design or supervision of construction of that Item(s) of which he or she is responsible. Developer's Design Professional(s) may be replaced only with the approval of the City.

D. Developer shall require its Design Professional(s) to be responsible without limitation for the following:

1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.

2. Before undertaking each part of the Work, review the Contract Documents, including the Criteria Package, and existing Reference Documents and studies of the proposed Site and other data furnished to the Design Professional, if any, and advise the City whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Developer shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect, and the City will issue a Clarification or RFI reply, as appropriate, as to the procedure to be followed.

3.03 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

A. The Contract Documents are not complete but show the City's purpose and intent only, and Developer shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity which appear in the Contract Documents, instructions or work performed by others.

B. Developer shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Developer shall be responsible for the accuracy of such dimensions and determinations.

C. Developer shall carefully review the appropriate portions of the Contract Documents a minimum of 30 days in advance of the Work to be executed for the express purposes of checking for any manifest errors, omissions, discrepancies or ambiguities. Developer shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by Developer's untimely review of the Contract Documents.

D. Developer shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of errors, omissions, discrepancies or ambiguities, and the City will issue a Clarification or RFI reply as to the procedure to be followed. If Developer proceeds with any such Work without receiving such Clarification or RFI reply, it shall be responsible for correcting all resulting damage and Non-conforming Work.

E. Developer shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and field conditions and to implement and administer a Request for Information ("RFI") system throughout the Contract Time. Developer shall be responsible for costs incurred by the City for the work of the City's consultants and City's administrative efforts in answering Developer's RFIs where the answer could reasonably be found by reviewing the Contract Documents.

F. Prior to start of Work, Developer and the City Representative shall visit the site and adjacent properties as necessary to document existing conditions including photographs. Developer shall document these conditions and shall submit prior to the start of Work a complete report of existing conditions.

3.04 SUPERVISION OF THE WORK

A. Unless there are specific provisions in the Contract Documents to the contrary, Developer shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Developer shall be solely responsible to the City for Developer or its Subcontractor(s)'s failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Developer, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. Developer is solely responsible for maintaining safe conditions on the site at all times, in accordance with Article 12.

B. Developer shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation into the Work in the proper

sequence and without delay of materials, devices, or provisions for future Work.

C. Whenever the Work of a Subcontractor or Lower Tier Subcontractor is dependent upon the work of another Subcontractor or Lower Tier Contractor, then Developer shall require the Subcontractor or Lower Tier Subcontractor to:

1. coordinate its Work with the dependent work;

2. provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;

3. supply and install items to be built into dependent work of others;

4. make provisions for dependent work of others;

5. examine dependent drawings and specifications and submittals;

6. examine previously placed dependent work;

7. check and verify dependent dimensions of previously placed work;

8. notify Developer of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and

9. not proceed with its Work until the unsatisfactory dependent conditions have been corrected.

D. Developer shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the City in accordance with the terms of this Contract, but nothing herein contained shall be taken to relieve Developer of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision.

E. Developer shall at all times permit the City, its agents and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; (ii) subject them to inspection at all such places; and (iii) reject if the Work does not conform to the requirements of the Contract Documents. This obligation of Developer shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the City as set forth in Article 8.

F. Whenever Developer desires to perform Work outside regular working hours, Developer shall give notice to the City of such desire and request and obtain the City's written permission at least 3 working days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work so that the City may make the necessary arrangement for testing and inspection.

G. If Developer receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Developer's risk.

H. During all disputes or disagreements with the City, Developer shall carry on the Work and adhere to the progress schedule required to be submitted under the requirements of the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and Developer may otherwise agree in writing.

3.05 DIFFERING SITE CONDITIONS

A. Consistent with section 7104 of the California Public Contract Code, if Developer encounters any of the following conditions at the Site, Developer shall promptly notify the City in writing of the specific differing conditions before such conditions are disturbed and before performing any affected Work to permit the City to timely investigate the conditions.

1. Subsurface or latent physical conditions at the Site (including hazardous waste) which differ materially from those indicated by information about the Site made available to Developers prior to execution of the Project Delivery Agreement.

2. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents.

B. Developer's written notice shall include the following information concerning such conditions: (i) location; (ii) nature and extent; (iii) a description of how such conditions affect the Work; (iv) recommended methods to overcome such conditions; (v) the baseline conditions described in the Contract Documents that formed the basis of Developer's expectations regarding the conditions that would be encountered; and (vi) the results of any testing, sampling, or other investigation conducted by Developer.

C. Differing Site Conditions shall not include:

1. All that is indicated in or reasonably interpreted from the Contract Documents or Available Project Information;

2. All that could be seen on Site;

3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Available Project Information.

4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Available Project Information.

D. The City will promptly investigate the conditions reported in Developer's written notice, and will issue a written report of findings to Developer.

E. Developer shall be responsible for the safety and protection of the affected area of the Work for the duration of the City's investigation of potential Differing Conditions.

F. Only if the City determines, in its sole and reasonable discretion, that the conditions reported do materially so differ, and cause a decrease or increase in Developer's cost or time required to perform all or part of the Work, will the City issue a Change Order as provided in Article 6 of these General Conditions. If the City determines that a Differing Site Condition exists, Developer shall promptly submit a Cost Proposal and/or Time Adjustment Proposal, as appropriate, per Article 6 to facilitate the timely negotiation and execution of a Change Order.

G. If Developer disagrees with the City's determination and wishes to pursue an adjustment to the Contract Sum and/or Contract Time, Developer must timely submit a written Notice of Potential Claim to the City as provided in Paragraph 13.02 of these General Conditions. Developer's Notice of Potential Claim must include the information required by Paragraph 13.02, and must also identify all documentation underlying Developer's assumptions that are affected by the alleged differing condition. In the event of such disagreement, Developer shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.

H. Failure by Developer to comply with the contract requirements concerning the timing and content of any notice of Differing Site Conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged Differing Site Conditions shall be deemed a waiver of any Contract Claim or subsequent proceedings (e.g., Government Code Claims and litigation) by Developer for adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

3.06 SUPERINTENDENTS AND OTHER KEY TEAM MEMBERS

A. Developer shall at all times be represented at the Site by Developer's construction project manager or superintendent whom it has authorized in writing to make decisions and receive and carry out any instructions given by the City. City recognizes that the construction project manager may be a designated employee of Developer's construction Subcontractor. Notwithstanding, Developer will be held liable for the faithful compliance with such instructions. Prior to the issuance of a Notice to Proceed, Developer shall inform the City in writing of the names, addresses and telephone numbers of its key personnel whom it has authorized to act as its representatives at the Site, including employees of a Subcontractor if so authorized, and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Developer is a joint venture, it shall designate only one such representative.

B. The City reserves the right to reject Developer's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided in subparagraph 3.07A. The City shall be given written notice of, and shall have the right to approve, replacement of Developer's project manager, superintendents and foremen.

C. In the event that the Developer proposes to substitute a key team member during the performance of the Contract, Developer shall submit to the City Representative, at least seven days prior to engaging the person, an experience statement for the City's review and acceptance. Any proposed substitution is subject to the approval of the City Representative based upon qualifying experience on similar projects. Failure to obtain the City's acceptance shall not constitute a cause for delay. In addition, the City may issue an order to stop the work under Article 2.03 until such time as the Developer engages persons possessing skills and qualifications acceptable to the City.

3.07 LABOR, MATERIALS AND EQUIPMENT

A. Developer shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's notification, Developer shall discharge from the Work and replace at no additional cost to the City an employee of Developer, a Subcontractor, or a Supplier used on the Work who, in the City's sole

judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a City employee, agent or member of the public; or (iii) is refusing to carry out the provisions of the Contract.

B. In order that the City can determine whether Developer has complied or is complying with the requirements of the Contract that are not readily enforceable by inspection and test of the Work and materials, Developer shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.

C. Before ordering materials, equipment, or performing Work, Developer shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work. If a discrepancy exists as to information provided by the City, Developer shall notify the City immediately and request the City to clarify the design intent. Upon commencement of a particular item of Work, Developer shall be responsible for dimensions related to such item of Work.

D. All materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Developer shall store packaged materials and equipment to the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Developer shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.

E. Unless otherwise specified in the Contract Documents, Developer shall provide and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities and incidentals necessary for the performance, testing, start-up and completion of the Work.

F. Developer shall provide a field office at the Site with adequate separate sanitary facilities for the City Representative.

3.08 PERMITS, FEES AND NOTICES

A. Developer shall pay all utility charges for temporary connections to the Work.

B. Unless otherwise provided in the Contract Documents, Developer shall secure and pay for all permits (other than the building permit), governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than inspections which are to be performed at the expense of the City as provided in Article 8) necessary for proper execution and completion of the Work. Developer shall be responsible for submitting complete, approvable applications for permits pursuant to the timeline set forth in the Project Schedule. If: (1) permits are not issued in the number of days allocated for each permit type in the Project Schedule; (2) delay in permit issuance is not due to any deficiency in Developer's application; and (3) such additional time to secure the permit creates a critical path delay, then Developer shall be entitled on a noncompensable time extension equal to the number of additional days taken to secure the permit.

C. Developer shall coordinate and obtain all permits prior to starting Work for which permits are required.

D. Pursuant to section 832 of the California Civil Code, Developer shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work.

E. Developer shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Developer shall timely deliver, post and maintain all notices required by such permits. Developer shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations. Should delays or damages be caused by Developer's failure to coordinate or comply with the conditions of such excavation permits, Developer shall pay all costs, assessments, fines, and penalties resulting therefrom.

F. If Developer observes that portions of the Contract Documents are at variance with the Code or other applicable laws, statutes, ordinances, rules and regulations, Developer shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with such laws, statutes, ordinances, rules or regulations, the City will make necessary changes to the Contract Documents by appropriate amendment.

G. If Developer performs Work it knows, or reasonably should have known, to be contrary to the Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Developer shall assume responsibility for such Work and shall bear all costs of correction.

H. Developer shall keep the permits, an approved set of Drawings and Specifications, and a copy of the Code at the Site readily available for inspection during regular working hours throughout the Contract Time.

I. Developer shall coordinate all required

inspections and special inspections with the appropriate agency having jurisdiction. Developer shall notify the City Representative in accordance with Article 8, so that the appropriate City representatives and inspectors will be present at these inspections.

J. Developer shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.

K. Developer shall submit to the City Representative as a condition precedent to Final Completion signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

3.09 RECORD DOCUMENTS

A. Developer shall maintain at the Site a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, Field Orders, and approved shop drawings, samples and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed.

B. Developer shall furnish on a monthly basis the aforesaid record documents for the City to review and determine their sufficiency in conforming to the requirements set forth in subparagraph 3.09A. The City shall have the right to withhold 25% of progress payments due Developer until Developer has complied with this Paragraph 3.09.

C. Record documents shall be available for inspection by the City at all times and shall be delivered to the City prior to Substantial Completion.

3.10 DEVELOPER'S DAILY REPORT

A. Developer shall complete, and submit to the City on the next day, consecutively numbered daily construction reports in a format and containing such information as may be required by the City.

B. In addition, whenever Force Account Work is in progress, Developer shall complete and submit to the City detailed written daily Force Account Work reports as provided under Paragraph 6.07.

3.11 PROGRESS AND SUBMITTAL SCHEDULES

A. Prior to issuance of a NTP with the construction Phase of the Work, Developer shall submit to the City for review the following schedules:

1. a base line construction schedule for the Work which shall use, the critical path method ("CPM"), activity on arrow or precedence diagramming method, as outlined in the Associated General Contractors publication "The Use of CPM in Construction," and shall indicate the times (number of days or dates) for starting and completing the various stages of the Work, including all milestones and special constraints specified in the Contract Documents; and

2. a submittal log, coordinated with the progress schedule, listing all submittals required by the Contract, their cognizant specification reference, and indicating the times for submitting such submittals.

B. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the City and Developer shall meet to review for acceptability to the City the schedules submitted under subparagraph 3.11.A.1.a. Developer shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the schedules.

C. No progress payments will be made to Developer unless and until the base line schedule is submitted and accepted by the City.

D. Developer shall adhere to the base line construction schedule accepted by the City in accordance with subparagraph 3.11B and as may be adjusted during the performance of the Work in accordance with the Contract Documents. Developer shall submit to the City for acceptance proposed revisions or adjustments in the base line construction schedule. Proposed adjustments in the base line construction schedule that will change the Contract Times shall be submitted to the City in accordance with Paragraph 7.02.

E. Acceptance of base line construction and submittal schedules by the City will neither impose on the City responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve Developer from its full responsibility therefor.

F. Developer shall submit a monthly progress schedule update as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03. All updates shall be submitted to the City for the City's acceptance; if rejected, Developer shall correct and resubmit updates to the satisfaction of the City before a pending application for payment is approved.

1. Each progress schedule update shall continue to show all Work activities including those already completed and those of changed Work.

2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates activities were actually started

and completed and the actual percent complete of activities.

3. Developer's submission of progress schedule updates, reports, curves or narratives, or the City's acceptance of such progress schedule updates, reports, curves or narratives, shall not amend or modify, in any way, the Contract Time or milestone dates or modify or limit, in any way, Developer's obligations under this Contract.

4. Developer waives its rights to time extensions based on changed Work if Developer has failed to meet its obligations to provide monthly schedule updates as specified herein.

G. Early Completion Schedule: If Developer submits a base line schedule that shows a completion time that is earlier than the Contract Time, the "float" or slack time shall belong to the Project and is an expiring resource available to City or Developer as needed to meet Milestones or complete the Work within the Project Time. Developer shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float."

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Developer proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Developer shall submit drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by Developer that are not required by the Contract Documents may be returned without action. The City recognizes that Developer may cause a Subcontractor to prepare such submittals, but Developer shall be responsible to the City for all required submissions.

C. By approving and submitting shop drawings, product data, samples and other submittals, Developer represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.

D. Developer shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples and other submittals until the respective submittal has been received, reviewed and approved or received, reviewed and accepted by the City and returned to Developer. Such Work shall be in accordance with approved/accepted submittals. Developer is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals.

E. Where a shop drawing or sample is required by the Contract Documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk and responsibility of Developer.

F. The review, acceptance, approval, or other action taken by the City upon Developer's submittals such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Developer from its responsibility to notify the City of errors or omissions therein in accordance with Paragraph 3.01, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City's action will be taken with such reasonable promptness provided that the City shall be provided a reasonable time, as set forth in Division 01, to permit adequate review, but in no case shall City reviews and approvals of Shop Drawings, Product Data and Samples take longer than five (5) business days. Approval/acceptance of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely Developer's obligation. Developer shall be responsible to provide engineering or other costs necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of such approvals/acceptances, from obtaining a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

G. Developer shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples and other submittals unless Developer has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.

1. Deviations shall also be indicated clearly and boldly on such shop drawing, product data, sample or related submittal.

2. For resubmitted shop drawings, product data, samples and other submittals, Developer shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.

H. Developer shall not be relieved of responsibility

for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

3.13 SUBSTITUTIONS

A. Pursuant to section 3400 of the California Public Contract Code, Developer shall submit for approval to the City a properly completed Request for Product Substitution for each material, product, thing, or service that it proposes to substitute in place of, and as the equal, of a material, product, thing, or service specified in the Contract Documents by trade name or by the names of any particular patentee, manufacturer or dealer.

3.14 USE OF SITE

A. Developer shall confine its operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

B. In all cases, the Work shall be constructed solely within the boundaries of the Site. Developer shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties in accordance with section 832 of the California Civil Code. Developer shall obtain all such permits, rights-of-way and easements at no cost to the City.

C. Pumping, draining and control of surface and ground water and excavating or other earthwork shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Developer shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated materials at the Site.

D. Developer shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Developer subject part of the Work or adjacent property to stresses or pressures that will endanger it.

E. Developer shall assume full responsibility and shall promptly settle all claims for damage to areas of the Site, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.

3.15 ACCESS TO WORK

During the performance of the Work, the City and its authorized representatives, including City consultants performing necessary project-related functions on behalf of the City (e.g., construction management personnel and design professionals), or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, may at any time, and for any purpose, enter upon the Work, the shops where any part of such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any materials for use in the Work are being, or are to be, manufactured. Developer shall not require City personnel or City consultants performing necessary project-related functions on behalf of the City to sign visitor hold harmless agreements or similar agreements requiring the signatory to defend, hold harmless and/or indemnify Developer for claims arising out of or relating to the Work, the Project, or the Site.

3.16 CUTTING AND PATCHING

A. Developer shall be responsible for performing, in accordance with the requirements of the Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.

B. Developer shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching or otherwise altering such construction. Developer shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Developer shall not withhold from the City Developer's consent to cut or otherwise alter the Work.

3.17 CLEANING UP AND REMOVING DEBRIS

A. Developer shall keep the Site and surrounding area, including public areas immediately adjacent to the Site such as temporary pedestrian walkways and sidewalks, free from accumulation of excess materials, rubbish, graffiti, and debris.

1. Developer shall perform such clean up and removal in accordance with the requirements of the Specifications.

2. Prior to Substantial Completion Developer shall remove from and about the Site excess materials, rubbish, Developer's tools, construction equipment, and machinery and shall perform final cleaning as specified in accordance with the requirements of the Specifications.

3. Removal and disposal of such excess materials, rubbish, and other debris shall conform to applicable laws and regulations.

B. If Developer fails to comply with Article 3.15 or to clean up as provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Developer under the Contract.

C. Developer shall salvage and deliver to the City removed equipment, appurtenances and other materials that are not reused in the Work and indicated by the City to be salvaged. Developer shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances and other materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

3.18 INTELLECTUAL PROPERTY; ROYALTIES AND INDEMNIFICATION

A. Developer shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

B. Developer shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, material, article or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.

C. To the fullest extent permitted by law, Developer shall save, defend, hold harmless, and fully indemnify the City and all its officers, employees, agents, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks or other intellectual property claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Developer is not the patentee or assignee or does not have the lawful right to sell the same.

1. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Completion and termination of the Contract. The notice, cooperation and control of defense provisions set forth in Paragraph 3.21 shall apply to this intellectual property indemnity.

D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Developer shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Developer cannot so procure such right within a reasonable time, Developer shall promptly, at Developer's sole expense and at no cost to the City, (1) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right, or (2) replace said Work with work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

E. Subparagraphs 3.18C and 3.18D, above, shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right (i) arising from any unauthorized modifications to the Work by the City or its agents or (ii) arising from the combination of Work with any products or services not provided or recommended by Developer where the combination is the basis for infringement.

3.19 WARRANTY

A. Developer warrants and guarantees to the City that materials and equipment provided under the Contract shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity; that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents.

1. Developer additonally warrants manufacturers' product warranties.

B. Developer's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Developer, improper or insufficient maintenance, improper operation, or normal wear and tear. Testing shall not be construed as operation.

C. Developer shall deliver product warranties and guarantees conforming to the requirements of the Specifications to the City Representative prior to Final Completion.

D. The warranty provisions of this Paragraph 3.19 are separate and additional to the provisions for the Guarantee to Repair Period and correction of Non-conforming Work as specified in Article 8.

3.20 TAXES

A. Developer shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Poposal opening.

3.21 INDEMNIFICATION

A. Consistent with California Civil Code section 2782, Developer shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, agents, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct of any person indemnified herein. Developer's obligations under this Paragraph apply regardless of whether or not such claim, suit, action, loss or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this Contract, Developer shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between Developer and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Developer will be for that entire portion or percentage of liability not attributable to the active negligence of City.

1. Developer's defense, indemnity and hold harmless obligations shall extend to City Consultants (e.g., design professionals and construction managers) providing services under separate written agreement with the City covering any portion of the Project.

2. Developer's defense, indemnity and hold harmless obligations shall not extend to the liability of a City Consultant or its agents, employees or subconsultants arising out of, connected with or resulting from such indemnitee's own active negligence, errors or omissions or from (1) such indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, Change Orders, designs or Specifications, or (2) such indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.

B. Developer acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

C. The City and other indemnified parties specified in subparagraph 3.21A shall provide Developer with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Developer from any obligation hereunder. Developer shall obtain the City's and other indemnified parties' consent for Developer's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Developer and the City and/or other indemnified party conflict and counsel chosen by Developer cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Developer, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate co-counsel shall be borne by Developer, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Developer's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Developer in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

1. So long as Developer has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Developer will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Developer and does not impose any obligation upon City and/or other indemnified party in connection with such judgment or settlement and Developer obtains the full and complete release

of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Developer.

2. If Developer does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Developer, and (ii) Developer will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, of caused by the claim to the fullest extent provided in this Paragraph 3.21.

D. Developer's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.

E. In the event that Developer and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Developer's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Developer under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

F. The defense and indemnity obligations of this Paragraph shall survive Final Completion and termination of this Contract. Developer's defense and indemnity obligations shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by Developer that occurred during the course of the Work.

3.22 COMPLIANCE WITH LAWS; INDEMNIFICATION

A. Developer shall keep itself fully informed of and comply with the Charter, ordinances, codes, and regulations of the City and other local agencies having jurisdiction over the Work, and all federal and state laws, regulations, orders or decrees in any manner affecting or applicable to the Contract Documents, the performance of the Work, or those persons engaged therein.

B. All construction and materials provided under the Contract Documents shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of the Code specified in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it.

C. As required by and in accordance with the procedures specified in Paragraph 3.19, Developer shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, and other designated other parties, and all of their officers, agents, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims or liability arising from the violation of law, regulation, order or decree by Developer or its Subcontractors or Suppliers of all tiers in connection with or resulting from performance of the Work.

D. If the City incurs any fines or penalties because of Developer's (or a Subcontractor's or Supplier's) failure to comply with a law, regulation, order or decree, the City may deduct the amount of the fine or penalty from the Contract Sum.

E. Authorized persons may at any time enter upon any part of the Work to ascertain whether applicable laws, regulations, orders or decrees are being complied with. Developer shall promptly notify the City Representative if a regulatory agency requests access to the job site or to records. Developer shall provide the City Representative with a list of documents provided to the regulatory agency and enforcement actions issued against Developer.

F. No additional costs will be paid or extensions of time granted as a result of Developer's compliance with this Paragraph 3.20.

3.23 LIABILITY OF DEVELOPER – CONSEQUENTIAL DAMAGES

Developer shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Developer's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Developer. This limit of

liability shall NOT, however, apply to, limit or preclude: (A) Developer's obligation to pay Liquidated Damages as set forth in the Contract Documents; (B) damages caused by Developer's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (C) Developer's obligations to indemnify and defend the City and other indemnified parties; (D) Developer's liability for any type of damage to the extent such damage is required to be covered by insurance as specified in the Contract Documents; (E) wrongful death caused by Developer; (F) punitive or treble damages; (G) Developer's liability for damages expressly provided for in this Agreement, including without limitation statutory damages imposed by the City upon Developer under the City Ordinances and Municipal Codes specified in this Agreement; and (H) Developer's warranties and guarantees under the Contract Documents.

ARTICLE 4 – SUBCONTRACTORS

4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

A. Under Section 1725.5 of the California Labor Code, all subcontractors who work on a public works project must register and pay an annual fee to the California Department of Industrial Relations. No unregistered subcontractor, regardless of the dollar amount of subcontract work, may be awarded a contract for public work on a public works project. Developer shall not employ a subcontractor of any tier that does not maintain a current registration with the California Department of Industrial Relations.

B. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with the governing regulations regarding subcontracts, section 6.21 of the Administrative Code, and section 1771.1 of the California Labor Code. Section 6.21 and section 1771.1 shall govern the designation of, failure to specify, and substitution of subcontractors and the assignment, transfer and performance of subcontracts.

C. Developer shall not employ a subcontractor of any tier, Supplier or other person or entity that the City has determined unqualified or non-responsible. The City may give written notice of such determination prior to award of the Agreement or at any time during the Contract Time, and upon receipt thereof Developer shall provide replacement with a qualified person or entity. The City shall have the right of approval and shall not be responsible for added costs to Developer, if any, of employing such replacement person or entity.

4.02 SUBCONTRACTUAL RELATIONS

Developer shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Developer by the applicable terms and conditions of the Contract Documents, in the same manner Developer is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Supplier. All Subcontractors and Suppliers shall have similar agreements with Lower-Tier Subcontractor and Lower-Tier Suppliers. All Subcontractors and Suppliers shall be given copies of the contract documents to which the Subcontractor or Supplier will be bound, and upon written request of the Subcontractor or Supplier, shall have identified written terms and conditions of their proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

4.03 ASSIGNABILITY OF SUBCONTRACTS

A. All subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers shall provide that they are freely assignable to the City under the following conditions:

1. the City terminates the Agreement for cause under provisions of Article 14;

2. the City requests such assignment; and

3. the surety providing the performance bond for the Project fails to timely fulfill its obligations under the performance bond.

B. The City will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

4.04 SUCCESSORS AND ASSIGNS

A. Developer shall constantly give its personal attention to the faithful prosecution of the Work. Developer shall keep the Work under its personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.

B. All transactions with Subcontractors will be made through Developer, and no Subcontractor shall relieve Developer of any of its liabilities or obligations under the Contract.

C. When a subcontractor of any tier fails to prosecute a portion of the Work in a manner satisfactory to the City, Developer shall remove such subcontractor immediately upon written request of the

City, and shall request approval of a replacement subcontractor to perform the Work in accordance with Administrative Code section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq., at no added cost to the City.

D. The Contract shall not be assigned except upon the approval of the City in accordance with Administrative Code section 6.22(d).

ARTICLE 5 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

A. Should the Contract Documents indicate that construction work, or work of any other nature, be performed by other contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Parties executed the Agreement, Developer shall cooperate with all such contractors or forces to the end so as to avoid delay or hindrance to their work. The cost of such cooperation shall be considered as included in Developer's Proposal price and no direct or additional payment will be made therefor.

B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work is not indicated in the Contract Documents or underway when the Parties executed the Agreement materially increases Developer's costs, then Developer may submit a Change Order Request therefor in accordance with Paragraph 6.03.

C. If the City gives Developer written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Developer is already performing Work, Developer shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Developer shall provide the City Representative written notice when cleanup and demobilization has been completed. The City Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Developer shall allow proper and safe access to the Work at the subject location and shall schedule and coordinate its Work with the other contractors' work.

D. If Developer requires access to a location where another contractor is performing work, Developer shall request such access in writing from the City Representative. The City Representative will provide written notice to Developer when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification, Developer shall have full access and shall commence or resume its operations in that location.

E. If Developer believes it is entitled to a time extension caused by its obligations under subparagraphs 5.01Cor 5.01D above, it shall comply with the notification requirements of Paragraph 7.02.

F. When it is necessary for Developer and another contractor or utility owner to work in the same location at the Site, each party shall assume the following mutual responsibilities for the benefit of the other party at no additional cost to the City:

1. both parties shall execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in the same location;

2. both parties shall add the other party as an additional insured under their respective liability policies;

3. the party seeking to use portions of the construction Site of the other party to perform its work shall pay all direct costs incurred by the other party to accommodate its operations; and

4. if Developer contends that delay or additional cost is involved because of such action by the City, Developer shall make such Claim by the procedures as provided in Article 13.

G. The City shall not be a party to any of the agreements between multiple contractors and shall have no liability to any party with regard to the lack of coordination and cooperation or the inability of a party to execute specific work requirements. Developer agrees to indemnify and hold the City harmless for all claims or losses that Developer or the other contractors may incur as a result of their inability to successfully obtain work areas under the control of one of the parties.

5.02 COORDINATION

A. Developer shall afford other contractors and the City reasonable opportunity for storage of materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the City may direct.

B. Notice of Conflicting Conditions: Where Developer's Work is adjacent to or placed on top of

that of another contractor, Developer shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Developer proceeds without giving notice, it shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

1. The foregoing does not apply to latent defects. Developer shall report to the City latent defects in another contractor's work promptly upon discovery.

C. Developer shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract as directed.

D. Any difference or conflict that may arise between Developer and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.

E. If so directed by the City, Developer shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the work of all other contracts thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Developer may submit a Change Order Request as provided under Paragraph 6.03 for additional costs incurred by it in preparation of such coordination drawings.

F. At any time during the progress of the Work, the City may, by providing reasonable notice, require Developer to attend any conference of any or all of contractors engaged in the Work.

G. If the City determines that Developer is failing to coordinate its Work with the work of other contractors as directed, the City may upon 72 hour written notice:

1. withhold any payment otherwise owed under the Contract until Developer complies with the City's directions; or

2. direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or

3. terminate any and all portions of the Contract for Developer's failure to perform in accordance with the Contract.

5.03 CLEAN UP RESPONSIBILITIES

A. Developer and other contractors shall each bear responsibility for maintaining their respective work areas on the premises and adjoining areas free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.

B. In the event of conflicts the City, after issuing 24 hour written notice to the contractors involved, will clean up the premises and deduct from the amount due Developer under the Contract the cost of said clean up as the City determines equitable.

ARTICLE 6 – CLARIFICATIONS AND CHANGES IN THE WORK

6.01 GENERALLY

A. The City may, at any time between the Notice to Proceed and Final Completion and without notice to Developer's surety, order additions, deletions, or revisions in the Work by Change Order, Unilateral Change Order, or Field Order. Developer shall promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents.

B. Developer shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Developer performs work that is not required by the Contract Documents as amended, modified, or supplemented in writing.

C. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, the Developer provides the City with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the City may evaluate each potential Change and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the Developer of additional, undisputed amounts.

D. Failure by the Developer to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the City at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the Developer arising out of such Clarification or Change Order.

6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS AND FIELD ORDERS

A. Should there appear to Developer to be a discrepancy in the Contract Documents, should

questions arise as to the meaning or intent of the Contract Documents, or should the City's comments on submittals returned to Developer appear to Developer to change the requirements or scope of the Contract Documents, Developer shall promptly submit a Request for Information ("RFI") to the City. Developer shall coordinate and schedule its Work to provide the City sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.

B. The City shall issue a reply to the RFI within 5 working days of receipt of the same. The reply may include written Clarifications as deemed by the City to be necessary and consistent with the Contract Documents, or a Field Order requiring minor changes in the Work. If additional time is needed to issue the reply, the City will, within the 5 working-day reply period, notify the Developer of the longer reply period.

C. Clarifications of the Contract Documents and Field Orders issued by the City shall be binding on Developer and shall be promptly executed by Developer. The City's right to clarify any element of the Contract Documents shall not be construed to entitle Developer to a modification of the Contract Sum or a change in the Contract Time, unless such clarification amounts to a change in the Scope of Work.

6.03 CHANGE ORDER REQUESTS AND PROPOSED CHANGE ORDERS

A. Change Order Request ("COR") Initiation: Should the City's Clarification or other written directive or determination, in the opinion of Developer, materially exceed or change the requirements of the Contract Documents, Developer shall submit to the City a written COR within 5 working days of receipt of the Clarification or other written directive or determination. A COR shall reference the Clarification or other written directive or determination and the relevant Specification and Drawings, and clearly state reasons why a change is needed. A COR shall also include a cost proposal and/or a time adjustment proposal, as a good faith estimate of any additional compensation or time associated with the affected Work, documented in accordance with subparagraphs 6.03Eand 6.03F, below, and a narrative describing the scope of the COR including means and methods, sequence of Work, and other information necessary to fully understand the scope of the COR. The COR shall also include, as a minimum standard, quantity take offs and extensions identifying equipment and material against a specific Work task within the scope. Failure to submit a timely, fully documented COR shall constitute a waiver of any future claim for additional compensation or time relating to such Work.

B. COR Review: The City will review the COR. Within five (5) working days after receipt of the COR and all required supporting documentation, the City will issue a written determination accepting or rejecting the COR in whole or in part. If the City requires additional time to issue a determination, it shall notify the Developer of the same in writing, within the initial five (5) working-day period. A final determination is any determination on a COR which states that it is final. If the City issues a final determination denying a COR in whole or in part, Developer may contest the decision by filing a timely Notice of Potential Claim per Article 13 of these General Conditions. If the City does not issue a determination within the 5 working-day period, or such other period as set forth in a written notice, then the COR is deemed rejected and the City's failure to issue a determination shall be treated as the issuance, on the last day of the applicable period, of a final decision denying the COR in its entirety.

C. PCO Initiation: The City may initiate a change in the Work by issuing a Proposed Change Order ("PCO"). A PCO will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Specifications, and will request from Developer a quotation of cost and time for completing the proposed changes. After the City issues a PCO, Developer shall not submit a COR for the same Work addressed in the City's PCO.

D. PCO Quotation Time Period: Developer shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the City within five (5) working days after receipt of a PCO. If Developer fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the five (5) working-day period, or if the price or time adjustment cannot be agreed upon, the City may either direct Developer to proceed with the Work on a Force Account basis or a Unilateral Change Order instructing Developer to proceed with the PCO Work based on the City's estimate of the cost and/or time adjustment.

E. COR and PCO Cost Proposal Requirements: The Cost Proposal shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the City. The same shall be required for Subcontractor and Lower-Tier Subcontractor cost proposals, which shall be furnished on the same form as required for Developer.

1. At a minimum, Developer shall provide the following documentation to the City in support of Developer and Subcontractor cost proposals:

a. material quantities and type of products;

b. labor breakdown by trade classification,

wage rates, and estimated hours;

c.equipment breakdown by make, type, size, rental rates, and equipment hours; and

F. COR and PCO Time Adjustment Proposal Requirements: If Developer asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, Developer shall provide the following documentation to the City in support of any Developer time adjustment proposals:

1. Developer shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete and most current City-accepted progress schedule network, with appropriate logic so that a true analysis of critical path can be made.

2. Failure to comply with the requirements set forth in this subparagraph 6.03F shall constitute a waiver of any claim for delay, disruption, extended overhead and other associated costs or damages.

6.04 CHANGE ORDERS

A. Execution of Change Orders; Modifications: When the City and Developer agree on the total cost and time of a COR or PCO, the City will prepare for signatures of parties a Change Order to implement the changed Work. No oral instructions of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Change Orders that result in an increase to the amount certified by the Controller for the Project are subject to the Certification by Controller requirements of the City's Charter and are effective upon incorporation into an approved Modification.

B. Release of Claims: The parties agree to make good faith efforts to settle all Change Orders full and final at the time of Change Order execution. Accordingly, City and Developer acknowledge and agree that Change Orders shall contain the following provision, unless and only if the City determines that good cause exists to use different release language for a specific change order:

"The compensation (time and cost) set forth in this Change Order comprises the total compensation due to Developer, all Subcontractors and all Suppliers, for the Work or change defined in the Change Order, including impact on unchanged Work. By executing this Change Order, Developer acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for the interruption of schedules, extended field and home overhead costs (if any), delay, and all impact, ripple effect or cumulative impact on all other Work under this Contract. The execution of this Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the Developer, all Subcontractors, and all Suppliers as a result of the change. The Developer, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim related to this Change Order. No further claim or request for equitable adjustment of any type for any reasonably foreseeable cause shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract."

C. Change Orders issued under this Article or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Developer under the provisions of the Contract Documents, nor shall they relieve or release Developer's sureties of bonds executed under such provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of time made by reason thereof. Developer shall be responsible for giving notice of any change affecting the Work, Contract Sum or Contract Times that is required to be given to its sureties by the provisions of any bond.

6.05 UNILATERAL CHANGE ORDERS

A. General: When time does not allow for a Change Order to be negotiated, or when the City and Developer are unable to agree on the cost or time required to complete the change in the Work, the City may issue a Unilateral Change Order instructing Developer to proceed with a change in the Work based on the City's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, Developer shall proceed with the ordered Work.

B. Protest: If time did not allow for Developer to submit a complete Cost and/or Time Adjustment Proposal prior to the issuance of a Unilateral Change Order, and Developer disagrees with any terms or conditions set forth in a Unilateral Change Order and wishes to protest the Unilateral Change Order,

Developer shall submit, within 5 working days of receipt of the Unilateral Change Order, a complete Change Order Request ("COR") in accordance with the requirements of Paragraph 6.03 (including a complete Cost and/or time Adjustment Proposal, as applicable). If a COR is not timely submitted as required, Developer waives all rights to additional compensation for said Work, and payment, which shall constitute full compensation for Work included in the Unilateral Change Order, will be made as set forth in the Unilateral Change Order. The City will review the COR and issue a determination per Paragraph 6.03. If the City denies the COR in whole or in part, Developer may contest the decision by filing a timely Notice of Potential Claim per subparagraph 6.05C, below. As a point of clarification, the protest procedures specified in this subparagraph do not apply to circumstances where Developer submitted a complete Cost Proposal and/or Time Adjustment Proposal prior to the issuance of the Unilateral Change Order at issue, and the City subsequently issued a Unilateral Change Order because the parties were unable to timely agree on the cost and/or time to complete the change in the work. In such circumstances, if Developer disagrees with any terms or conditions set forth in the Unilateral Change Order and wishes to pursue the dispute, Developer must submit a timely Notice of Potential Claim per subparagraph 6.05C, below (but does not have to submit a revised/new COR).

C. Claim Notification: Developer waives all costs exceeding the City's estimate for the Unilateral Change Order Work unless Developer submits a written Notice of Potential Claim in accordance with the requirements of Article 13. Said Notice shall be submitted no later than 10 working days after occurrence of one of the following potential claim events, whichever occurs first:

1. Developer submits an invoice for completion of the Unilateral Change Order Work; or

2. Upon Developer's receipt of written notice from the City that the City considers the Unilateral Change Order Work completed.

6.06 COST OF CHANGE ORDER WORK

A. For Change Order Work and Change Order Work proposal pricing, Developer will be paid the sum of the direct costs for labor, materials and equipment used in performing the Work as determined by the procedures set forth in this subparagraph 6.06A.

1. Labor. Developer will be paid the cost of labor for the workers used in the actual and direct performance of the Change Order Work. Working foremen will be considered a direct cost of the Change Order Work only if the individual is on Site physically installing the Work. The costs for all supervision, including general superintendents and foremen, will not be considered a direct cost and shall be included the markup defined in subparagraph 6.06B, below. The cost of labor, whether the employer is Developer, a subcontractor, or other forces, will be the sum of the following:

a. Actual Wages. The actual wages paid shall include any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.

b. Labor Surchargeto the actual wages, as defined above, will be added a labor surcharge as set forth in the version of the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates which is in effect on the date upon which the extra work is accomplished and which is incorporated by reference as though set forth in full. That labor surcharge shall constitute full compensation to Developer for all of its costs for worker's compensation insurance, Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes. No other fixed labor burdens will be considered, unless approved in writing by the City.

c. Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workers.

2. Materials: The City will pay Developer on Change Orders only for those materials furnished by Developer and directly required for performing the Change Order Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Developer, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order Work. If a trade discount by an actual Supplier is available to Developer, such discount shall be credited to the City notwithstanding the fact that such discount may not have been taken. If the materials are obtained from a Supplier or source owned wholly or in part by Developer, payment thereof shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

3. Equipment: Payment for equipment costs on Change Orders will be made at the lesser of the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of: (i) the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) published by the California Department of Transportation and available for download at http://www.dot.ca.gov/hq/construc/equipmnt.html; or (ii) "Rental Rate Blue Book," published by

EquipmentWatch, a unit of Penton Media, Inc., 181 Metro Drive, Suite 410, San Jose, California 95110, phone (800)669-3282(see http://www.equipmentwatch.com/Marketing/RRBB_overview.jsp for information).

Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under Developer's control through direct ownership, leasing, renting, or other method of acquisition; provided, however, for equipment rented or leased in arm's length transactions with outside vendors, Developer will be reimbursed at the actual rental or leased invoice rates when such rates are reasonably in line with the applicable rates specified in the publications identified above as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Developer has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Developer shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each PCO cost proposal.

For equipment that is not listed in the publications identified above, payment for equipment costs or the City' assessment of the reasonableness of rates in arm's length rental or lease transactions will be based on the lowest quote obtained by the City from either CALTRANS or EquipmentWatch. Developer shall provide all necessary equipment ownership and other information as requested by the City so that the City may obtain a quote. CALTRANS will quote rental rates at no cost to the City; however, EquipmentWatch charges for its quote service (a charge that will be paid by the City if the City seeks a quote from EquipmentWatch). Accordingly, if CALTRANS provides a quote for a rental rate, then the City, at its sole discretion, may elect not to seek a quote from EquipmentWatch and will use only the CALTRANS quote.

a. Daily, weekly, or monthly rates shall be used, whichever are lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, the cost shall be calculated at the rental rate for equipment of proper size and type.

b. The actual time to be paid for equipment shall be the time the equipment is in productive operation on the Work under the Change Order. No payment will be made for time while equipment is inoperative due to breakdown or for non-work days. In addition, the rental time shall not include the time required to move the equipment to and from the Site. Loading and transportation costs will be paid, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. No mobilization or demobilization will be allowed for equipment already on the Site. Equipment that is idle, non-operating or in standby mode shall be reimbursed at the lesser of Caltrans' rates, as adjusted by Caltrans' Delay Factor, or EquipmentWatch's rates, as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.

c. Individual pieces of equipment having a replacement value of $1,000 or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment are included as part of Developer's markup for overhead and profit as defined in subparagraph 6.06B.

d. Payment to Developer for the use of equipment as set forth herein shall constitute full compensation to Developer for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Developer incidental to the use of the equipment.

B. Costs Included as Part of Markup for Overhead and Profit: To the total of the direct costs computed as provided in subparagraph 6.06Athere will be added a markup for overhead and profit as specified in subparagraph 6.06C. The markup shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically listed in subparagraph 6.06Aas direct costs. No separate allowance or itemization for overhead costs shall be allowed. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:

1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.

2. All field and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service at the Site, long-distance telephone calls, fax machines, computers and software, internet and e-mail services, temporary

utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under $1,000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to all regulatory requirements including compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs.

3. Administrative functions including, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.

4. Bond and insurance costs.

5. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06A.

C. Developer's Markup for Overhead and Profit: The following maximum percentage markups shall be applied to the total direct costs for each direct cost category. These markups provide for all indirect and overhead costs and profit:

Changed/Extra Work –Direct Costs	Markup Percentage
Developer direct labor	15%
Developer direct materials	15%
Developer direct equipment	15%
Subcontractor (of any tier) direct labor see Note 1 below.	15% or 35%
Subcontractor/Supplier (of any tier) direct materials	15%
Subcontractor/Supplier (of any tier) direct equipment	15%

Note 1: In the case of Subcontractor (of any tier) direct labor costs, upon Developer's request and at the City's sole discretion, taking into account the facts and circumstances of the Change Order Work, (including but not limited to the financial impact to such Subcontractor of delays to the project schedule resulting from such Change Order), the City may allow a 35% markup to the subject Change Order.

1. For Work performed by a Subcontractor, Developer shall receive a maximum 7.5% markup on the Subcontractor's total cost (total cost includes direct costs plus applicable markups specified above). Such additional 7.5% markup shall reimburse Developer for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Subcontractor.

2. For Work performed by a Lower-Tier Subcontractor, Developer and Subcontractor shall each receive a maximum 7.5% markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 7.5% markup shall reimburse Developer and Subcontractor for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Lower-Tier Subcontractor.

3. In no case shall the sum of the individual markups specified in subparagraphs 6.06C.1 and 6.06D.1, above, exceed 25%, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.

D. For Work performed by a Subcontractor, Developer shall receive a maximum 7.5% markup on the Subcontractor's total cost (total cost includes direct costs plus applicable markups specified above). Such additional 7.5% markup shall reimburse Developer for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Subcontractor.

1. For Work performed by a Lower-Tier Subcontractor, Developer and Subcontractor shall each receive a maximum 7.5% markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 7.5% markup shall reimburse Developer and Subcontractor for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Lower-Tier Subcontractor.

2. In no case shall the sum of the individual markups specified in subparagraphs 6.06Cand 6.06D.1, above, exceed 20%, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.

E. For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (i) Unit Prices stated in the Contract Documents; (ii) where Unit Prices are not applicable, a lump sum based upon the costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Paragraph 6.06, supported by a Cost Proposal as required by Paragraph 6.03. Neither Developer nor the Subcontractor shall receive a markup on their respective Lower-Tier Subcontractors to administer the credit Change Order.

1. When both additions and credits are involved in any one Change Order, Developer's markup shall be computed on the basis of its direct

costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

2. If the City issues written notice of deletion of a portion of Work after the commencement of such Work or after Developer has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Developer because it is unnecessary due to actual Site conditions, payment will be made to Developer for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06C.

3. Developer shall not be compensated for costs incurred after receipt of the City's written notice deleting the portion of Work.

4. Materials ordered by Developer prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, the material shall be returned and Developer will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

F. Costs Not Included in the Work: Developer shall be solely responsible for determining which of its Subcontractors and Suppliers receive Change Orders. No additional compensation will be provided Developer for the cost of its Subcontractors and Suppliers to review, post, coordinate, and perform related tasks to administer Change Orders which do not result in direct cost charges from such Subcontractors or Suppliers. Such costs shall be considered normal business costs, which are contractually determined between Developer and its Subcontractors and Suppliers prior to Proposal, and such costs shall be included in Developer's Total Proposal Price.

G. Records: Developer shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Developer.

6.07 FORCE ACCOUNT WORK

A. General: When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all direct costs itemized in subparagraph 6.06A shall be subject to the approval of the City and compensation will be determined as set forth herein.

1. The City will direct Developer to proceed with the Work on a Force Account basis, and the City will establish a "not to exceed" budget.

2. All requirements regarding direct costs and markup for overhead and profit provided in Paragraph 6.06B shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.

3. Developer shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in subparagraph 6.06C.

B. Notification and Verification: Developer shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be witnessed, documented, and approved in writing by the City on the day that the Work is performed. Developer will not be compensated for Force Account Work if Developer fails to provide timely notice to the City before commencing the Force Account Work. In addition, Developer shall notify the City when the cumulative costs incurred by Developer for the Force Account Work equal 80% of the budget pre-established by the City. Developer will not be compensated for Force Account Work exceeding the "not to exceed" budget amount if Developer fails to provide the required notice before exceeding 80% of the Force Account budget.

C. Reports: Developer shall diligently proceed with the approved Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Developer's authorized representative shall complete and sign the report. Developer will not be compensated for Force Account Work for which said timely report is not completed and submitted to the City.

D. Records: Developer shall maintain detailed records of all Work done on a Force Account basis. Developer shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage

completion of the Force Account Work.

E. Agreement: If Developer and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Developer's signed written reports shall be discontinued and all previously signed reports shall become invalid.

6.08 UNIT PRICE WORK

A. General: Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price Bid for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. The Contract Sum will be adjusted based on the actual quantities of Work performed.

1. Each unit price on the Schedule of Bid Prices shall include an amount considered by Developer to cover Developer's markup for overhead and profit as defined in Paragraph 6.06.

B. Quantity Increases: Should the total quantity of any Item of Unit Price Work performed exceed the estimated quantity indicated on the Schedule of Bid Prices by more than 25%, the Work in excess of 125% of such estimated quantity will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined as follows, of the total quantity of Work performed under said Item. The actual unit cost will be determined based on the direct costs per unit less fixed costs, which will be deemed to have been recovered by Developer with the payments made for 125% of the quantity indicated on the Schedule of Bid Prices, and markup for overhead and profit as provided in Paragraph 6.06.

2. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125% of the quantity as indicated on the Schedule of Bid Price is less than $5,000 at the unit price Bid therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except that an adjustment will be made if Developer submits a Change Order Request ("COR") in accordance with the requirements of Paragraph 6.03.

3. At the City's option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07in lieu of adjusting the unit price in accordance with subparagraphs 6.08B.1 or 6.08B.2 above.

C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75% of the estimated quantity indicated on the Schedule of Bid Prices, an adjustment in compensation will not be made unless Developer submits a COR in accordance with Paragraph 6.03. If Developer so requests, the quantity of said Item performed will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined based on the direct costs per unit, including fixed costs described under subparagraph 6.08B.1, and markup for overhead and profit as provided in Paragraph 6.06, of the total quantity of Work performed under said Item, provided however, that in no case shall the payment for such Work be less than that which would be made at the unit price Bid therefor.

2. The payment for the total pay quantity of such Item of Unit Price Work will in no case exceed the payment which would be made for the performance of 75% of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price Bid therefor.

3. At the City's option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08C.1 and 6.08C.2 above.

ARTICLE 7 – TIME

7.01 PROGRESS AND COMPLETION

A. Developer shall commence the Work of the Contract within 5 days from the start date established in the Notice to Proceed issued by the City for that Phase of Work and shall diligently and continuously prosecute that Phase of the Work to its completion.

B. No demolition, removal, or reconstruction Work at the Site shall be started until Developer has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and a Notice to Proceed has been issued by the City for Work to start.

C. The continuous prosecution of the Work by Developer shall be subject only to the delays defined in Paragraph 7.02. The start of Work shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions;

preparation and submittal of shop drawings, equipment lists, schedule of values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.

D. The Work of Phase 1 of this Agreement (Design and Site Work) shall be considered complete when the City approves the 100% Construction Documents and Developer completes site Work undertaken during the Design Phase to the City's satisfaction.

E. The Work of Phase 2 of this Contract shall be brought to Substantial Completion and Final Completion, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in the Agreement, from and after the official start date established in the written Notice to Proceed.

1. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by the authority having jurisdiction over the Work.

2. During the time between Substantial Completion and Final Completion, Developer shall complete the punch list work, but Developer shall not disrupt the City's beneficial occupancy of the Project or any public use of the Work.

3. Final Completion is a condition precedent to final payment. The City will issue final payment to Developer acknowledging that the Project is complete and the Work is acceptable to the City.

4. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 13.03.

F. Developer shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion of the Project within the specified limits of Contract Time required by the Contract Documents. Developer shall not start the Work unless it has sufficient equipment and materials available for the Project to allow diligent and continuous prosecution of the Work.

G. Developer shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. Developer is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its schedule and complete the Work within the specified limits of Contract Time. No additional compensation will be paid for such cooperation.

H. If, in the opinion of the City, Developer has fallen behind schedule according to Developer's most current and City-approved update of the progress schedule submitted as set forth in Paragraph 3.11, or if Developer delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Developer shall take some or all of the steps as follows to improve its progress at no additional cost to the City and shall submit operational plans to the City to demonstrate the manner in which the desired rate of progress will be regained:

1. increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;

2. increase, when permitted in writing by the City, the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;

3. reschedule activities to achieve maximum practical concurrence of accomplishment of activities;

4. expedite delivery of materials and equipment such as by airfreight;

5. accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with the Supplier should such priority lists exist as a normal course of its business; and

6. any other means deemed appropriate by the City.

I. The City may direct Developer to take steps enumerated in subparagraph 7.01H for the convenience of the City and if Developer is not at fault. Should the City Representative direct Developer to take measures previously described, the City will reimburse Developer for reasonable costs of complying.

J. Should Developer at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to enter Default and terminate the Contract for cause as set forth in Paragraph 14.01.

7.02 DELAYS AND EXTENSIONS OF TIME

A. Unavoidable Delays: Pursuant to section 6.22(h)2(C) of the Administrative Code and for the purposes of the Contract Documents the term

Unavoidable Delay shall mean an interruption of the Work beyond the control of Developer that could not have been avoided by Developer's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.11, Developer shall demonstrate that the Unavoidable Delay actually extends the most current Contract Substantial Completion date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Developer (i.e., Avoidable Delays).

1. Non-compensable Delay/Time Extension. Developer will be entitled to only a non-compensable time extension for the following types of Unavoidable Delay: Acts of God (as used herein, includes only earthquakes in excess of a magnitude 3.5 on the Richter Scale and tidal waves); acts of the public enemy; adverse weather conditions (in excess of the number of days specified in Paragraph 7.02C); fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Developer to procure labor; material shortages; inability of Developer to procure material; fuel shortages; freight embargoes; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the Project; the prevention by the City of Developer from commencing or prosecuting the Work; the prevention of Developer from commencing or prosecuting the Work because of the acts of others, excepting Developer's Subcontractors and Suppliers of all tiers; the prevention of Developer from commencing or prosecuting the Work because of failure of the City to furnish the necessary materials, when required by the Contract Documents and when requested by Developer in the manner provided in the Contract Documents; and inability to procure or failure of public utility service.

a. Whenever Developer has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Developer shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.

b. In addition, Developer shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may be appropriately utilized as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Developer fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Developer-caused delay under any and all applicable provisions of the Contract Documents.

2. Compensable Delay/Time Extension. Developer shall be entitled to a compensable time extension for an Unavoidable Delay caused solely by (i) the failure of the City to furnish necessary rights-of-way in accordance with the schedule set forth in the Contract Documents; (ii) failure by the City to deliver materials or equipment shown in the Contract Documents to be furnished by the City in accordance with the schedule specified in the Contract Documents where such failure is not the result of any default or misconduct of Developer; (iii) the failure of the City to perform some other contract obligation where such failure is not the result of any default or misconduct of Developer; (iv) the suspension of the Work by the City for its own convenience or benefit where such decision is not the result of any default or misconduct of Developer; or (v) a materially differing site condition per Paragraph 3.05, provided such City-caused Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Developer-caused delay (Avoidable Delay) or other type of Unavoidable Delay as previously defined (not caused by the City). If for any reason one or more of the conditions prescribed above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining a compensable time extension. All other types of Unavoidable Delay shall not entitle Developer to a compensable time extension. Refer to Paragraph 7.03 for more information regarding compensable delay.

a. Float or slack time within the base line schedule belongs to the Project and is an expiring resource available to City or Developer as needed to meet Milestones or complete the Work within the Project Time. Accordingly, Developer acknowledges and agrees that any City-caused delays on the project may be offset by City-caused time savings (including, but not limited to, the return of critical path submittals in less time than allowed under the Contract Documents, approval of substitution or value engineering requests which result in savings of time along the Critical Path). In such event Developer shall not be entitled to receive a compensable time

extension until all City-caused time savings are exceeded and the Contract Time is also exceeded.

b. Early Completion Schedule: If Developer submits a base line schedule that shows a completion time that is earlier than the Contract Time, the float shall belong to the Project. Developer shall not be entitled to a compensable time extension for any Change Order, Unilateral Change Order or City-caused delay that causes the early completion date to be extended within the float.

3. Concurrent Delay: Developer shall be entitled to only a non-compensable time extension in the event that a City-caused (otherwise compensable) delay is concurrent with either a Developer-caused delay or a non-compensable Unavoidable Delay.

B. Avoidable Delays: The term Avoidable Delay shall include, but is not limited to, the following:

1. any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Developer or its subcontractors or suppliers of any tier; or

2. any delay in the prosecution of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or

3. any delay caused by the untimely review by Developer of the Contract Drawings and Specifications pursuant to subparagraph 3.03C; or

4. any delay resulting from the City responding to Developer-generated RFIs in accordance with subparagraph 6.02B; or

5. any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time.

6. Developer shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs or damages for delay, disruptions, hindrances or interferences (including without limitation interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of Avoidable Delay.

C. Adverse Weather Delays:

1. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and Developer shall make every effort to continue work under prevailing conditions. Such efforts by Developer shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.

2. The City may classify an adverse weather day as a non-compensable Unavoidable Delay, provided Developer made efforts to work during adverse weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and Developer is prevented by adverse weather or conditions from proceeding with at least 75% of the scheduled labor, material and equipment resources for at least 5 hours per work day on activities shown as critical on the most current and City-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and Developer will be granted a non-compensable time extension.

3. Regardless of the type and severity of the adverse weather, Developer shall be responsible for all costs of its efforts to mitigate the impacts of adverse weather to its schedule during the Contract Time.

4. Adverse weather shall mean rain, windstorm, flood, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather as provided herein and which are proven by Developer to be detrimental to the progress of the Work. Developer shall plan the Work to allow for the following number of days of inclement weather during normal working hours:

Month	Rain Days	Month	Rain Days
January	3	July	0
February	3	August	0
March	3	September	0
April	1	October	1
May	0	November	3
June	0	December	3

a. Developer's progress schedule shall incorporate prudent allowance for the anticipated number of days of inclement weather specified herein.

b. The Contract Time allowed for completion of Work specified in Contract Time and Liquidated Damages (Section 00 73 02) is predicated on the anticipated number of days of inclement weather specified herein.

c.Developer shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.

d.In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Developer has requested a time extension because of adverse weather.

e.In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Developer has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Developer shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.

D. Notice of Delay:

1. Pursuant to section 6.22(h)(2)(D) of the Administrative Code, Developer shall notify the City in writing promptly of all anticipated delays in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay. The City may take steps to prevent the occurrence or continuance of the delay, and the City may determine to what extent Substantial Completion is delayed thereby.

2. Said notice shall constitute an application for an extension of time and payment for a compensable time extension, if applicable, only if the notice requests such time extension, specifies whether Developer believes the time extension is compensable or non-compensable, sets forth Developer's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, and meets all requirements for a Notice of Potential Claim as set forth in Article 13, including the requirement that such Notice be submitted to the City within 10 days of the event which the Developer contends affected the performance of the Work.

3. The City's determination of whether an extension of time will be granted and whether the extension is compensable or non-compensable will be based on Developer's demonstration to the City's satisfaction that such Unavoidable Delays will extend Developer's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.

4. If Developer does not submit a notice as set forth in subparagraph 7.02D.2, above, Developer thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Developer understands and agrees that no extension of time or adjustment of the Contract Sum will be granted by the City.

E. Extensions of Time:

1. In the event it is deemed necessary by the City to extend the time for completion of the Work to be performed under these Contract Documents beyond the specified limits of Contract Time specified in the Contract Documents, such extensions shall in no way release any guarantees or warranties given by Developer pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provision.

2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time.

3. The length of any extension of time shall be limited to the extent that the commencement, prosecution and completion of the Work are delayed by the event as determined by the City in accordance with section 6.22(h)(2)(D) of the Administrative Code.

4. Adjustments to the Contract Sum for compensable time extensions shall be per Paragraph 7.03.

5. Extensions of time that cumulatively extend the Contract Time in excess of 10% of the original contract duration as specified in the Agreement shall be subject to the approval of the Mayor (or the Mayor's designee).

6. In no event shall such extensions of time be granted subsequent to the date of Final Completion.Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests which the City is entitled. Should Developer, any subcontractor of any tier or any supplier of any tier seek an extension of time for the completion of the Work under the provisions of this Paragraph 7.02, Developer and its subcontractor or supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.

7. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, the City Representative, the City's consultants, and their respective directors, officers, members, employees, and authorized representatives from responsibility of their own sole negligence, violation of law or other willful injury to the person or property of another.

7.03 ADJUSTMENTS TO THE CONTRACT SUM FOR COMPENSABLE DELAY/COMPENSABLE TIME EXTENSION

A. The Contract Sum will be adjusted for a compensable delay as specified in subparagraph 7.03C, below, if, and only if, Developer demonstrates that it is entitled to a compensable time extension per subparagraph 7.02A.2 and timely complies with the Notice of Delay requirements of these General Conditions.

B. Change Order, Unit Price and Force Account Work Excluded. The provisions of this Paragraph 7.03 and subparagraph 7.02A.2 do not apply to Change Order Work paid under Paragraphs 6.06(Cost of Change Order Work) or 6.08(Unit Price Work), or to Force Account Work performed under Paragraph 6.07. Developer's right to recovery of compensation, costs, expenses and damages for delay, disruption, hindrance and interference (including without limitation interruption of schedules, extended, excess or extraordinary field and home office overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of extras, changes, additions or deletions in the Work shall be limited to the adjustment of the Contract Sum (including without limitation the mark-ups specified) as set forth in Paragraphs 6.06 or 6.08 of these General Conditions. Those Paragraphs include markups to cover field and home office overhead costs. Overhead claims in excess of the markups specified are not allowed for Change Order Work, Force Account Work or Unit Price Work. The Contract Sum adjustment provisions set forth in Paragraphs 6.06 and 6.08 constitute the sole, exclusive and complete compensation that the City is obligated to pay Developer for all costs, expenses and damages incurred by Developer and its Subcontractors and Suppliers of all tiers associated with Change Order Work, Force Account Work or Unit Price Work.

C. Field Office Overhead – Daily Rate. If Developer meets the conditions for a compensable time extension specified in subparagraph 7.03A, above, then the City shall pay Developer such amount as the City may find to be fair and reasonable compensation for such part of Developer's actual loss that was unavoidable. Fair and reasonable compensation shall be calculated as follows:

1. Within the time and in the format specified by the City, Developer shall submit a detailed listing of daily field office overhead cost components which are time related. The individual cost components shall represent costs which have been or will be incurred or increased as a sole or direct result of the compensable time extension. This listing may include without limitation onsite project management, supervision, engineering, and clerical salaries; onsite office utilities and rent; onsite company vehicles and their operating expenses; site maintenance, safety and security expenses.

2. The listing of the daily field office overhead cost components described above must be based on the Developer's actual field office overhead costs. This listing must be submitted with the first Notice of Delay that includes a request for a compensable time extension. If Developer's time-related daily field office overhead cost changes for subsequent compensable delays, then the Developer shall submit a new overhead rate based on the Developer's overhead costs at the time of the subsequent delay.

3. The daily field office overhead rate shall be multiplied by the number of days the Contract is to be extended. No markup for overhead and profit shall be allowed on the extended daily field office overhead cost.

4. The information submitted as required above shall be submitted in sufficient detail to allow review, and shall be prepared in accordance with generally accepted accounting principles. The City shall have the right to audit Developer's costs under Paragraph 2.08 of these General Conditions.

D. Extended Home Office Overhead. Absent extraordinary circumstances, extended home office overhead is not allowable. Extended home office overhead and its application to a compensable time extension will not be allowed unless Developer demonstrates to the satisfaction of the City that each and every of the following conditions apply to the delay period: (i) the delay was caused by the City and meets the conditions of Paragraph 7.02A.2; (ii) such City-caused delay was of an indefinite (unknown) duration; (iii) the City-caused delay suspended most, if not all, project Work; (iv) the City-caused delay resulted in a substantial disruption or decrease in the income stream from the project; (v) during the City-caused delay, Developer was required to remain ready to resume Contract Work immediately; and (vi) Developer was unable to secure comparable replacement work due solely to the said delay from this project during the impacted period to replace the

reduced cash flow from this project. If Developer believes that it may be entitled to extended home office overhead, it must notify the City through the Notice of Delay process specified in subparagraph 7.02D, above. Within the time and in the format specified by the City, Developer shall submit detailed evidence of entitlement and the requested rate, including all supporting evidence from which the City may make a determination (including an audit by a California-licensed Certified Public Accountant if the City so requests). Supporting evidence shall be prepared in accordance with generally accepted accounting principles, and the City shall have the right to audit Developer's submittal. If the City determines that extended home office overhead is available, then the City shall have the discretion to determine the methodology for calculation of the rate.

E. Credit for Change Order and Force Account Markups. If Developer timely requests additional compensation for a compensable delay in accordance with the Contract, and the City determines Developer entitlement to additional compensation for such delay, then the City will adjust the amount payable to Developer for the compensable delay by deducting a fair and reasonable credit to account for additional overhead paid to Developer under the markups specified in Paragraph 6.06 for Change Order Work and Force Account Work, including markups from changes performed and paid under bids items (i.e. unit priced and contingency allowance bid items). The baseline credit amount will be five (5) percent of the value of all Change Order Work and Force Account Work performed by Developer under the Contract prior to and during the compensable delay period (but excluding any future Change Order Work and Force Account Work). If the City seeks a credit in excess of five (5) percent, then the City will provide Developer with supporting documentation. Such supporting documentation may include, at the City's discretion, the results of an audit or examination of documents performed under Paragraph 2.05. If Developer seeks either a credit of less than five (5) percent or objects to the credit amount proposed by the City, then Developer shall timely provide the City with supporting documentation. Such supporting documentation shall include the results of an audit performed by a CPA at Developer's cost if so requested by the City.

7.04 LIQUIDATED DAMAGES

A. Determination of Damages:

1. The actual fact of the occurrence of damages and the actual amount of the damages which the City would suffer if the Work were not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.

2. Damages which the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City Representatives and consultants; costs of administration, inspection and supervision; and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.

B. Agreed Amount of Damages: It is understood and agreed by Developer and City that if all the Work specified or indicated in the Contract Documents is not completed within the specified limits of Contract Time, or within such time limits as extended in accordance with Paragraph 7.02, actual damages will be sustained by the City in the event of and by reason of such delay.

1. Developer and City agree that the amount of liquidated damages set forth in the Agreement represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in the Agreement for Substantial Completion, as such date may be modified in accordance with the Contract Documents.

2. Developer and City agree that the amount of liquidated damages set forth in the Agreement represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Agreement for completing the punch list of remedial Work and achieving Final Completion, as such date may be modified in accordance with the Contract Documents.

3. It is therefore agreed that Developer shall pay such amount of liquidated damages as specified in the Agreement, and in case such amount is not paid, Developer agrees that the City may deduct the amount therefor from any money due or that may become due Developer under the Contract.

C. Payment of Damages:

1. Should Developer become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments as provided in Paragraph 9.06 which would otherwise be due or become due Developer until the liability of Developer has finally been determined.

2. The City shall have the right to use and apply such retained percentages, in whole or in part,

to reimburse the City for all liquidated damages due or to become due to the City. Any remaining balance of such retained percentages shall be paid to Developer only after discharge in full of all liability incurred by Developer.

3. If the retained percentage is not sufficient to discharge all such liabilities of Developer, Developer and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full.

4. Should the retention of moneys due or to become due to Developer be insufficient to cover such damages, Developer shall pay forthwith the remainder to the City.

ARTICLE 8 – INSPECTION AND CORRECTION OF WORK

8.01 UNCOVERING OF WORK

A. No Work or portion of Work shall be covered until inspected by the City or other public authorities having jurisdiction as required by the Contract Documents.

B. If any part of the Work is covered contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Developer must, upon written request, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this subparagraph shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.

C. Should the City or other public authorities having jurisdiction wish to either (i) re-inspect a portion of the Work that has been covered by Developer in compliance with subparagraph 8.01A, above, or (ii) inspect a portion of the Work that has been covered by Developer which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Developer shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Developer shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

8.02 TESTS AND INSPECTIONS

A. All testing and inspection of the Work required by the Contract Documents (other than special inspections as set forth in subparagraph 8.02B below) shall be arranged and paid for by Developer through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.

B. Special inspections to be performed by the City as specified in the Contract Documents or as required to comply with the Code or other agency having jurisdiction shall be performed at the City's expense. Developer shall give the City Representative, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 10 working days notice, excluding weekends and City holidays, of when and where such special inspections are required so the City may arrange for the appropriate City representatives and inspectors, and representatives from other public authorities having jurisdiction, to be present to perform the necessary inspections or tests.

1. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.

C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in subparagraph 8.02A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City shall bear such costs except as otherwise provided in subparagraph 8.02D.

D. If such testing, inspection or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, Developer shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.

1. If the City's observation of any inspection or testing undertaken pursuant to this Paragraph 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (i) with the requirements of the Contract Documents or (ii) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction with respect to the performance of the Work, then the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable.

2. Developer shall bear all costs thereof, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Paragraph 8.02 nor any decision made by the City Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Developer, any subcontractor, or any of their agents or employees, or any other person performing any of the Work.

E. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Developer from Developer's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.

F. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective materials shall not be construed:

1. to imply acceptance of such Non-conforming Work or materials; or

2. as barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or

3. to relieve Developer from the responsibility of correcting Non-conforming Work or materials.

G. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by Developer and furnished to the City in accordance with the Specifications.

H. Developer shall provide promptly all facilities, labor, equipment, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.

1. The City reserves the right to charge to Developer any additional cost of inspection, including travel, transportation, lodging, etc., or test when the Work, material or workmanship is not ready for testing or inspection at the specified time.

8.03 CORRECTION OF NON-CONFORMING WORK AND GUARANTEE TO REPAIR PERIOD

A. Developer shall (i) correct Non-conforming Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (ii) replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Non-conforming Work or correction of Non-conforming Work. Developer shall promptly commence such correction, replacement, repair, or restoration upon notice from the City Representative, but in no case later than 10 working days after receipt of such notice; and Developer shall diligently and continuously prosecute such correction to completion. Developer shall bear all costs of such correction, replacement, repair, or restoration, and all damages resulting from such Non-conforming Work, including without limitation additional testing, inspection, engineering, and compensation for City Representative's services and expenses (including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services). This Subparagraph shall not be interpreted to provide for recovery of attorney's fees.

B. The term "Guarantee to Repair Period" means a period of one (1) year, unless a longer period of time is specified in the General Requirements or other Contract Documents or prescribed by applicable laws and regulations, commencing as follows:

1. For any Work not described as incomplete in the Punch List / Final Completion, on the date of Substantial Completion.

2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion per Paragraph 9.07 (Partial Utilization), as established in a Notice of Partial Utilization.

3. For all Work other than B.1 and B.2, above, from the date of Final Completion.

C. The requirement to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced items, or such longer period as may be specified in the Contract Documents or mutually agreed to by Developer and City.

D. If Developer fails to commence correction of Non-conforming Work or fails to diligently prosecute such correction within 10 working days of the date of written notification from the City, the City may correct the Non-conforming Work or may remove it and store the salvageable materials or equipment at Developer's expense. If Developer does not pay the costs of such removal and storage within 5 working days after written notice, the City may sell, auction, or discard such materials and equipment. The City will credit Developer's account for the excess proceeds of such sale, if any. The City will deduct from Developer's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing such salvageable materials and equipment, and discarding the materials and equipment, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Developer shall reimburse the City.

E. If immediate correction of Non-conforming Work is required for life safety or the protection of property and is performed by City or a separate contractor, Developer shall pay to the City all reasonable costs of correcting such Non-conforming Work. Developer shall replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such Non-conforming Work or the correction of such Non-conforming Work.

F. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of subcontractors of any tier or suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.

G. Developer's obligations under this Paragraph 8.03 are in addition to and not in limitation of its warranty obligations under Paragraph 3.19 or any other obligation of Developer under the Contract Documents. Enforcement of Developer's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Non-conforming Work. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of Developer under the Contract Documents. Establishment of correction periods for Non-conforming Work relate only to the specific obligations of Developer to correct the Work and in no way limits either Developer's liability for Non-conforming Work or the time within which proceedings may be commenced to enforce Developer's obligations under the Contract Documents.

8.04 ACCEPTANCE OF NON-CONFORMING WORK

If, in the sole and unfettered judgment of the City, it is undesirable or impractical to repair or replace any Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Developer shall rebate moneys previously paid by the City.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.01 CONTRACT SUM

A. Payment to Developer at the Contract Sum shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work; for performing and completing all Work in accordance with the requirements of the Contract Documents; and for all expenses incurred by Developer for any purpose incidental to performing and completing the Work.

B. Whenever the Contract Documents specify that Developer is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed or such materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such materials is included in Developer's Total Bid Price.

9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

A. Within 30 days after receipt of the Notice to Proceed, Developer shall submit a detailed cost breakdown items of the Work, coordinated with the progress schedule. This breakdown shall be referred to as the schedule of values and shall serve as the basis for progress payments for lump sum Items. The City will not issue any progress payments until the City has reviewed and accepted Developer's schedule of values.

1. The specific format, detail and submittal requirements for the schedule of values shall be as as directed by the City to facilitate and clarify progress payments to Developer for completed Work.

2. The sum of the individual costs listed in the schedule of values for each lump sum Item shall equal the Contract Sum.

3. Unless otherwise provided in the Contract Documents, Developer's overhead, profit, insurance,

bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal the Contract Sum.

B. The City will review and return Developer's schedule of values with comments. Developer shall make all corrections requested by the City and resubmit for approval.

1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Developer's schedule of values.

2. Developer's schedule of values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Developer's Items as component parts of the Work.

C. Upon concurrence by the City, the City will issue a written formal approval of Developer's schedule of values. If the City later determines that the schedule of values is insufficient or incorrect, Developer shall make an adjustment as specified in subparagraph 9.02B.1.

9.03 PROGRESS PAYMENTS

A. Subject to the conditions set forth in these General Conditions, and to the authorization of the City or the authorized representatives of the City, payment shall be made upon demand of Developer and pursuant to the Contract Documents as follows.

B. On the 25th day of each month, Developer shall submit to the City for review an Application for Payment, on a form approved by the City and signed by Developer, covering the Work completed by Developer as of the date of the Application and accompanied by supporting documentation demonstrating completion of a specified portion of the Work.

1. The monthly value of Items of Work shall be estimated by Developer pursuant to the schedule of values prepared in accordance with Paragraph 9.02. Developer's estimates need not be based on strict measurements but shall consist of good-faith approximations and shall be proportional to the total amount, considering payments previously made, that becomes due for such Work satisfactorily completed in accordance with the requirements of the Contract Documents.

C. The Application for Payment shall identify the amount of Developer's total charges to date.

D. Monthly progress payment amounts to Developer shall be based upon completed Work or percentages of Work completed prior to the end of the payment period. Except as provided in subparagraph 9.10, no allowance will be made for materials or equipment not incorporated into the Work.

E. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by Developer. Submission of approved monthly progress schedule updates for same period as the Application for Payment shall be a condition precedent to making progress payment Applications. No partial progress payment shall be made to Developer until all cost information requested by the City is submitted and reviewed.

F. Consistent with San Francisco Mayor's Executive Directive 12-01, Developer shall include its Subcontractors' and Suppliers' acceptable invoices with the Monthly Application for Payment that it submits no later than 30 days after receipt of such invoices from its Subcontractors, and Suppliers.

G. As soon as practical after estimating the progress of the Work, the City will pay to Developer in a manner provided by law an amount based upon Contract prices, of labor and materials incorporated in the Work at the Site until midnight of the 25th day of the current month, less the aggregate of the amount of previous payments. Payments, however, may be withheld at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.06.

1. The City shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a payment request and the required documentation including, without limitation, certified payrolls, and Contract Monitoring Division program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in Administrative Code section 6.22(j)(7).

H. No inaccuracy or error in said monthly estimates shall operate to release Developer or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.

I. In accordance with the provisions of section 22300 of the California Public Contract Code, Developer will be permitted to substitute securities for any moneys withheld by the City to ensure performance under the Contract under the following conditions:

1. At the request and expense of Developer, securities listed in section 16430 of the California Government Code, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Developer which are equivalent to the amount

withheld under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Developer. Upon satisfactory completion of the Project and all Work under the Contract, the securities shall be returned to Developer.

2. Developer shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.

3. Developer shall enter into an escrow agreement with the City Controller using a form provided by the City (Escrow Agreement for Security Deposits in Lieu of Retention), specifying the amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Developer, and termination of escrow upon completion of the Contract.

J. The granting of any progress payment, or the receipt thereof by Developer, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of Developer to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.

K. It is mutually understood and agreed that the City may withhold from any payment otherwise due Developer such amounts as may be necessary to protect the City to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Developer shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.

1. If any payment or portion of payment is withheld by the City, City will notify Developer in writing of the cause(s) of such action.

L. Only Change Orders and undisputed portions of Unilateral Change Orders completely approved and executed by the City shall be included on the payment authorization, and only that portion of the Change Order Work actually performed shall be submitted for payment. Developer shall submit a breakdown for each Change Order by Change Order number on its Application for Payment.

M. Submission of Electronic Certified Payrolls. No monthly progress payments will be processed until Developer has submitted weekly certified payrolls to the City for the applicable time period. Certified payrolls shall be prepared pursuant to Section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and materials incorporated into the Work.

1. Developer shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the World Wide Web through a web browser. The Developer and each Subcontractor and Supplier will be assigned a log-on identification and password to access the PRS.

2. Use of the PRS may require Developer, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Developer's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.

3. The City will provide basic training in the use of the PRS at a scheduled training session. Developer and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.

4. Developer shall comply with the requirements of subparagraph 9.03M at no additional cost to the City.

5. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Developer's failure to make a timely and accurate submittal of certified payrolls.

N. No monthly progress payments will be processed until Developer has also submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period.

1. Developer shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR.

O. Developer Prompt Payment. Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of section 6.22(q) of the Administrative Code, Developer shall pay its Subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Developer and the Subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Developer to a Subcontractor, the Developer may withhold the disputed amount but shall pay the undisputed amount. If Developer violates the provisions of Section 6.22(q), then Developer shall pay to the Subcontractor directly the penalty specified in Section 6.22(q).

9.04 RETENTION

A. As required by and in conformance with the procedures set forth in section 6.22(j) of the Administrative Code, the City shall hold five (5) percent in retention from each progress payment.

B. When the City determines that the Work is 98% or more complete, the City may reduce retention funds to an amount equal to 200% of the estimated value of work yet to be completed, plus any amounts necessary to cover offsets by the City for liquidated damages, defective Work, stop notices, forfeitures and other charges.

C. The City shall release the balance of retention only upon the following conditions: (i) the Developer has reached Final Completion as provided in paragraph 9.09, below, and (ii) the Contract is free of offsets by the City for liquidated damages and defective work and is free of stop notices, forfeitures, and other charges.

D. The Developer may apply for early release of retention for Work performed by (1) any subcontractor certified by the City as an LBE or (2) any subcontractor under a Contract with a construction duration of more than two years. The Developer shall make such application in writing and shall certify the following:

1. That the Work by the subcontractor is completed and satisfactory in accordance with the Contract Documents;

2. The total amount paid to the subcontractor by Developer as of the date of the written request; and

3. The amount of retention associated with the Work performed by the subcontractor.

4. Developer acknowledges and agrees that the release of retention under this subparagraph shall not reduce the responsibilities or liabilities of the Developer or its surety(ies) under the Contract or applicable law.

9.05 PAYMENT AUTHORIZATION

A. The City will, after receipt of Developer's Application for Payment, approve such amount as the City determines is properly due.

B. Payment will be issued by the City based on the City's determination that the Work has progressed satisfactorily to the point stated in the application for payment. Payment will not be a representation that the City has:

1. inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or

2. reviewed Developer's means, methods, techniques, sequences or procedures of construction; or

3. ascertained how or for what purpose Developer has used money paid, or determined that title to any of the Work, materials, or equipment has passed to the City free and clear of any liens.

9.06 WITHHOLDING PAYMENT

A. The City may decide not to authorize payment, in whole or in part, to the extent reasonably necessary to protect itself, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Developer's failure, if, in the City's judgment, the determination required by subparagraph 9.05B cannot be made. If the City does not authorize payment in the amount of the application, the City will notify Developer of the reasons for withholding payment. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Developer's failure, for one or more of the following reasons:

1. The City determines the existence of Non-conforming Work or completed Work that has been damaged, requiring correction or replacement.

2. Third party claims have been filed, or there is reasonable evidence indicating probable filing of such claims.

3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.

4. The Contract Sum has been reduced by Change Orders.

5. Damage has occurred to the City or another contractor.

6. The City determines that the Work will not be completed within the Contract Time and that the current unpaid balance and retention will not be adequate to cover actual or liquidated damages for the anticipated delay.

7. The City determines that Developer persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the causes enumerated under subparagraph 14.01A).

8. The City determines that Developer fails to

submit timely PCO cost proposal breakdowns in accordance with the Contract Documents.

9. The City determines that Developer fails to comply with any other requirements of the Contract Documents.

9.07 PARTIAL UTILIZATION

A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, the City may make a written request for Developer to permit the City to take possession of and use the Work, or a part thereof, at no additional cost to the City. When so used, maintenance and repair due to ordinary wear and tear caused by the City will be made at the City's expense. The use by the City of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall neither relieve Developer of any of its responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.

B. Such Partial Utilization may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.

C. If, in response to the City's written request(s) to take possession of and use part of the Work, Developer believes that a specified part of the Work is Substantially Complete and ready for Partial Utilization, Developer shall notify the City in writing and request a joint inspection of that part of the Work per the procedures described in Paragraph 9.08. When the City determines that the Work is ready for Partial Utilization, the City will issue a Notice of Partial Utilization, which shall establish the Partial Utilization date. The City will also issue a Punch List for the Work identifying deficient items to be corrected by Developer prior to Final Completion.

D. Partial utilization of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

E. Developer shall perform final cleaning of such partially utilized Work when directed to do so by the City.

F. The Guarantee to Repair Period, as defined in Paragraph 8.03, will commence upon the date specified in the Notice of Partial Utilization except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which the City has not taken Partial Utilization or issued a Notice of Partial Utilization shall not commence until the City has taken Partial Utilization for that portion of the Work or has issued a Notice of Substantial Completion for the entire project.

G. Except as provided in this Paragraph 9.07, there shall be no additional cost to the City due to Partial Utilization.

9.08 SUBSTANTIAL COMPLETION

A. Developer shall notify the City in writing when Developer considers that the Work is Substantially Complete and request that the City inspect the Work and prepare a Notice of Substantial Completion. Attached to Developer's request for a Substantial Completion inspection shall be a preliminary list of items to be completed or corrected before Final Completion.

B. Within 10 working days from receipt of Developer's written notification, the City will make an inspection to determine whether the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Developer with a Punch List/Substantial Completion within 15 working days from Developer's notice, that lists all Items that shall be corrected or completed before the City considers the Work Substantially Complete.

C. Once Developer has completed all items on the Punch List/Substantial Completion, Developer shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow the same procedure as for the first inspection as described in subparagraph 9.08B. Developer shall reimburse the City for costs incurred by the City and its consultants related to all additional inspections necessary to achieve Substantial Completion.

D. As a condition precedent to Substantial Completion, Developer shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other equivalent agency having jurisdiction over the Work in the event that such temporary occupancy permit or equivalent permit is necessary for the City to utilize the Work for the purposes for which it is intended.

E. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.

F. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Developer (i) a Punch List/Final Completion identifying deficient items to be corrected by Developer prior to Final Completion; and (ii) a written determination as to the division of responsibilities

regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance and warranties.

9.09 FINAL COMPLETION AND FINAL PAYMENT

A. When Developer considers all Work complete, including all items of Work on the Punch List/Final Completion and all closeout requirements, Developer shall notify the City in writing and request that the City issue a certificate of acceptance.

B. Within 10 working days of receipt of Developer's written notice, the City will verify whether all Punch List/Final Completion items are completed. If the City finds that any of the Punch List/Final Completion items are not complete, the City will notify Developer in writing within 15 working days from Developer's notice. Developer shall promptly take actions necessary to complete such Punch List/Final Completion items. The City will add to or modify the Punch List if it discovers additional non-compliant work prior to Final Completion.

C. Once Developer considers all deficient Punch List/Final Completion items complete, Developer shall notify the City in writing and request a second inspection. If the City finds the Punch List/Final Completion items are still not complete, Developer shall be responsible for all costs for conducting such additional inspections incurred by the City and its consultants before Final Completion. The cost of such inspections shall not be considered a delay cost and shall be charged in addition to any liquidated damages which may become due as a result of Developer's failure to achieve Final Completion within the time prescribed in Section 00 73 02. All such costs of the City and its consultants shall be deducted from amounts which are due or become due to Developer.

D. While deficient Punch List / Final Completion Work is outstanding, the City may, at its option, pay Developer any earned Contract funds, including retention, subject to offset for the following: (i) funds subject to a certification of forfeiture by the Office of Labor Standards Enforcement and/or stop notice claims and/or funds to be withheld as otherwise required by law or court order; (ii) an amount not to exceed 200% of the total estimated cost of labor and materials to correct any Non-conforming, unacceptable, or incomplete Work; and (iii) amounts assessed for liquidated damages.

E. After Developer has completed to the satisfaction of the City all Punch List / Final Completion items and close-out requirements in accordance with the Contract Documents, the City will issue a written certificate of acceptance as required by section 6.22(k) of the Administrative Code stating that the Work is acceptable, and Developer may submit the final application for payment.

F. Developer and each assignee under any assignment in effect at the time of final payment shall, if required by the City, execute and deliver at the time of final payment, as a condition precedent to final payment, a release in the form specified by the City and containing such exemptions as may be found appropriate by the City, discharging the City and the City's consultants, and their directors, officers, members, employees, agents and authorized representatives of all liabilities, obligations and Claims arising under this Contract.

9.10 PAYMENT FOR UNDELIVERED LONG LEAD ITEMS; PAYMENT FOR ITEMS DELIVERED AND STORED ON OR OFF THE SITE

A. Long Lead Items Not Delivered to Developer. In general, the City will not make payments for undelivered equipment or materials. Notwithstanding that general rule, the Contract Documents may, in limited circumstances, authorize partial payment for undelivered equipment or materials which require lengthy fabrication periods. Payment will be made according to and limited to the specific authorization and process set forth in the City's Project Delivery Agreement Form (Section 00 52 00). The City will not make partial payment for undelivered Items unless the Agreement specifically authorizes such payment.

B. Items Delivered and Stored On or Off the Site. In general, the City will not make partial payment to Developer for material or equipment procured by Developer but stored on or off the Site and not incorporated into the Project. Notwithstanding that general rule, the following exception applies in limited circumstances:

1. The City will, upon written request by Developer, make partial payment for material or equipment procured by Developer and not incorporated into the Project subject to the following conditions:

a. Partial payment will not be made for any materials or equipment unless each individual piece of the material or equipment will become a permanent part of the Work, the materials and/or equipment are required by the Contract Documents, and the materials and/or equipment are specially manufactured for the Project and could not readily be used for or diverted to another job.

b. No partial payment will be made for living or perishable plant material, or for degradable materials such as rock, sand, cement, or for reinforcing steel, miscellaneous piping, off the shelf and catalog items, or similar items, until they are incorporated into the Work.

c. Applicable materials and/or equipment are either stored on the Site or at an off-Site location approved in advance and in writing by the City and in compliance with the requirements set forth in this Subparagraph.

d. Partial payment for materials or equipment stored off the Site shall be limited to 75% of the invoice cost. Partial payment for materials or equipment stored on the Site shall be limited to the 95 percent of the invoice cost. The actual percentage paid (subject to the 75% or 95% limit, as applicable) shall be at the discretion of the City.

2. The City will not approve a request for partial payment for material or equipment not incorporated into the Project unless Developer complies with each of the applicable requirements set forth below. No partial payment will be made until Developer submits sufficient and satisfactory documentation to the City as required below.

a. Developer shall submit to the City Representative proof of off-Site material or equipment purchases, including bills of sale, invoices, unconditional releases and/or other documentation as requested by the City warranting that Developer has received the material or equipment free and clear of all liens, charges, security interests, and encumbrances.

b. Developer shall submit to the City Representative proof that title to stored Items vested in the City at time of delivery to the Site or off-Site warehouse. Developer shall be responsible for all costs associated with storage of the Items.

c.Developer shall store the materials and/or equipment in a bonded warehouse or facility approved by the City Representative. The materials and equipment shall be physically segregated from all other materials or equipment within the facility and shall be identified as being the "PROPERTY OF THE CITY AND COUNTY OF SAN FRANCISCO." Developer shall exercise all measures necessary to ensure preservation of the quality, quantity, and fitness of such materials or equipment and shall perform the manufacturers' recommended maintenance of the materials or equipment. Developer shall inspect the materials and equipment, and shall submit regular reports to the City Representative as specified in the General Requirements, listing all of the equipment stored, results of its inspection, and the maintenance performed.

d. Developer, at no additional cost to the City, shall insure stored material and/or equipment against theft, fire, loss, vandalism, and malicious mischief, and shall deliver the policy or certificate of such insurance to the City Representative naming the City as additional insured. Insurance shall not be cancelable without a minimum 30 days advance written notice to the City and cancellation shall not be effective until certificate thereof is provided to the City. The insurance shall cover the material or equipment while stored at the approved location, while in transit to the Site, while being off-loaded at the Site and until the material or equipment is incorporated into the Work and the Work is accepted by the City.

e. Developer shall submit to the City Representative written consent from Developer's sureties approving the partial payment for Items stored on or off Site. The written consent must include a statement confirming that remittance of the advance payment will not relieve the sureties of any of their obligations under the Bonds.

f. Stored material or equipment shall be available for inspection by the City at all times. Developer shall, upon request, assist the City Representative in conducting a full view, piece-by-piece, inventory or all such material or equipment.

g. Developer shall protect stored material and equipment from damage. Damaged material and/or equipment, even though paid for, shall not be incorporated into the Work. In the event of loss or damage to paid material and/or equipment, Developer shall be responsible for replacing such lost or damaged material and/or equipment at its own cost and shall be responsible for all delays incurred to the Project as a result of such loss or damage. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Developer fails to replace lost or damaged material and/or equipment at its own cost.

h. Developer shall deliver stored material and equipment to the Site. After delivery, if any inherent or acquired defects are discovered in such material and/or equipment, Developer shall remove and replace any defective Items with suitable Items at no additional cost to the City. Developer shall be responsible for all delays incurred to the Project resulting from the removal and replacement of defective material and/or equipment. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Developer fails to remove and replace defective Items.

3. Nothing in this Paragraph 9.10 shall relieve Developer of its responsibility for incorporating material and equipment into the Work that conform to the requirements of the Contract Documents.

4. Developer shall absorb any and all costs incurred to meet the requirements of this Paragraph 9.10 without modification to the Contract Sum.

ARTICLE 10 – INSURANCE AND BONDS

10.01 INSURANCE REQUIREMENTS

A. Developer shall be responible for purchasing and maintaining in force throughout the Contract Time such liability and other insurance as provided in the Agreement. A Subcontractor may provide the insurance on behalf of Developer, which shall not have the effect of reducing or eliminating any of Developer's liability under this Agreement.

10.02 PERFORMANCE BOND AND PAYMENT BOND

A. No less than 10 business days prior to the issuance of the NTP for Site Work defined in the Agreement, Developer shall file with the City the following bonds procured through the General Contractor using a form provided by the City:

1. a corporate surety bond, in a sum not less than 100% of the hard construction costs (i.e., the contract price of the contract between Developer and its general contractor), to guarantee the faithful performance of the Contract ("Performance Bond"); and

2. a corporate surety bond, in a sum not less than 100% of the hard construction costs (i.e., the contract price of the contract between Developer and its general contractor),, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").

B. Said Performance Bond shall cover all corrective Work required during the Guarantee to Repair Period, all warranty and maintenance Work required by the Contract Documents, and any and all Work required to correct latent defects.

C. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have either a current A.M. Best Rating not less than "A-, VIII" or shall be listed in the current version of the United States Department of the Treasury's Listing of Approved Sureties (Department Circular 570), and shall be satisfactory to the City.

ARTICLE 11 – LABOR STANDARDS

11.01 PREVAILING WAGES

A. It is hereby understood and agreed that all provisions of section 1770, et seq., of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.

B. It is hereby understood and agreed that all provisions of sections 6.22(e) and 6.22(f) of the Administrative Code are incorporated as provisions of the Contract Documents including, but not limited to, the following:

1. Developer shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

2. Developer shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

3. Developer shall keep or cause to be kept complete and accurate payroll records for all persons performing labor in or about the Work. Such records shall include the name, address and social security number of each worker who provided labor, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every Subcontractor who shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the California Department of Industrial Relations.

4. Should Developer, or any Subcontractor who shall undertake the performance of any part of the Work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Developer shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Developer and the Subcontractor shall jointly and severally forfeit back wages due plus the penalties set forth in Labor Code Section 1775, but not less than $50 per day per worker.

5. No person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required shall perform labor for a longer period than five days (Monday-Friday) per calendar week of eight hours

each (with two 10-minute breaks per eight-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Developer or any Subcontractor who violates this provision shall forfeit back wages due plus the penalties set forth in Labor Code section 1775, but not less than $50 per worker per day.

C. The most current highest prevailing wage rate determinations at the time the parties execute the Agreement are hereby incorporated as part of the Contract Documents. No adjustments in the Contract Sum will be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.

1. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at http://www.dir.ca.gov/DLSR/PWD.

2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

D. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations and the San Francisco Office of Labor Standards Enforcement.

E. Developer shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed.

11.02 PAYROLLS

A. Certification of Payroll Records: Developer shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the preparation, keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

1. The payroll records shall be certified under penalty of perjury and shall be submitted electronically to the City and, where required, to the California Department of Industrial Relations, as set forth in Paragraph 9.03M, In addition, Developer shall make the payroll records available for inspection at all reasonable hours at the job site office of Developer on the following basis:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.

b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.

c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be provided access to such records at the job site office of Developer.

d. Developer shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of a written request.

2. In providing copies of payroll records to any requestor, the City shall redact or obliterate such information as may be required under California Labor Code section 1776(e), as that section may be amended from time to time.

3. Developer shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.

4. In the event that Developer receives a written notification of noncompliance with section 1776, Developer shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, Developer shall forfeit the penalties set forth in Administrative Code section 6.22(e) and (f) and/or California Labor Code section 1776. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the Contract Sum.

5. Developer is solely responsible for compliance with Section 1776. The City shall not be liable for Developer's failure to make timely or accurate submittals of certified payrolls.

11.03 APPRENTICES

A. Developer and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and Administrative Code, section 6.22(n). Developer shall be solely responsible for securing

compliance with section 1777.5 for all apprenticeable occupations.

1. Developer shall comply with all requests by the City to provide proof that Developer and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.

2. Developer shall include in all of its subcontracts the obligation for Subcontractors to comply with the requirements of the State Apprenticeship Program.

3. Section 1777.5 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

B. Should Developer fail to comply with the apprenticeship requirements of section 1777.5, Developer shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

C. Developer, if not signatory to a recognized apprenticeship training program under chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Developer shall require its Subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City. The City reserves the right to demand such evidence upon request.

11.04 LABOR STANDARDS ENFORCEMENT

A. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations ("DIR") and the San Francisco Office of Labor Standards Enforcement

B. In accordance with Administrative Code section 6.22(e)(7) and section 6.24 and the applicable sections of the California Labor Code, Developer further acknowledges and agrees as follows:

1. Developer will cooperate fully with the DIR and the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter, Chapter 6 of the Administrative Code, and the applicable sections of the California Labor Code.

2. Developer agrees that the DIR and the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.

3. Developer shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.

4. Developer shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed.

5. The DIR and the Labor Standards Enforcement Officer may audit such records of Developer as is deemed reasonably necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter, Chapter 6 of the Administrative Code, and the applicable sections of the California Labor Code.

C. Under California Public Contract Code section 6109, Developer or Subcontractors who are ineligible to bid or work on, or be awarded, a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.

1. Any contract for the Project entered into between Developer and a debarred subcontractor is void as a matter of law.

2. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works project. Developer shall return to the City any public money that may have been paid to a debarred subcontractor by Developer.

3. Developer shall be responsible for the payment of wages to workers of a debarred subcontractor that has been allowed to work on the Project.

ARTICLE 12 – SAFETY

12.01 PRECAUTIONS AND PROGRAMS

A. Developer shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Developer shall be solely responsible for any and all fines, penalties or damages which result from Developer's failure to comply with applicable health and safety laws and regulations during performance of the Work.

B. Developer shall designate in writing a responsible competent person of Developer's organization at the Site as Project safety representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and regulations. This person shall be available 24 hours a day, 7 days a week by telephone or other approved means.

C. Developer shall perform all Work relating to hazardous materials as required by the Contract Documents. Developer and its Subcontractors shall comply with all federal, state and local statutes and regulations on training, handling, storage, public notification and disposal of hazardous materials and hazardous wastes. In the event that Developer or its Subcontractors introduces and/or discharges, spills or releases a hazardous material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a hazardous material identified in the Contract Documents or Available Project Information, the Developer shall immediately notify the City Representative and any required agencies of the spill, release or discharge and Developer shall stop the Work, and cordon off the affected area to secure entry. Removal and disposal of the hazardous material, if deemed necessary by the City, will, at the discretion of the City, be performed either by the City at Developer's expense or by Developer, through a qualified remediation Subcontractor, at Developer's expense. Under no circumstance shall the Developer perform remediation Work for which it is not qualified.

D. Should Developer or any of its Subcontractors, while performing Work on the Site, unexpectedly encounter any hazardous material not shown in the Contract Documents or Available Project Information, or have reason to believe that any other material encountered may be a hazard to human health and safety and/or the environment, Developer shall stop the Work, cordon off the affected area to secure entry, and shall immediately notify the City Representative. Removal and disposal of the hazardous material not shown in the Contract Documents or Available Project Information, if deemed necessary by the City, will be performed as directed by the City at the City's expense. In the event that Developer is delayed in the completion of the Contract Work solely because of such hazardous materials or conditions not previously identified in the Contract Documents or Available Project Information, the Developer shall be entitled to an extension of time in accordance with Article 7 of these General Conditions.

12.02 PERSONS AND PROPERTY

A. Developer shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to the following:

1. all persons on the Site or others who may be affected by the Work;

2. the Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not indicated to be removed, relocated or replaced on the Contract Documents.

B. Developer shall give notices pursuant to California Civil Code section 832 and shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

C. Developer shall notify owners of adjacent property, underground facilities and utilities, such as PG&E, AT&T, Municipal Railway, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Developer's operations a reasonable time in advance thereof so as to permit the owners to make suitable markings on the street surface of the locations of such facilities. After such markings have been satisfactorily made, Developer shall maintain them as long as necessary for the proper conduct of the Work.

D. Developer shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating, or otherwise protecting such facilities.

E. Developer shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, such as posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying owners and users of adjacent sites, underground facilities and utilities of Developer's operations.

F. Developer shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of their removal or adjustment and to avoid damage to such facilities lying outside of or below a required excavation or trench area which are intended to remain in place.

G. Developer shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable laws and regulations.

H. In the event of damage or loss to property

referred to in the previous subparagraphs, whether caused by Developer, its Subcontractors or Lower-Tier Subcontractors, Developer shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Developer are in addition to Developer's obligations under Paragraph 3.21 of these General Conditions.

I. Pursuant to section 6705 of the California Labor Code, excavation for trenches 5 feet or more in depth shall not begin until Developer has received acceptance from the City of Developer's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Developer's shoring plan shall be submitted in accordance with the requirements of the Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan shall allow the use of shoring, sloping or other protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If Developer's shoring plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and sealed by an engineer retained by Developer who is registered as a civil or structural engineer in the State of California. The City's acceptance of Developer's shoring plan shall not be construed to relieve Developer of its sole responsibility for damage or injuries related to the excavation resulting from unsafe shoring.

J. Developer shall be responsible for each operation and all Work, both permanent and temporary. Developer shall protect its Work and materials and fully or partially completed work of the City or separate contractors from damage due to construction operations, the action of the elements, the carelessness of its subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Completion of the Work. Should improper Work of any trade be covered by another contractor and damage or defects result, Developer shall make the whole Work affected good to the satisfaction of the City and without expense to the City.

12.03 SAFETY PERMITS

A. Developer shall obtain and pay for a California industrial safety permit if the following occurs:

1. the construction of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or

2. the demolition of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or

3. the excavation of a trench 5 feet deep or deeper into which a person must descend.

B. Developer shall obtain and pay for all other required safety permits.

12.04 EMERGENCIES

A. In emergencies affecting the safety or protection of persons or property at the Site, Developer shall act promptly to prevent threatened damage, injury or loss. Developer shall give prompt written notice to the City if Developer believes that, due to the nature of the emergency or circumstances related thereto, any significant changes in the Work or variations in the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Developer in response to such an emergency, a Change Order or Unilateral Change Order will be issued as provided in Article 6.

ARTICLE 13 – CONTRACT AND GOVERNMENT CODE CLAIMS

13.01 CLAIMS GENERALLY

A. The City and Developer acknowledge and agree that early identification and resolution of potential claims or disputes benefits all parties and advances the success of the Project.

B. The notice requirements and procedures set forth under this Article 13 are necessary for the City to address potential claims and disputes. Having knowledge of potential claims prior to the Developer performing disputed Work and having documentation from the Developer concerning a dispute as Work is being performed is critical for the City to make informed decisions which could impact the budget and schedule for the Project.

C. Compliance with the Notice of Potential Claim and Contract Claim submission procedures prescribed in this Article are condition precedents to the right to file a Government Code Claim under California Government Code section 900, et seq., and Administrative Code Chapter 10. As set forth in subparagraph 13.04, Developer's submittal of timely and proper Notices of Potential Claims and Contract Claims may, in some circumstances, toll Developer's compliance with the Government Code Claim requirements until the Contract Claim process is finally completed. Refer to subparagraph 13.04, below. The timely submittal of both a properly completed Contract Claim and a Government Code Claim are conditions precedent to commencing litigation against the City for disputes arising out of or related to this Contract and not expressly excluded

from the Contract Claim process per subparagraph 13.01D, below. Disputed issues not timely raised and properly documented in conformance with this Article shall be deemed waived by the Developer and may not be asserted in a Government Code Claim, subsequent litigation, or legal action. Furthermore, by executing this Contract, Developer waives any and all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Contract Claim submission requirements.

D. The Contract Claim procedures specified in this Article 13 do not apply to the following: (1) claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine; (2) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury of death; (3) claims by the City; or (4) claims respecting stop notices.

E. The requirements of this Article 13 shall survive expiration or termination of this Contract.

13.02 NOTICE OF POTENTIAL CLAIM

A. If, during the course of the Project, the Developer seeks an adjustment of the terms of the Contract Documents, an adjustment to the Contract Sum or Contract Time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Developer arising out of or related to the Contract Documents or the performance of Work (including without limitation determination of delay, assessment of liquidated damages, Proposed Change Orders, Unilateral Change Orders, denial of Change Order Requests, payment, nonpayment, termination for cause, termination for convenience, or other act by the City impacting or potentially impacting payment, nonpayment, withholding, or the performance of the Work), then the Developer must submit to the City a timely Notice of Potential Claim to preserve its right to seek such additional compensation and/or time.

B. Developer must submit a Notice of Potential Claim to the City within seven (7) days of the event, activity, occurrence, or other cause giving rise to the potential Claim. For potential Claims that involve or relate to an extra, change, addition or deletion to the Work, Developer's seven day period to submit a Notice of Potential Claim will commence when the City Representative issues a final written decision denying, in whole or in part, Developer's Change Order Request or other proper request for adjustment to the Contract Sum and/or Contract Time. Note that Developer's failure to comply with required notice and submittal requirements for Change Order Requests (Article 6) or Differing Site Conditions (Paragraph 3.05) shall constitute grounds to deny any related Claim.

C. A Notice of Potential Claim shall describe the nature and circumstances of the potential claim event, set forth the reason(s) for which Developer believes additional compensation and/or time will or may be due, and provide a good faith estimate of the cost and/or time impact to which Developer believes it may be entitled. Notices of Potential Claims submitted per Paragraph 3.05 (Differing Site Conditions) must also include documentation of information on which Developer based its understanding of Site Conditions.

D. The Notice of Potential Claim provides early notice to the City of a disputed issue and provides the City with the opportunity to mitigate associated costs, allowing for early resolution. Failure by Developer to submit a timely Notice of Potential Claim shall constitute a waiver of any claim arising out of the event, activity, occurrence, or other cause giving rise to the potential Claim.

E. The requirements of Paragraph 13.02 apply regardless of whether or not the disputed issue underlying a potential claim event has been or will be submitted to an issue resolution/escalation ladder, Dispute Review Board, Dispute Resolution Advisor, or similar dispute resolution process that may be required by the Contract Documents.

13.03 CONTRACT CLAIM

A. General. The Contract Claim shall be the Developer's sole and exclusive administrative remedy for additional compensation or time associated with its performance of the Work under the Contract. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by the Developer as to any claims relating to its performance of the Work under the Contract and a failure to exhaust its administrative remedies.

B. Deadline to Submit Contract Claim. The time to submit a Contract Claim will depend on the dispute resolution process(es) that are incorporated into the Contract Documents.

If Developer elects not to refer the disputed issue to an optional dispute resolution process set forth in the Agreement, Developer may file a Contract Claim only as to disputed issues presented to and rejected by the City Representative through the Notice of Potential Claim process set forth in Paragraph 13.04, above. The City Representative will respond, in writing, to Developer's Notice of Potential Claim, submitted per Paragraph 13.04, within 30 days of receipt of the Notice. If the City Representative requires additional time to issue a determination, he or she will notify the Developer of the same in writing, within the initial 30-day review period. Developer shall submit a Contract Claim within 15 days of receipt of the City Representative's written determination on the Notice of Potential Claim if Developer disputes the City Representative's written determination and wishes to

preserve its right to pursue the disputed issue. In the event that the City Representative does not issue a written determination on Developer's Notice of Potential Claim within the prescribed period, the Developer must submit a Contract Claim either within 15 days of the expiration of the prescribed period, or 45 days of submitting its Notice of Potential Claim, whichever is later, if Developer wishes to preserve its right to pursue the disputed issue.

C. Contract Claim Certification Requirement:

1. Developer, under penalty of perjury, shall submit with the Contract Claim certification by Developer and its Subcontractor(s), as applicable, that:

a. the Claim is made in good faith;

b. supporting data are accurate and complete to the best of Developer's and/or Subcontractor's knowledge and belief; and

c. the amount requested accurately reflects the Contract adjustment for which Developer believes the City is liable.

2. An individual or officer who is authorized to act on Developer's behalf shall execute the certification. Failure to certify a claim under penalty of perjury shall render the Contract Claim a nullity and the underlying claim waived by the Developer.

3. In regard to a Claim or portion of a Claim by a Subcontractor, Developer shall fully review the Subcontractor's Claim and shall certify the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Claim, under penalty of perjury, in the same manner the Developer would certify its own claim under the foregoing subparagraph 13.03C.1. The City will not consider a direct claim by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.

4. Developer hereby agrees that failure to furnish certification as required in this Article shall constitute a waiver by the Developer as to the subject Claim.

5. Developer further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Developer may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

D. Format of a Contract Claim:

The Developer shall document its Contract Claim in the following format:

a. Cover letter and certification.

b. Narrative Summary of Claim merit and amount, and clause under which the Claim is made.

c. List of documents relating to Claim:

1) Specifications
2) Drawings
3) Clarifications/RFIs
4) Correspondence
5) Schedules
6) Other

d. Chronology of events and correspondence.

e. Analysis of Claim merit.

f. Analysis of Claim cost (money and time).

g. Attachments:

1) Specifications
2) Drawings
3) Clarifications/RFIs
4) Correspondence
5) Schedules
6) Other

E. Additional Requirements for Contract Claims Seeking Time Extensions or Contesting the Assessment of Delay:

1. All Contract Claims seeking time extensions or challenging the assessment of delay and/or liquidated damages shall include, in addition to all other applicable requirements of this Article 13, a written analysis of all changes and all delays impacting the as-built critical path (the "As-Built Schedule Analysis"). Developer shall base its As-Built Schedule Analysis on an as-built schedule that incorporates all actual start and finish dates, actual durations of activities, and actual sequences of construction. Developer shall obtain the as-built schedule from the most recent base-line schedule or progress schedule update as of the time of the activity, occurrence or other cause giving rise to the Claim. Developer shall create the as-built schedule as an early start schedule, and the schedule shall use the original activity durations for all incomplete Work and the actual logic driving all activities. The As-Built Schedule Analysis shall incorporate all delays (including City, Developer and third party Unavoidable Delay without exception) in the time frame that they occurred with actual logic ties. As part of its review of Developer's As-Built Schedule Analysis, the City will determine the critical path and identify any City-caused and/or third party-caused

delays (if any) on the critical path. The City will not review or consider any Contract Claim seeking time extensions or contesting the assessment of delay (including liquidated damages) that does not include an As-Built Schedule Analysis that meets the requirements of this Subparagraph.

F. Procedure For Review of a Contract Claim:

1. The City shall review only a timely, certified, and properly documented Contract Claim.

2. The City shall respond to a Contract Claim in writing, within 45 days of receipt of such Claim. In its response, the City shall either grant or deny the Claim in whole or in part. If the City does not respond to a Claim within the 45-day period, the Claim is deemed denied in its entirety.

3. Within 10 days of the date of the City's response or expiration of the 45-day period, whichever is earlier, the Developer may request review of the Contract Claim and the City's response by the Department Head. The request must be in writing, directed to the Department Head and copied to the City Representative. Failure by the Developer to make a timely request to the Department Head, copied to the City Representative, shall constitute acceptance by the Developer of the City's original response.

4. Upon a timely and proper request, the Department Head, or his/her designee (other than personnel assigned to the Project), shall review the relevant documents, meet with the Developer and City personnel assigned to the Project, and confirm or revise the City's response to the Contract Claim. The Department Head, or his/her designee, shall issue such determination within 60 days of the date of the request for review. The determination by the Department Head, or his/her designee, shall constitute the final administrative determination of the City. If the Department Head takes no action on a request for review within the 60-day period, the City's original response shall constitute the final administrative determination by the City.

13.04 GOVERNMENT CODE CLAIM

A. For the purposes of this Contract, the City and the Developer hereby agree that any action at law against the City arising out of or relating to Developer's performance of the Work shall accrue either on the effective date of termination (under Article 14 of these General Conditions) or on the date of Substantial Completion, whichever is earlier. Notwithstanding the foregoing, the timely submittal of a complete and proper Notice of Potential Claim and Contract Claim under the administrative procedure specified in this Article 13 shall operate to toll Developer's compliance with the Government Code Claim requirements under California Government Code section 900, et seq., and Administrative Code Chapter 10 until the City issues a final administrative determination per subparagraph 13.03(F)(4).

ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT

14.01 NOTICE OF DEFAULT; TERMINATION BY THE CITY FOR CAUSE

A. Grounds for Default. Developer is in Default of the Contract if Developer:

1. refuses or fails to supply enough properly skilled workers, adequate and proper materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or

2. is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

3. refuses or fails in a material way to replace or correct Work not in conformance with the Contract Documents; or

4. repeatedly fails to make prompt payment due to Subcontractors or for labor; or

5. materially disregards or fails to comply with any law, ordinance, rule, regulation or order of any public authority having jurisdiction; or

6. intimidates or sexually harasses a City employee, agent, or member of the public; or

7. is otherwise in material breach of any provision of the Contract Documents.

B. Notice of Default. When any of the above grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to the Developer. The City shall provide a copy of any Notice of Default to the Developer's surety.

1. The Notice of Default shall identify the ground(s) for Default and provide the Developer with a 14-day cure period to complete necessary corrective Work and/or actions.

2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Developer or its subcontractors/suppliers, Developer shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence

diligently the corrective Work and/or actions. The City, after accepting Developer's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to the Developer's surety.

C. Termination for Cause. If Developer fails to completely cure the Default either (i) within the 14-day cure period set forth in the Notice of Default; or (ii) within the agreed-upon cure period set forth in an amended Notice of Default, the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Developer and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:

1. take possession of the Site and use any materials, equipment, tools, and construction equipment and machinery thereon owned by Developer to complete the Project;

2. accept assignment of subcontracts and agreements pursuant to Paragraph 4.03; and

3. finish the Work by whatever reasonable method the City may deem expedient.

D. When the City terminates the Contract for one of the grounds set forth in subparagraph 14.01A, Developer shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including all liquidated damages for delays, such excess shall be paid to Developer. If such costs exceed the unpaid balance, Developer shall pay the difference to the City. The amount to be paid to Developer or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract.

1. Upon completion of all Work, Developer shall be entitled to the return of all its materials which have not been used in the Work, its plant, tools, equipment and other property provided, however, that Developer shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

E. If, after termination of the Developer's right to proceed, it is determined that the Developer was not in default, or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Sum, will be the same as if the termination had been issued for the convenience of the City, as provided under Paragraph 14.03.

14.02 SUSPENSION BY THE CITY FOR CONVENIENCE

A. The City may, without cause, order Developer in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

B. An adjustment shall be made as specified in Paragraph7.02A for increases in the cost of performance of the Contract caused by suspension, delay or interruption. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Developer is responsible; or

2. that an equitable adjustment is denied under another provision of this Contract.

14.03 TERMINATION BY THE CITY FOR CONVENIENCE

A. Pursuant to section 6.22(l) of the Administrative Code the City may terminate the performance of Work under this Contract in accordance with this Paragraph 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Developer of a notice of termination specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the City, Developer shall comply with all of the following requirements.

1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.

4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title, and interest of Developer under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the

purposes of this Paragraph 14.03.

6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Developer (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Developer under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract which is in the possession of Developer and in which the City has or may acquire an interest.

C. After receipt of a notice of termination, Developer shall submit to the City its termination claim, in the form and with the certification the City prescribes. Such termination claim shall be submitted promptly, but in no event later than 3 months from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Developer within such 3-month period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Claim at any time after such 3-month period or extension period. If Developer fails to submit its termination Claim within the time allowed, the City may determine, on the basis of information available to the City, the amount, if any, due to Developer because of the termination. The City shall then pay to Developer the amount so determined.

D. Subject to the previous provisions of this Paragraph 14.03, Developer and the City may agree upon the whole or any part of the amount or amounts to be paid to Developer because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum of Work not terminated. The Contract shall be amended accordingly, and Developer shall be paid the agreed amount. Nothing following, prescribing the amount to be paid to Developer in the event of failure of Developer and the City to agree upon the whole amount to be paid to Developer because of the termination of Work under this Paragraph 14.03, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Developer pursuant to this subparagraph 14.03D.

E. If Developer and the City fail to agree, as subparagraph 14.03Dprovides, on the whole amount to be paid to Developer because of the termination of Work under Paragraph 14.03, the City shall determine, on the basis of information available to the City, the amount, if any, due to Developer by reason of the termination and shall pay to Developer the amounts determined as follows:

1. For all Contract Work performed before effective date of the notice of termination, the total (without duplication of any items) of the following items:

a. The cost of such Work.

b. The cost of settling and paying Claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Developer before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.

c. A sum, as profit on the cost of the Work as provided in subparagraph 14.03D, that the City determines to be fair and reasonable. But, if it appears that Developer would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss.

2. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to Developer shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be

excluded from the amounts payable to Developer the fair value, as determined by the City, of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the City, or to a buyer as previously provided.

F. Developer shall have the right to dispute in a court of competent jurisdiction within the State of California any determination the City makes under subparagraph 14.03E. But, if Developer has failed to submit its termination Claim within the time provided and has failed to request extension of such time, it shall have no such right to dispute the City's determination. In any case where the City has determined the amount owed, the City shall pay to Developer the following:

1. if there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or

2. if a proceeding is initiated in a court of competent jurisdiction within the State of California, the amount finally determined in said proceeding.

G. In arriving at the amount due Developer under this clause there shall be deducted:

1. all unliquidated advance or other payments on account theretofore made to Developer, applicable to the terminated portion of this Contract;

2. any Claim which the City may have against Developer in connection with this Contract; and

3. the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by Developer or sold, under the provisions of this Paragraph 14.03, and not otherwise recovered by or credited to the City.

H. If the termination hereunder be partial, before the settlement of the terminated portion of this Contract, Developer may file with the City a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination). Such equitable adjustment as may be agreed upon shall be made in the specified price or prices. Nothing contained herein shall limit the right of the City and Developer to agree upon the amount or amounts to be paid to the continued portion of the Contract when the Contract does not contain an established Contract price for the continued portion.

I. Developer understands and agrees that the foregoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

14.04 TERMINATION OR SUSPENSION BY THE DEVELOPER

A. Developer may terminate this Agreement if the Work is stopped for a period of 30 consecutive days through no act or fault of the Developer, its agents or employees or any other persons performing portions of the Work under contract with Developer, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

2. An act of government, such as a declaration of national emergency that requires all Work to be stopped.

B. If the Work is stopped for a period of 60 consecutive days through no act or fault of Developer, its agents or employees or any other persons performing portions of the Work under contract with Developer because the City has repeatedly failed to fulfill the City's obligations under the Contract Documents with respect to matters important to the progress of the Work, Developer may, upon seven additional days' written notice to the City, terminate the Contract and recover from the Owner as provided in Paragraph 14.04D, below.

C. Developer may terminate this Agreement if, through no act or fault of Developer, its agents or employees or any other persons performing portions of the Work under contract with Developer, repeated suspensions, delays or interruptions of the entire Work by the City or Unavoidable Delays constitute in the aggregate more than 100 percent of the total number of days scheduled for completion of Phase Two, or 120 days in any 365-day period, whichever is less.

D. If one of the reasons described in Paragraph 14.04A, 14.04B or 14.04C exists, Developer may, upon seven days' written notice to the City, terminate this Agreement and recover from the City payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

E. If the Work is stopped for a period of fifteen (15) consecutive days due to events of Unavoidable Delay, then, upon fifteen (15) days' written notice to the City, and provided the Unavoidable Delays have continued without interruption during such additional 15-day period, Developer may suspend the Work and demobilize from the Site. When the conditions giving rise to the Unavoidable Delay abate, and provided this Agreement has not otherwise been properly terminated, Developer shall remobilize and recommence the Work. Developer shall be entitled to an equitable non-compensable extension of the Contract Time (taking into account additional time

required to remobilize on the Site) upon any suspension of the Work pursuant to this Paragraph 14.04E.

ARTICLE 15 – MISCELLANEOUS PROVISIONS

15.01 GOVERNING LAW AND VENUE

A. The Contract Documents shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code, including but not limited to Chapter 6 of the Administrative Code, which is incorporated by this reference as if set forth herein in full.

B. All litigation relative to the formation, interpretation and performance of the Contract Documents will be decided by a court of competent jurisdiction within the State of California.

15.02 RIGHTS AND REMEDIES

A. All of City's rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of City under the Contract Documents or otherwise available at law or in equity.

B. No action or failure to act by the City or the City Representative will constitute a waiver of a right afforded them under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by City or the City Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.03 COMPLETE AGREEMENT

The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract Documents may be modified or amended only as specified in Paragraph 1.04 of these General Conditions.

15.04 SEVERABILITY OF PROVISIONS

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

END OF SECTION