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San Francisco County Superior Court

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CLERK OF THE COURT
BY: NEYL WEBB
Deputy Clerk

6 Attorneys for Plaintiff
7 WEBCOR/OBAYASHI JOINT VENTURE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 WEBCOR/OBAYASHI JOINT VENTURE, a
11 joint venture,
12 Plaintiff,
13 v.
14 TRANSBAY JOINT POWERS AUTHORITY
and DOES 1 through 100, inclusive,
15 Defendants.

Case No. CGC - 18 - 570621

COMPLAINT OF WEBCOR/OBAYASHI
JOINT VENTURE, FOR:

- 1) Breach of Contract; and
- 2) Declaratory Relief

JURY TRIAL DEMANDED

16 Plaintiff WEBCOR/OBAYASHI JOINT VENTURE ("WOJV"), hereby complains and
17 alleges as follows:

18 PARTIES

19 1. WOJV is now, and at all times herein mentioned was, a California joint venture
20 qualified to do business, and doing business, in the State of California.

21 2. Upon information and belief, Defendant TRANSBAY JOINT POWERS
22 AUTHORITY ("TJPA") is a joint powers authority created under public section 6500, *et seq.*, of
23 the California Government Code. TJPA is empowered to develop, design, construct, renovate,
24 rehabilitate, improve, operate, manage, and maintain a new regional transit terminal known as the
25 Salesforce Transit Center located in San Francisco, California (the "Transbay Terminal").

26 3. The Defendants DOES 1 through 100, inclusive, are sued herein under fictitious names,
27 as WOJV is informed and believes, and thereon alleges, DOES 1 through 100, inclusive, are in
28

1 some fashion legally responsible for, and proximately caused, injuries and damages to WOJV
2 alleged herein, and/or each otherwise has an interest in the matters adjudicated herein. WOJV is
3 ignorant of the true names or capabilities of the defendants sued herein under the fictitious names
4 DOES 1 through 100 inclusive. When their true names and capacities are ascertained, WOJV will
5 amend this Complaint by inserting their true names and capacities.

6 VENUE

7 4. Venue in this Court is proper because (i) performance of the contracts at issue
8 occurred, in part, in San Francisco County, California, (ii) the TJPA has its principal place of
9 business in San Francisco County, California, and (iii) because many of the breaches of the contracts
10 at issue took place in San Francisco County, California.

11 FACTUAL BACKGROUND

12 5. On information and belief, TJPA has undertaken a \$6 billion infrastructure project
13 to: (i) replace the former Transbay Terminal with a modern transportation hub servicing 11 transit
14 systems including AC Transit, BART, Caltrain, Golden Gate Transit, Greyhound, Muni, SamTrans,
15 WestCAT Lynx, Amtrak, Paratransit and future High Speed Rail; (ii) extend Caltrain service
16 underground to a new below-ground terminal within the replacement Transbay Terminal; and (iii)
17 create a new neighborhood with homes, offices, parks, and shops surrounding the replacement
18 Transbay Terminal.

19 6. The present matter arose from the demolition of the former Transbay Terminal and
20 the design and construction of the Transbay Transit Center Project in its place (the "Project").

21 7. The original scope of work on the Project was split into two phases and was to be
22 constructed in a "top down" manner whereby Phase 1 would include the design and construction of
23 all above-grade elements of the Transbay Terminal, the ramps for bus access, and the ground slab
24 and foundation systems necessary to allow for the future Phase 2 work. Phase 2 was to be comprised
25 of the below-grade elements of the Transbay Terminal, including the station passenger platform
26 level and the train mezzanine level (collectively the "Train Box").

27 8. The Transbay Terminal was to consist of six levels that spanned more than one
28 million square feet, and to include several signature elements such as a 5.4-acre rooftop garden, a

1 “Grand Hall”, and a “Light Column” that would allow daylight into the Transbay Terminal.

2 9. During the course of the Project, elected officials, transit advocates and the news
3 media pilloried TJPA for its management failures, numerous errors, cost overruns, and exorbitant
4 travel costs for the TJPA’s CFO, among many other issues. The situation became so critical and
5 out of control that the TJPA Board of Directors terminated the contract of TJPA executive director
6 Maria Ayardi-Kaplan with a confidentiality agreement and a significant “golden parachute,” despite
7 her presiding over a major budget shortfall and causing significant delays and impacts to the overall
8 Project during her tenure. At that point, approximately two years ago, elected and regional leaders
9 summoned the City of San Francisco’s Department of Public Works (“DPW”) to assume
10 management of the Project, tapping into DPW’s extensive experience managing large and complex
11 public projects in San Francisco. But unfortunately the damage was largely already done, and
12 despite DPW’s commendable efforts, DPW and WOJV were unable to fully overcome the
13 significant Project delay and cost overruns. TJPA now, unjustifiably, seeks to pass on responsibility
14 for these delays and cost overruns to WOJV and its subcontractors by both (i) denying WOJV’s
15 requests for additional Contract Time and payment of additional costs incurred, and (ii) threatening
16 to assess liquidated damages against WOJV for late completion of the Project.

17 10. TJPA was unable to fulfill its key contractual duties including making the critical
18 decisions required to keep the Project on time and on budget. This led to WOJV and its
19 subcontractors being forced to issue more than 12,000 Requests for Information (“RFIs”) on the
20 Project, many of which were necessary to correct errors or omissions in the TJPA’s Project design.
21 The TJPA’s responses to these RFIs were often late and included design clarifications, code updates,
22 and significant design progressions/revisions. The Construction Drawings were obviously
23 incomplete. In breach of the Contract, TJPA provided late responses to over 3,500 (more than 28%)
24 of the RFIs WOJV issued on the Project, with some TJPA responses delayed by as many as 296
25 days.

26 11. Over the course of the Work, WOJV issued over 1,603 Change Order Requests,
27 many of which were necessary to correct errors or omissions in the Project design prepared by the
28 TJPA Design Team. In breach of the Contract, the average time taken for TJPA to resolve Change

1 Order Requests and issue a Contract Change Order (“CCO”) was 129 days, and in some instances
2 TJPA took up to 930 days to resolve a single Change Order Request.

3 12. The need for an excessive number of RFIs and Change Order Requests to remedy
4 errors or omissions in the Project design prepared by the TJPA Design Team, as well as TJPA’s
5 delayed responses to RFIs and Change Orders Requests, directly impacted the critical path of the
6 Project and caused significant delays to the Project. WOJV and its subcontractors made every effort
7 to address these issues and overcome TJPA’s mismanagement, failures and delays in order to keep
8 the Project on track and, in fact, reduced the potential delay significantly through its efforts.

9 **A. Contractual Background**

10 13. On information and belief, on or about March 20, 2008, TJPA contracted with Pelli
11 Clarke Pelli Architects (“PCPA”) to act as the lead architect, to among other things, provide
12 construction plans and specifications and the overall architectural and engineering design (the
13 “Contract Documents”) for the Project.

14 14. Upon information and belief, PCPA’s contractual responsibilities included providing
15 a Project design that was full, complete, coordinated, accurate, and sufficient for its intended
16 purpose, and to provide such designs in a timely manner.

17 15. Upon information and belief, PCPA contracted with Thornton Tomasetti to serve as
18 the engineer of record, to among other things, prepare the structural engineering elements of the
19 Contract Documents for the Project.

20 16. Upon information and belief, PCPA, Thornton Tomasetti, and others under contract
21 directly and/or indirectly with TJPA formed the design team for the Project and operated under
22 TJPA’s management and direction (the “TJPA Design Team”).

23 17. On or about July 8, 2008, TJPA released a Request for Qualifications (the “RFQ”)
24 seeking proposals from companies to provide certain pre-construction and construction services for
25 the Project, pursuant to which WOJV was subsequently selected by TJPA as a qualified bidder.

26 18. On or about October 21, 2008, TJPA issued a Request for Proposals (the “RFP”) to
27 the qualified bidders, including WOJV, requesting that each submit a proposed price to perform the
28 work described therein.

1 19. On or about March 12, 2009, TJPA and WOJV entered into Contract No. 08-04-
2 CMGC-000 (the "Contract") whereby WOJV agreed to provide certain pre-construction services
3 (the "Pre-Construction Services"), to serve as the construction manager/general contractor, and to
4 manage/administer subcontracts with trade subcontractors (the "Trade Subcontractors") who would
5 construct Phase 1 of the Project in accordance with the Contract Documents (collectively the
6 "Construction Work") for a not-to-exceed price of \$600,000,000 (the "Contract Price"). A true and
7 correct copy of the Contract, including the Contract Agreement and General Conditions, is attached
8 hereto as Exhibit A and incorporated by reference as though set forth in full, except that the exhibits
9 and reference documents have not been attached here in order to conserve filing capacity.

10 20. The Contract provides that the Pre-Construction Services would include, among
11 other tasks:

12 (a) WOJV's periodic review of the evolving Project design prepared by the TJPA
13 Design Team with regards to means and methods of construction (within WOJV's
14 capacity as a general contractor);

15 (b) WOJV's preparation of a trade work package plan outlining the timeline for
16 procurement of subcontracts with the Trade Subcontractors to perform each of the
17 trade work packages (the "Trade Work Package Plan"); and

18 (c) WOJV's execution of the Trade Work Package Plan, including procurement
19 of the Trade Subcontractors based on the finalized construction documents prepared
20 by the TJPA Design Team and issued by TJPA (the "100% CDs"). (See Contract,
21 Section 00 05 20 at Article 2.)

22 21. Pursuant to the procurement plan set forth in the Contract, TJPA developed work
23 scopes and bid documents, and discrete scopes of work were then put out to bid by WOJV according
24 to TJPA's direction. TJPA thereafter selected the Trade Subcontractor for each scope of work
25 following a competitive bidding process, and directed WOJV to enter into a subcontract with the
26 awardee accordingly. As the construction manager/general contractor for the Project, WOJV did
27 not self-perform any work on the Project.

28 22. Under the terms of the Contract, WOJV is to be compensated for the Pre-

1 Construction Services based on an hourly rate set forth in the Contract up to a maximum number of
2 hours performed. (See Contract, Section 00 05 20 at Article 5.01(A).)

3 23. The Contract provides that the Construction Work would include, among other tasks,
4 management and administration of the work of the Trade Subcontractors, including: submittal and
5 coordination of Requests for Information (“RFIs”), Change Order Requests, and other submittals;
6 submittal of monthly progress reports to the TJPA; and, acting as liaison between the Trade
7 Subcontractors, TJPA, the TJPA Design Team, and TJPA’s inspectors. (See Contract, Section 00
8 05 20 at Article 3.)

9 24. Under the terms of the Contract, WOJV is to be compensated for the Construction
10 Work based on its direct costs of performing the work (“Direct Costs”), plus a fixed fee that includes
11 WOJV’s overhead, profit and general conditions fee. For any approved Direct Costs in excess of
12 the Contract Price performed within the Contract Time, WOJV is entitled to be paid for the Direct
13 Costs plus a mark-up of 3.5% (the “WOJV Mark-up”). (See Contract, Section 00 05 20 at Article
14 5.01(B)(1),(2), and (4).)

15 25. The Pre-Construction Services and the Construction Work (collectively the “Work”)
16 was to originally occur within 1,825 consecutive calendar days, or approximately five years (the
17 “Contract Time”). (See Contract, Section 00 05 20 at paragraph 4.01.)

18 26. In or around June 2010, TJPA revised and greatly expanded the Phase 1 scope,
19 including design and construction of the Train Box in Phase 1. TJPA also directed that the Work
20 was to be altered to be performed using a “bottom up” approach where the below-ground Phase 2
21 components of the Work were to be constructed first, in a complete reversal of the original plan. In
22 addition, TJPA elected to defer completion of certain Phase 1 elements until later in the Project
23 timeline. To account for TJPA’s directions, TJPA and WOJV amended the Contract Time to 2,555
24 consecutive calendar days (approximately seven years), and increased the not-to-exceed Contract
25 Price to \$994,517,600.

26 27. TJPA issued WOJV the notice to proceed for the Construction Work on October 26,
27 2010, with the original contractual Substantial Completion date set for October 23, 2017.

28 28. Beginning in or about October 2010, WOJV conducted competitive bidding

1 processes with potential Trade Subcontractors and entered into numerous subcontracts with Trade
2 Subcontractors to perform the Construction Work.

3 29. WOJV and TJPA entered into a settlement agreement on April 2, 2015 that extended
4 the Project's Substantial Completion date by 60 calendar days to December 22, 2017 due to
5 acknowledged excusable delays incurred during the excavation and shoring work.

6 30. Substantial Completion of the Project was achieved on July 12, 2018, at which point
7 the Contract Price, as amended from time to time by the parties, was approximately \$1,461,222,078.

8 **B. TJPA Has Materially Breached the Contract by Failing to Extend the Contract**
9 **Time to Account for Delays Caused by TJPA and/or TJPA's Design Team**

10 31. In January 2011, WOJV and TJPA agreed upon a baseline schedule (the "Baseline
11 Schedule"), which included the Trade Work Package Plan, and stipulated that the 100%
12 Construction Drawings would be issued to WOJV (and hence available for procurement of the trade
13 packages) no later than October 28, 2011.

14 32. After agreement on the Baseline Schedule, WOJV experienced extensive delays,
15 extra work, disruptions, and impacts due to events beyond its control that led to compensable
16 increased costs of the Work under the Contract and entitled WOJV to an extension of the Contract
17 Time.

18 33. During the course of the Work, TJPA caused delays and additional costs to WOJV
19 arising from or relating to, without limitation: (a) late delivery and defective condition of design
20 documents (including, but not limited to, errors and omissions in the Contract Documents prepared
21 by the TJPA Design Team under TJPA's management and direction, and piecemeal delivery of
22 drawings); (b) delay and extension of the bidding process resulting from re-scoping and re-bidding
23 of certain critical trade packages at the direction of TJPA; (c) conversion of several trade packages
24 from a "bid-build" basis to a design-build basis, (d) enhancement and expansion of the Risk and
25 Vulnerability Assessment (the "RVA Criteria") which greatly impacted the delivery of the Contract
26 Documents as well as significantly transformed signature elements of the Project; (e) failure by
27 TJPA to grant full access to the Project site when required; (f) delayed responses of RFIs and Change
28 Order Requests by TJPA and/or the TJPA Design Team, many of which were requested by the TJPA

1 and/or the TJPA Design Team or other for whom TJPA is contractually responsible in order to
2 correct design errors and omissions; (g) ill-fated and poorly thought-out TJPA-directed code
3 compliance decisions, made in its role as the Authority Having Jurisdiction (AHJ) on the Project,
4 which the Project inspectors could not support, thus forcing TJPA-directed code compliance
5 revisions at or near the conclusion of the Project – some after the contractual Substantial
6 Completion date of December 22, 2017 – rather than at the beginning when WOJV could have
7 implemented these measures while avoiding additional impacts; and (h) failure by TJPA to facilitate
8 the timely closeout of the Project (collectively the “Project Delays”).

9 34. Each of these impacts, changes, and delays adversely affected WOJV’s ability to
10 achieve Substantial Completion by December 22, 2017.

11 1. TJPA’s Late Delivery and Defective Condition of the Project Design

12 35. Contrary to the Baseline Schedule, design delays caused by TJPA and/or the TJPA
13 Design Team resulted in the Construction Drawings not being issued to WOJV until December 2014
14 (Architect’s Supplemental Instruction (“ASI”) No. 128), over 37 months late (the “Late Design
15 Delivery Delay”). However, these Construction Drawings were not fully complete as the design
16 continued to be developed through the issuance of additional ASIs through December 2016 when
17 the final ASI, ASI No. 150, was issued by TJPA and its design team.

18 36. The primary, but not sole, driver of the Late Design Delivery Delay was the decision
19 made solely by TJPA in July 2011 to revisit the RVA, upon which years of Project design
20 development had already been based, and to revise the various criteria contained therein (the
21 “Revised RVA Criteria”) which in many cases resulted in a complete scrap and redesign of early
22 and major design elements. The glass and awning packages in particular were both rebid and
23 redesigned multiple times to meet (i) increasing RVA requirements and, later, (ii) tightening
24 budgetary considerations in an escalating market. As an example, it was TJPA’s own continuing
25 real estate sales in the immediate area that caused ever-increasing demands on local construction
26 resources thus escalating Project costs.

27 37. The Contract relied upon an RVA performed by URS Corporation for TJPA in 2009.
28 However, as WOJV was ramping up its procurement and construction activities, TJPA

1 commissioned a new and greatly revised RVA study, notwithstanding the fact an RVA already had
2 been performed and its criteria had been incorporated into the existing Project design and schedule.
3 This expanded version of the RVA would take at least one year to incorporate and impose radically
4 different design criteria into the Project directly and significantly impacting both the schedule, costs,
5 and oversight required to complete the Project.

6 38. The Revised RVA Criteria impacted the design of significant, signature components
7 of the Project, each of which required extensive design verification processes followed by lengthy
8 lead times to procure materials. TJPA's delays pushed this work later into the construction period
9 which then coincided with other construction projects in the area, many of which were constructed
10 on land sold by TJPA.

11 39. The ramifications of the enhanced Revised RVA Criteria directly and substantially
12 impacted the critical path of the Project, delaying completion of the 100% Construction Drawings,
13 and consequentially the start of procurement for certain critical components of the Project by nearly
14 two years.

15 40. At the same time, TJPA delayed the start of structural steel construction. The original
16 structural steel package bid process was initially delayed by the issuance of multiple addenda during
17 bidding, and was further impacted by TJPA decisions to (i) rebid the package, and (ii) remove
18 procurement of the steel cast nodes from the package and directly procure them. TJPA had expressly
19 assumed responsibility for many of these risks by contract modification with WOJV when it decided
20 to directly procure the cast nodes in an effort to mitigate the previous TJPA-caused delays associated
21 with bidding the structural steel package.

22 41. Further significant causes of the Late Design Delivery Delay include, without
23 limitation:

- 24 (a) failure by TJPA to produce a basis of design in compliance with the Federal
25 Transit Administration's Buy America requirements, including obtaining the
26 standard project specific waivers for non-domestic procurements, ensuring a basis of
27 design that was domestically sourced, and/or failure by TJPA to remedy this issue in
28 a timely manner; and

1 (b) failure by TJPA to timely issue a complete design to WOJV for, without
2 limitation:

- 3 (i) the fire management system;
4 (ii) the lighting system;
5 (iii) the below grade waterproofing system;
6 (iv) the buttress shafts;
7 (v) the lower concourse concrete deck layout;
8 (vi) the escalator supports;
9 (vii) the bus deck crash rail;
10 (viii) the escalator openings and pit dimensions;
11 (ix) the area of refuge;
12 (x) the permanent power and water systems;
13 (xi) other design elements to be identified at or before trial; and

14 (c) failure by TJPA to remedy such incomplete designs (including numerous and
15 significant design errors and omissions) in a timely and responsive manner.

16 2. Extension of the Bidding Process at the Direction of TJPA

17 42. The Baseline Schedule provided timelines for procuring bids for the 31 trade
18 packages called for by the Project design, of which only two were designated as a “design-build”
19 package where the Trade Subcontractor would be asked to design and build the component of the
20 Project described in the trade package. The remaining trade packages were to be procured on a
21 “bid-build” basis in which the Trade Subcontractor would bid and construct the trade package based
22 on the 100% CDs (also referred to as the Issued for Construction “IFC” set) prepared by the TJPA
23 Design Team.

24 43. However, for a number of the trade packages, the bids by the Trade Subcontractors
25 were significantly higher than the estimates provided by the TJPA Design Team. In response, TJPA
26 cancelled numerous initial procurement efforts, directed that certain of the trade packages be split
27 into multiple packages and that the smaller packages be re-bid, and further directed that certain trade
28 packages be converted from bid-build packages to design-build packages. This just compounded

1 the delay problems on a project that had already incurred a two year delay due to the RVA Criteria
2 changes.

3 44. For example, the comprehensive enhancement by TJPA to the RVA criteria
4 referenced above began in late 2011, which was concurrent with the bidding period for the TG08.1
5 (Building Enclosure) package. As part of the RVA update, the security subject matter experts
6 recommended pre-bid testing of the W-1 Exterior Awning System in order to provide enhanced
7 information to the bidders. Therefore, in January 2012, TJPA suspended the bidding process for
8 package TG08.1 to allow for the fabrication and testing of prototypes for the W-1 Exterior Awning
9 System to evaluate the performance of alternative glazing materials and attachment system designs.

10 45. As a result of TJPA's directions, the number of trade packages rose from 31 to 47,
11 many of which TJPA directed to be re-bid multiple times in hopes of reducing the presentation of
12 the costs through re-packaging, scope division, and redesign. This trend of forced re-bid by the
13 TJPA delayed several long lead and critical procurements, such as the glass and exterior awning,
14 which resulted in loss of bidding interest from the subcontractor community. Meanwhile, the
15 number of design-build packages increased from two to eight. As a direct consequence of TJPA's
16 decisions and directions, the bidding process took significantly longer than planned for in the
17 Baseline Schedule and caused significant impacts to the critical path of the Project (the "Bid
18 Extension Delay").

19 46. WOJV incurred millions of dollars in additional costs when it was required to
20 augment its project staff to manage and administer the multiple late issued design packages that
21 forced multiple major trades to perform construction in a stacked and concurrent manner, in many
22 cases rather than the orderly sequence contemplated under the Contract at award and execution.

23 24 3. Delayed Responses to RFIs and Change Orders Requests

25 47. Pursuant to the Contract, in the event that WOJV noted a discrepancy in the Contract
26 Documents, had questions concerning the meaning or intent of the Contract Documents, or if
27 TJPA's comments on trade submittals transmitted by WOJV appeared to change the requirements
28 or scope of the Contract Documents, WOJV was directed by TJPA to submit an RFI, and to provide

1 TJPA a reasonable time to reply before WOJV proceeded with the affected Work. (See Contract,
2 Section 00 07 00 at paragraph 6.02.)

3 48. As noted above, over the course of the Work, WOJV had cause to issue over 12,000
4 RFIs necessary to correct errors and omissions in TJPA's Project design. Despite WOJV's best
5 efforts to rectify the design errors, TJPA compounded the problems by failed to timely respond to
6 the RFIs, providing late responses to over 3,500 (more than 28%) of the RFIs, with some responses
7 up to 296 days late. This only served to compound the cost overruns and Project delays.

8 49. Similarly, the Contract requires that where a direction by TJPA materially exceeds
9 or changes the requirements of the Contract Documents, WOJV shall submit a Change Order
10 Request to TJPA, who shall render a determination within ten days, or else will be deemed to have
11 rejected the Request unless TJPA notifies WOJV that it requires more time. (See Contract, Section
12 00 07 00 at paragraph 6.03.) As noted above, WOJV issued over 1,603 Change Order Requests,
13 many of which sought to correct the TJPA and the TJPA Design Team's design errors and
14 omissions. As with the RFIs, TJPA's resolution of Change Order Requests was untimely, in some
15 cases taking 930 days to resolve a single Change Order Request.

16 50. Each of these issues directly impacted the critical path of the Project and caused
17 significant delays to the Project (the "RFI/COR Delay").

18 4. TJPA Has Refused to Extend the Contract Time to Account for the Project
19 Delays

20 51. Many of the Project Delays are Unavoidable Delays as that term is defined in the
21 Contract, which are compensable as they were each caused by TJPA, impacted the critical path of
22 the Work, and were not concurrent with any WOJV-caused delays.

23 52. WOJV duly informed TJPA of all delays to the critical path of the Project, as required
24 by the Contract. WOJV additionally kept TJPA continually apprised of the progress of the Work,
25 both orally and in writing.

26 53. TJPA had actual knowledge of the basis for all of the Project Delays.

27 54. Although WOJV has on numerous occasions properly requested extension of the
28 Contract Time in accordance with the Contract, TJPA has unreasonably breached the Contract by

1 failing to extend the Contract Time asserting that the unavoidable delays should have been
2 anticipated or were a result of required WOJV coordination activities. In fact, to date WOJV has
3 received only two extensions of time over the 10 year Project duration, specifically at the (1)
4 addition of the train box and (2) an early sub-tier subcontractor negotiated settlement.

5 55. Upon information and belief, TJPA's failure to extend the Contract Time as required
6 under the terms of the Contract has been undertaken in an effort by TJPA to avoid its responsibility
7 for the significant costs associated with the TJPA-caused Project Delays.

8 56. As a result of the excusable and compensable delays caused by TJPA, WOJV has
9 incurred millions of dollars in extended general conditions costs, for which TJPA is liable under the
10 Contract, but which TJPA has failed to pay.

11 C. **TJPA Has Materially Breached the Contract by Failing to Increase the**
12 **Contract Price on Account of WOJV's Acceleration of the Work at TJPA's**
13 **Direction**

14 57. With knowledge of the reasons for the Project Delays, and despite multiple requests
15 by WOJV, TJPA has refused to extend the Contract Time and instead repeatedly directed WOJV to
16 complete the Work by the Substantial Completion and Final Completion dates in the Baseline
17 Schedule.

18 58. While WOJV has not been able to accelerate the Work to mitigate all of the Project
19 Delays, WOJV did mitigate a substantial number of days of compensable and/or excusable delays
20 such that Substantial Completion was achieved on or about July 12, 2018, only 202 calendar days
21 after the contractual date of December 22, 2017, despite TJPA being responsible for more than 388
22 days of delay to the Project.

23 59. Pursuant to the Contract, WOJV is entitled to reimbursement from TJPA for its
24 reasonable costs of complying with TJPA's directions. (See Contract, Section 00 07 00 at paragraph
25 7.01(H).)

26 60. WOJV's acceleration efforts entitle it to recovery of, among other costs, additional
27 WOJV staffing required to address: (1) the compressed schedule for completion of the work by the
28 Trade Subcontractors; (2) the additional Construction Work necessitated by TJPA-directed changes
in the bidding process; and, (3) the additional Construction Work necessitated by the modifications

1 to the Project design.

2 61. Despite the myriad of TJPA-caused delays throughout the Project's eight-year
3 construction phase, and an increase in the Contract Price to \$1,461,222,078 (a more than 140%
4 increase over the life of the Project), WOJV's extraordinary efforts had this Project completing
5 within only seven months of the current contract substantial completion date of December 22, 2017.

6 62. WOJV is entitled to the additional costs it has incurred to accelerate the Work at
7 TJPA's direction.

8 63. Upon information and belief, TJPA's failure to increase the Contract Price as
9 required under the terms of the Contract has been undertaken in an effort by TJPA to avoid its
10 responsibility for the significant costs associated with the acceleration and schedule mitigation
11 efforts undertaken by WOJV and its subcontractors in connection with the TJPA-caused Project
12 Delays.

13 **D. TJPA Materially Breached the Contract by Failing to Issue Contract Change**
14 **Orders**

15 64. Throughout the Project, pursuant to the Contract, WOJV has submitted Change
16 Order Requests to TJPA where it is entitled to additional compensation pursuant to the terms of the
17 Contract.

18 65. In some circumstances, months passed without TJPA issuing any Contract Change
19 Orders ("CCO"), resulting in a growing backlog of changed work that remains unpaid to WOJV and
20 its Trade Subcontractors. TJPA's failure to issue CCOs has also increased staffing demands on
21 WOJV that could not have been anticipated at the time of bid.

22 66. TJPA has repeatedly and wrongfully breached the Contract by failing to issue CCOs
23 in response to legitimate Change Order Requests and by doing so, refused to adjust the Contract
24 Price where WOJV is contractually entitled to additional compensation.

25 67. Upon information and belief, TJPA's failure to increase CCOs as required under the
26 terms of the Contract has been undertaken in an effort by TJPA to avoid its responsibility for the
27 significant costs associated with the changed and additional work performed by WOJV and its
28 subcontractors on the Project.

1 E. **TJPA Materially Breached the Contract by Inappropriate and Impermissible**
2 **Use of Contingency Funds and Must Replenish the Contingency Fund**

3 68. The TJPA Project Budget includes a contingency fund for use by WOJV (the
4 “CM/GC Contingency”) equal to four percent (4%) of the aggregate sum of awarded Trade
5 Packages, or approximately \$51 million. (See Contract, Section 00 05 20 at Article 6.)

6 69. The CM/GC Contingency is a separate contingency from the TJPA Design Team or
7 TJPA contingency funds. It is expressly not a design contingency and is not to be used for changes
8 in the scope of the Work, for upgrades in the quality of the Work as reflected in the Contract
9 Documents, or for acceleration efforts required by TJPA for TJPA’s benefit. (See Contract, Section
10 00 05 20 at Article 6.)

11 70. The CM/GC Contingency is only to be used for specific categories of costs
12 enumerated in the Contract (the “CM/GC Contingency Categories”). WOJV is required to apply to
13 TJPA for use of the CM/GC Contingency and TJPA is to confirm that the proposed use falls within
14 the CM/GC Contingency Categories. If so, TJPA is to decide whether to approve the request, which
15 approval was not to be unreasonably withheld. Critically, WOJV is not entitled to a mark-up on any
16 expenditure from the CM/GC Contingency. (See Contract, Section 00 05 20 at Article 6.02.)

17 71. Upon achieving Final Completion, WOJV is entitled to 50% of the remaining
18 CM/GC Contingency. Conversely, should the CM/GC Contingency be fully depleted then any
19 additional Work would be expected to be performed by WOJV at no additional cost to TJPA.

20 72. Throughout the Project, TJPA wrongfully, unilaterally, and in breach of the Contract
21 used the CM/GC Contingency for costs outside of the CM/GC Contingency Categories in an effort
22 to avoid its responsibility for cost overruns on the Project and improperly pin them on WOJV and
23 its subcontractors. Among other improper uses, TJPA used the CM/GC Contingency to fund the
24 costs of acceleration efforts required by TJPA for its benefit and changes in the scope of the Work,
25 including but not limited to design ramifications related to the Revised RVA Criteria, and funding
26 the logistical support of the direct work for the extended work period. WOJV was forced to fund
27 these logistical requirements from the CM/GC Contingency to ensure a safe, clean, orderly, and
28 OSHA-compliant work environment for trade workers for all work after December 22, 2017.

1 73. WOJV continually and duly notified TJPA that its improper usage of the CM/GC
2 Contingency was in violation of the Contract terms and demanded that TJPA replenish the CM/GC
3 Contingency. TJPA's failure to do so constitutes a continuing breach of the Contract.

4 74. Further, the CCOs issued by TJPA that wrongfully applied funds from CM/GC
5 Contingency did not include the contractual WOJV Mark-up. As such CCOs should have been
6 approved additional Direct Costs performed within the Contract Time, WOJV is entitled to the value
7 of the WOJV Mark-up on such CCOs in an amount to be proven at trial.

8 75. Upon information and belief, TJPA's impermissible use of the CM/GC Contingency
9 has been undertaken in an effort by TJPA to avoid its responsibility for the significant cost overruns
10 and schedule delays on the Project.

11 **F. WOJV Has Been Damaged by TJPA's Various Contract Breaches**

12 76. As a result of TJPA's various breaches set forth above, WOJV has been damaged in
13 amounts to be proven at trial.

14 77. WOJV is entitled to an increase in the Contract Price for amounts due and owing
15 related to WOJV's additional staffing costs, extended general conditions costs, and pending Change
16 Order Requests.

17 78. WOJV is also entitled to all unpaid, earned Contract balance owed by TJPA,
18 including the Contract retention currently held by TJPA.

19 79. To date, WOJV's total claimed damages are **not less than \$140 million.**

20 80. Additionally, pursuant to its previously submitted time extension request, WOJV is
21 entitled to an extension of the Contract Time of at least 180 calendar days for delays experienced
22 through February 26, 2018, as well as additional delays experienced after that date, along with a
23 corresponding increase in the Contract Price as a result of TJPA's responsibility for such delays.

24 81. Finally, TJPA is obligated to replenish the CM/GC Contingency for the amounts it
25 inappropriately used in an amount to be proved at trial, but which WOJV reasonably believes and
26 therefore asserts will be **approximately \$10 million.**

27 **G. TJPA is Liable for Pass-Through Claims by Trade Subcontractors**

28 82. WOJV has received pass-through claims from several Trade Subcontractors seeking

1 payment for additional costs incurred on the Project arising from TJPA's acts or omissions (the
2 "Trade Subcontractor Claims"). More Trade Subcontractor Claims are expected going forward due
3 to TJPA's lack of diligence in fulfilling its obligations under the Contract relating to the closeout of
4 the Project.

5 83. In all appropriate and necessary cases, WOJV followed the claim-handling
6 requirements set forth in the Contract, and submitted Trade Subcontractor Claims to TJPA for
7 review and an ultimate determination of merit. By contrast, in the vast majority of cases, TJPA
8 breached the Contract by failing to follow the procedures for review of the Trade Subcontractor
9 Claims, including review by senior project staff, TJPA, and a Dispute Resolution Advisor. (See
10 Contract, Section 00 07 00 at paragraph 13.02(II)(D), (E), and (F).) TJPA further breached the
11 Contract by failing to increase the Contract Price for numerous substantiated Trade Subcontractor
12 Claims.

13 84. In addition to these specific examples, nearly every major Trade Subcontractor has
14 asserted, or has indicated its intent to assert, claims against WOJV based on TJPA's various breaches
15 of Contract enumerated herein.

16 85. As a result of TJPA's actions, WOJV has been forced to defend itself against lawsuits
17 filed by Trade Subcontractors seeking payment. Additional lawsuits filed by Trade Subcontractors
18 are expected.

19 86. TJPA retains ultimate responsibility under the terms of the Contract for any and all
20 Trade Subcontractor Claims either under the Contract or in equity to the extent that any Trade
21 Subcontractors establish entitlement to additional compensation pursuant to their work under the
22 respective subcontracts. WOJV has incurred and will continue to incur significant damages as a
23 result of the acts and omissions of TJPA including, without limitation, fees and costs associated with
24 defending the Trade Subcontractor Claims.

25 87. WOJV has fully complied with all statutory prerequisites to filing suit against TJPA,
26 including submission of a claim under California Government Code Sections 900 *et seq.* WOJV
27 timely filed this Complaint after the denial of its claim by TJPA.

28 88. WOJV has fully complied with all contractual prerequisites and fulfilled all

1 contractual conditions precedent to filing suit against TJPA.

2 **FIRST CAUSE OF ACTION**

3 **(Breach of Contract – Against TJPA and DOES 1-100)**

4 89. WOJV incorporates by reference all of the above paragraphs as if each were fully
5 alleged herein.

6 90. WOJV and TJPA entered into a valid and binding contract, the Contract, including
7 any legally valid and enforceable amendments thereto, as set forth herein.

8 91. WOJV has fully performed its obligations under the Contract, including fulfillment
9 of all notice provisions in the Contract, or has otherwise been excused from performance.

10 92. TJPA failed to perform, or properly perform, its obligations under the Contract as set
11 forth herein and, therefore, has breached the Contract.

12 93. Pursuant to the Contract, TJPA had an obligation and duty to, *inter alia*:

- 13 a) provide full, complete and accurate plans and specifications for the Project;
14 b) provide the completely designed and constructible Project plans and
15 specifications in a timely manner;
16 c) review RFIs and Change Order Requests in a timely manner;
17 d) issue CCOs increasing the Contract Price and extending the Contract Time for
18 changed, extra and delayed work, pursuant to the terms and conditions set forth
19 therein; and
20 e) otherwise honor the terms and conditions of the Contract.

21 94. TJPA breached the Contract when it failed to, *inter alia*:

- 22 a) ensure the delivery or production of timely and accurate designs and
23 specifications for the Project, or grant equitable adjustments to account for
24 inefficiencies resulting from delays in issuing, or errors or omissions in, the
25 designs or specifications for the Project;
26 b) issue CCOs for changes, modifications, and increases in the contractual scope
27 of work, including acceleration of the Work;
28 c) pay WOJV and the Trade Subcontractors for extra, changed, and modified

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work;

- d) timely grant time extensions and/or adjust the Contract Price for unavoidable delays in the Project schedule (including delays caused by TJPA), inefficiencies caused by TJPA, and accelerations of the Project schedule by TJPA, other excusable delays, other compensable delays, and other unforeseen matters beyond the control of WOJV;
- e) provide timely responses to WOJV’s submittals, RFIs, requests for time extensions, requests for payment, Change Order Requests, and other submissions;
- f) administer the Contract in good faith by, among other things, issuing CCOs to increase the Contract Price and to extend the Contract Time where appropriate;
- g) misappropriate portions of the CM/GC Contingency for uses other than those authorized by the Contract;
- h) review the merits all Trade Subcontractor Claims passed through to TJPA by WOJV; and
- i) otherwise honor the terms and conditions of the Contract.

95. Every contract, including the Contract, includes an implied warranty of good faith and fair dealing such that the parties to a contract will deal with each other fairly and in good faith, so as not to deprive the right of the other party to receive the benefits of the contract.

96. TJPA breached the implied covenant of good faith and fair dealing by refusing to grant an extension of the Contract Time and an increase in the Contract Price where it was obligated by the Contract to do so. TJPA’s failures are in conscious disregard, or are in deliberate disregard, of WOJV’s rights under the Contract, and the TJPA’s failures frustrate the very benefits that WOJV is entitled to receive.

97. TJPA also breached the implied warranty of correctness regarding the designs, including the plans and specifications, provided under the Contract.

98. As a direct and proximate result of TJPA’s breaches of the Contract, WOJV has

1 sustained, and will continue to sustain, damages in an amount to be more particularly proven at trial,
2 but reasonably believes and therefore asserts to be **not less than \$140 million**.

3 99. TJPA's material breaches of contract were a substantial factor in causing harm to
4 WOJV.

5 100. Many of TJPA's material breaches identified above are continuing.

6 101. WHEREFORE, WOJV prays for relief as hereinafter set forth.

7 **SECOND CAUSE OF ACTION**

8 **(Declaratory Relief – Against TJPA and DOES 1-100)**

9 102. WOJV incorporates by reference all of the above paragraphs as if each were fully
10 alleged herein.

11 103. An actual controversy has arisen and now exists between WOJV, TJPA, and DOES
12 1-100, in that WOJV contends, and TJPA denies, that WOJV is entitled to reimbursement and
13 replenishment of the CM/GC Contingency funds improperly misused by TJPA during the course of
14 the Project, and that WOJV is entitled to recovery of 50% of the CM/GC Contingency amount under
15 the Contract after TJPA replenishes the improperly used amounts in question as well as the WOJV
16 Mark-up on the value of CCOs inappropriately issued using CM/GC Contingency funds.

17 104. WOJV contends, and TJPA denies, that the CM/GC Contingency was to be used
18 solely for the types of work specified in the Contract, and TJPA's unilateral decision to use the
19 CM/GC Contingency for other types of work, including, without limitation, design work,
20 acceleration costs due to TJPA delays, logistical support of the extended work period which directly
21 resulted from TJPA-derived delays, and changes in the scope of the Work ordered by TJPA. WOJV
22 contends that TJPA must reimburse and replenish the CM/GC Contingency funds in an amount to
23 be proven at trial, but which WOJV reasonably believes and therefore asserts will be **approximately**
24 **\$10 million**.

25 WHEREFORE, WOJV prays for a judicial determination of the respective rights and duties
26 of WOJV, TJPA, and DOES 1-100 with respect to WOJV's entitlement to the reimbursement and
27 replenishment of the CM/GC Contingency, entitlement to 50% of the remaining CM/GC
28 Contingency after replenishment, and the WOJV Mark-up on appropriate CCOs.

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PRAYER

WHEREFORE, Plaintiff prays for relief against Defendants, and each of them, as follows:

As to the First Cause of Action:

1. For compensatory damages, general and special, in an amount according to proof at trial but not less than \$140 million;
2. For interest at the legal rate as permitted by law; and
3. For such other and further relief as the Court may deem proper.

As to the Second Cause of Action:

1. For judicial declaration, decrees, or orders establishing that:
 - a. TJPA is required to replenish or reimburse the CM/GC Contingency due to its improper misuse of those funds; and
 - b. WOJV is entitled to recovery of 50% of the CM/GC Contingency remaining under the Contract after TJPA replenishes or reimburses those misused amounts as well as the WOJV Mark-up on the value of CCOs inappropriately issued using CM/GC Contingency funds; and
2. For such other and further relief as the Court deems just and proper.

Dated: October 16, 2018

VARELA, LEE, METZ & GUARINO, LLP

By: 

Bennett J. Lee
Garrett E. Dillon
Attorneys for Plaintiff
WEBCOR /OBAYASHI JOINT VENTURE

4847-6096-7032, v. 1

Exhibit A

SECTION 00 05 20

AGREEMENT

THIS AGREEMENT is made for the convenience of the parties this 17th day of MARCH, 2009, by and between Webcor Builders/Obayashi Corporation, A Joint Venture, located at San Mateo, California (the "CM/GC"), and the Transbay Joint Powers Authority, located in San Francisco, California (the "TJPA"), acting through its Executive Director (the "EXECUTIVE DIRECTOR"), under and by virtue of the Joint Powers Agreement, the rules of the TJPA Board, the laws of the State of California, the Administrative Code of the City and County of San Francisco, and the rules and regulations of the Federal Transit Administration.

WHEREAS, the TJPA awarded this AGREEMENT to the CM/GC on the 12th day of MARCH, 2009, under TJPA Resolution No. 09-004, as more fully appears in the formal record of the proceedings of the TJPA Board:

TRANSBAY TRANSIT CENTER BUILDING AND RELATED STRUCTURES

**AGREEMENT FOR CONSTRUCTION MANAGER/
GENERAL CONTRACTOR SERVICES**

CONTRACT NO. 08-04-CMGC-000

NOW, THEREFORE, the CM/GC, in consideration of the mutual covenants set forth in this AGREEMENT, promises and agrees to provide all services to construct the Transbay Transit Center Building and Related Structures (the "Project") in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfaction of the EXECUTIVE DIRECTOR, to prosecute the Work with diligence from day to day to Final Completion, to furnish all pre-construction services and 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 the CM/GC's obligations under the Contract Documents, as and when required under the Contract Documents to the satisfaction of the EXECUTIVE DIRECTOR.

ARTICLE 1 – WORK

1.01 **The Project.** The Project shall consist of utility relocation, and demolition of the existing structure and ramps, and construction of the Transbay Transit Center Building, the Bus Ramps connecting the Transit Center Building to the Bus Storage Facilities and the West Approach to the Oakland-San Francisco Bay Bridge, and the interconnection and coordination with the Transbay Tower. The Project is located over four blocks (from Fremont to Second Streets) between Mission and Natoma Streets in the City and County of San Francisco.

The new Transit Center Building and Bus Ramps will have six levels: (1) a Train Station Passenger Platform Level, (2) a Train Mezzanine Level, (3) a Ground Level, (4) a Concourse Level, (5) an Elevated Bus Level, and (6) a Park Level. The Train Station Passenger Platform Level (Level (1)) and the Train Mezzanine Level (Level (2)) are the below grade levels of the Transit Center Building and are together sometimes referred to as the "Train Box". The construction shall be in two Phases, "top-down".

Phase I: The elements of the Project constructed in Phase I shall include all above-grade elements of the Transit Center Building, the Bus Ramps, and the ground slab and foundation systems necessary to support the ground slab system for the entire Project. The scope of Phase I construction shall allow for the future construction of the below-grade elements of the Transit Center Building. The design and construction of the Phase I elements shall consider, allow, and

provide for the integration and/or expansion of building systems and vertical circulation systems to be constructed in Phase II.

Phase II: The elements of the Project constructed in Phase II shall include all below-grade elements of the Transit Center Building, Phase II construction shall result in a complete Train Box, including the Train Station Passenger Platform Level (Level (1)) and the Train Mezzanine Level (Level (2)), as a functional component of the Transit Center Building.

The scope of this AGREEMENT includes services only for Phase I of the Project. Upon mutual agreement of the TJPA and the CM/GC, the TJPA may add to the scope of Work all or any portion of Pre-Construction and/or Construction Services for Phase II of the Project, by written modification to this AGREEMENT.

- 1.02 **Contract Documents.** The CM/GC shall provide all Work in conformance with the Contract Documents, which are incorporated into and made a part of this AGREEMENT by this reference as if set forth here in full, and all labor and materials used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between the CM/GC and the TJPA concerning the provision of the Work, are defined in the General Conditions (Section 00 07 00). Any undefined term used in this AGREEMENT will be given the definition set forth in the General Conditions (Section 00 07 00).
- 1.03 **CM/GC's General Responsibilities.** The CM/GC will provide a fully functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, procurement, pre-construction work, 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, which work will be phased as described in Article 2 and Article 3, below.
- 1.04 **Integrated Project Delivery.** Integrated Project Delivery provides a mechanism to enable the early engagement of the CM/GC so that the CM/GC can work with the TJPA and its Project designers to provide a better designed and constructed Project. Early engagement of the CM/GC also allows for early starts in the construction sequence, as the design is proceeding. Under the Integrated Project Delivery method, the CM/GC will provide Pre-Construction Services in coordination with the TJPA and its Project designers, will select trade subcontractors through pre-qualification and competitive bid, and will coordinate, manage, and oversee construction of the Project through Final Completion.

The CM/GC acknowledges and agrees that the TJPA has retained design professionals under three separate agreements for (a) utility relocation (the "UR Engineer") (b) demolition (the "Demolition Engineer") and (c) the design of the Transit Center Building and Related Structures (the "Architect"). The CM/GC further acknowledges and agrees that coordination and execution of the utility relocation, the demolition, and the construction of the Transit Center Building and Related Structures are all a part of the services under this Contract.

Under this approach, the CM/GC will provide Pre-Construction Services (Article 2) and Construction Services (Article 3) as set forth below. **The CM/GC acknowledges and agrees, however, that the specific scope of work for both Pre-Construction and Construction Services for this Project is currently undefined and will be developed and finalized incrementally as the Project progresses. The services outlined below**

are intended as summary descriptions of the types of services that the CM/GC may perform as part of its scope of work. Scopes of work shall be incorporated into this AGREEMENT in an incremental fashion as the Project progresses, at which time the TJPA will authorize the CM/GC to proceed with such services.

- 1.05 Personnel. The CM/GC team members shall at all times have the requisite expertise and experience to provide the Pre-Construction and Construction Services as required by the Contract Documents. See General Conditions (Section 00 07 00), at Article 3.

The CM/GC guarantees that the key personnel identified in its Qualification Statement will provide the required Pre-Construction Services for the duration of such services for the Project. The CM/GC will not make any substitutions to these key personnel without the TJPA's written approval. At a minimum, the CM/GC will demonstrate that any proposed substitution meets all of the applicable qualification requirements as set forth in the TJPA's RFQ.

ARTICLE 2 –PRE-CONSTRUCTION SERVICES

- 2.01 General. The CM/GC shall perform its Pre-Construction Services with a commitment to assisting the TJPA and its design teams in their efforts to meet the Project budgets and schedules. The CM/GC acknowledges and agrees that the UR Engineer, the Demolition Engineer, and the Architect are each designing toward a Fixed Budget Limit set by the TJPA for various aspects of the Project. The CM/GC shall respect the design teams' Fixed Budget Limits and shall perform all reviews, estimates, and other Pre-Construction Services in conformance with the Project budgets and general timelines set by the TJPA in its sole discretion.
- 2.02 Work Plan. Upon Notice To Proceed for Pre-Construction Services, the CM/GC shall prepare a work plan for TJPA approval outlining the scope of services in conformance with the provisions of this Article and the design schedules of the UR Engineer, the Demolition Engineer, and the Architect. The CM/GC shall submit the work plan for the TJPA's written approval within 30 days of the NTP for Pre-Construction Services.
- 2.03 Utility Relocation and Demolition. The CM/GC will consult with the UR Engineer and the Demolition Engineer to establish an effective and cost-efficient plan for the utility relocation and demolition work.
- 2.04 Transit Center Building and Related Structures. For the Transit Center Building and Related Structures, the CM/GC will work with the Architect in reviewing the Schematic Documents, the Design Development Documents, and the Construction Documents, taking into account quality of materials and equipment, to ensure an efficient design and minimum lifecycle cost. The CM/GC will participate in design decisions by providing information, estimates, schemes, and recommendations regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality, energy conserving and efficient building within the budget and schedule for the Project.

The CM/GC shall provide all Pre-Construction Services in conformance with the Architect's Design Schedule and shall provide timely comment, input, reports, or responses as appropriate. Failure by the CM/GC to provide timely services may result in termination of this AGREEMENT for cause.

During the Pre-Construction Services Phase (Design Phase), the CM/GC will work closely with the TJPA and the Architect. The CM/GC's scope of services associated with the Architect's preparation of the Schematic Design, Design Development, and

development of the Construction Documents shall include, but may not be limited to, the following tasks:

1. Perform periodic reviews of evolving design and make suggestions with regard to means and methods of construction including but not limited to construction staging management and crane and heavy equipment placement.
2. Review site conditions, site surveys, and soils reports and advise the TJPA as to anticipated site challenges (other than those that would properly be addressed through CM/GC means and methods) and recommended mitigation measures.
3. Provide constructability recommendations and guidance.
4. Perform construction operations planning.
5. Perform final review of Design Development Documents.
6. Provide input on Time and Cost Control to the TJPA and Architect.
7. Identify phased construction opportunities and constraints.
8. Prepare a Critical Path schedule.
9. Employ detailed constructability reviews and workshops including trade sequencing optimization, Architectural/Structural/MEP "clash detection" (using multi-dimensional Building Information Modeling ("BIM") technology), and recognition of and development of prefabrication/pre-assembly economies.
10. Participate in as-required collaboration and coordination efforts including performance evaluation, lifecycle cost analysis and scheduling/coordination impacts at core subcontractor level with respect to:
 - a. Risk Identification Mitigation and Management program with the TJPA and the Architect to identify issues which have the potential to impact project cost and/or schedule.
 - b. Structural Steel erection and fabrication.
 - c. Subsurface waterproofing design including foundations, slabs, and retaining walls.
 - d. Building Cladding and Curtain Wall detailing and erection including moisture and vapor barrier design, possibly as a design-build element of construction.
 - e. Life Safety systems design and specifications.
 - f. Fire Protection Systems design and specifications.
 - g. Conveyance design – elevator.
 - h. Energy Efficiency, Conservation and Generation features.
 - i. Building Automation System Engineering.
 - j. Security Systems and Hardware selections.
 - k. Telecommunications systems planning, design and specifications.
 - l. Digital communications systems planning, design and specifications.
 - m. Window Washing Equipment.
 - n. Life cycle analysis for major building elements and systems will include:

- Initial cost of system.
- Energy costs.
- Maintenance and custodial costs.
- Life expectancy.
- Replacement costs.
- Total cost of ownership over fifty (50) years.

11. Perform Quality Assurance Audit checks for Quantities and Compatibility utilizing computerized BIM technology.
12. Analyze the project for potential alternative equipment, material, and systems selections for LEED-certified Green Building Design feature cost/benefit studies.
13. Monitor market conditions for Project with subcontractors and material suppliers to (a) determine workloads, bonding capacity availability, and worker/mechanic availability; (b) develop interest in the Project and in bidding on the Work; and (c) fine tune the Project schedule.
14. Participate in the TJPA Total Cost Management process.
15. Prepare cost estimates in CSI/Masterformat 2004 edition, and according to the CSI 50 Division classifications at the following phases of design: 100% schematic design, 50% design development, 100% design development, 50% construction documents, 85% construction documents, and 100% construction documents. Estimates prepared during the construction document phase shall reflect the sequential trade packages in conformance with the bidding strategy to be adopted by the TJPA.
16. Coordinate and work with the Architect and the TJPA to reconcile contemporaneous cost estimates by the Architect and the TJPA.
17. Prepare cash flow analyses for both the design and construction phases.
18. Submit a site use study to be used for allocation of space for storage, parking, and temporary facilities throughout construction phasing.
19. Develop, review, and update a detailed CPM construction schedule.

2.05 Trade Subcontractors – Trade Work Packages. The CM/GC, in consultation with the Architect and the TJPA shall prepare a Trade Work Package plan outlining the logical, seamless, and distinct Trade Work Packages for all scopes of work. The Trade Work Package plan shall at a minimum present the number of packages, a description of the scope of work for each package, the sequence and schedule for procurement, the Architect's Estimate for each Trade Work package, and an outreach plan. The Trade Work Package plan shall be subject to the TJPA's written approval. The CM/GC shall be responsible for the cost of any scope of Work which the CM/GC neglects or fails to include in the Trade Work Packages; the CM/GC, however, may apply CM/GC Contingency funds to such costs (see Article 6 below).

The CM/GC shall develop and manage the master Project CPM schedule for inclusion in every Trade Work Package and shall develop and include in the Trade Work Package that portion or subset of the master Project schedule that applies to that trade.

The CM/GC shall include the TJPA's standard Contract Documents and General Conditions in the Trade Packages, and will consult with the TJPA to incorporate

applicable Federal Transit Administration (FTA) requirements into the Trade Packages. The CM/GC shall develop Supplementary General Conditions (with the TJPA's participation and approval) that address the trade subcontracts, schedule for trade subcontracts, and the responsibilities of all parties under the CM/GC with the agreed-upon procurement method. Awarded trade subcontracts shall not include any CM/GC construction contingency, allowances, or other items which are included in the CM/GC Markup (see Article 5 below).

The CM/GC shall assure that the procurement of subcontractors shall be without regard to race, gender, religion, affiliation, or sexual orientation.

2.06 Trade Subcontractors – Competitive Procurement and Award. Except as provided below, the CM/GC shall assure full and open competition for the procurement of all Trade Subcontractors. In doing so, the CM/GC shall follow a two-step process: (1) pre-qualification and (2) competitive bid.

1. Pre-Qualification of Trade Subcontractors: The CM/GC and the TJPA will jointly develop pre-qualification standards for all trade contracts. The CM/GC will issue RFQs and evaluate responses to establish a pool of no fewer than three pre-qualified trade subcontractors for each trade package, subject to the approval of the TJPA. Only pre-qualified Trade Subcontractors will be allowed to bid. The TJPA, with the assistance of the CM/GC, will resolve any protests or disputes relating to the pre-qualification process.
2. Trade Subcontractor Bid Packages: The CM/GC will receive sealed bids from pre-qualified Trade Subcontractors. The bid security provisions of San Francisco Administrative Code section 6.21 will not apply. Representatives from the TJPA will be present to receive the bids to ensure a fair and equitable process. The CM/GC will consult the TJPA before rejecting any bids.

The CM/GC will award a Trade Work Package subcontract to the responsible bidder submitting the lowest responsive bid, except that the CM/GC may negotiate and award a portion of the trade package contracts as provided in Article 2.07, below. Only those Administrative Code provisions and those Contract provisions between the TJPA and the CM/GC that normally apply to San Francisco public work subcontracts will apply to the Trade Work Package subcontracts.

The TJPA will modify the CM/GC's Contract by adding to it the awarded trade packages, thereby increasing the CM/GC's scope of work and the value of the Contract up to the Contract Sum.

2.07 Trade Subcontractors – Limited Noncompetitive Procurement. The CM/GC, with the approval of the TJPA, may negotiate subcontracts for Trade Work not exceeding seven and one-half percent (7 1/2%) of the total estimated subcontract costs. The value of each negotiated subcontract shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000).

2.08 Trade Subcontractors – Reprocurement. In the event that any bid or negotiated Trade Package results in a procurement in an amount in excess of 5% of the budget estimate for such Trade Work, the TJPA in its sole discretion may direct the CM/GC to cooperate with the TJPA, its consultants, and the Architect to value engineer, re-package, and/or re-bid any Trade Work at no additional cost to the TJPA. This right reserved by the TJPA is not exclusive or preclusive of any right the TJPA may have under this Contract or under any other instrument. The TJPA also reserves the right, in its sole discretion, to terminate

this Contract for convenience under General Conditions Article 14 in the event that the Trade Work Packages do not substantially conform to budget.

ARTICLE 3 – CONSTRUCTION SERVICES

3.01 General Requirements. The TJPA and the CM/GC intend that the TJPA will issue the NTP for Construction during the course of and prior to completion of the CM/GC's Pre-Construction Services; the CM/GC shall then contemporaneously perform Pre-Construction and Construction services. The CM/GC and all Subcontractors contracted for the construction of the Project will provide construction services from mobilization through project completion. The CM/GC 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 (see Contract General Conditions Section 00 07 00).

At a minimum, the CM/GC will perform construction services congruent with those of 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 design 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. Representative activities and responsibilities include, but are not limited to:

1. Secure the site to safely demolish the existing building and execute the demolition work in conformance with general and specific requirements of the Contract.
2. Coordinate the termination or installation of utility work during all phases of the demolition and construction work, including the timely notification to responsible parties, relative to the construction schedule, where the utility work is not a contracted responsibility of the CM/GC or its Trade Subcontractors.
3. Conduct, jointly with the TJPA, a pre-construction conference for the Trade Subcontractors and the Architect. The CM/GC's responsibilities will include (a) preparing a conference agenda; (b) preparing job procedures for clarifications, change orders, shop drawings, progress payments, field-testing and inspections, and safety; and (c) preparing and distributing pre-construction conference minutes or notes.
4. Update the master Project schedule, and review and approve the Trade Subcontractors' schedules for compliance with the individual requirements of each trade subcontract and the overall master Project schedule. The CM/GC will also review and approve Trade Subcontractors' proposed construction schedule for logic, reasonableness, and conformance to the requirements of the Contract Documents, and will review and maintain a daily log of the Trade Subcontractors' progress, personnel and conformance with monthly updated construction schedules.
5. Review and approve Trade Subcontractors' monthly progress payment requests. The CM/GC will (a) compare the requested payments to actual work completed in accordance with the pre-approved schedule of values presented by the Trade Subcontractors at the beginning of construction; (b) combine invoices and prepare the CM/GC payment request; (c) prepare a current overall schedule of values; and (d) submit to the TJPA one invoice in a format and process approved by TJPA for approval and payment.

6. Provide monthly updated cash flow requirement projections for each month of construction.
7. Act as liaison between Trade Subcontractors, inspectors, the Architect and the TJPA.
8. Coordinate the scheduling of work and the operational logistics that have an impact on the safety and operations of adjacent buildings and their occupants.
9. Review, assess and make best efforts to resolve Requests for Information (RFIs) from Trade Subcontractors before submitting RFIs to the TJPA. The CM/GC will be responsible for tracking RFIs through the field office. The Architect will be responsible for interpretations and clarifications of the plans and specifications, and will prepare sketches for clarification when necessary. The CM/GC will manage the distribution to its Trade Subcontractors of clarifications and interpretations prepared by the Architect and any other communication or direction by the TJPA.
10. Review submittals from Trade Subcontractors to identify any coordination conflicts between trade work to ensure appropriateness and conformance with the Contract Documents before forwarding submittals to the Architect.
11. Prepare a monthly construction progress report, summarizing the progress of construction and key issues currently pending. The report will indicate the progress of each Trade Subcontractor, and will also summarize the current cash flow projections. The CM/GC will submit the monthly construction progress reports to the TJPA.
12. Prepare occasional presentations to other organizations as requested by the TJPA regarding construction issues of special importance.
13. Provide direct supervision, scheduling and problem resolution for Trade Subcontractors throughout construction.
14. Provide all necessary on-site trailers and office equipment for the staff of the CM/GC.
15. Provide all necessary on-site construction management, supervisory, safety and clerical staff for the proper management of the construction.
16. Ensure and confirm that the Trade Subcontractors are maintaining CAL OSHA-mandated safety requirements and are conducting regular tailgate safety meetings.
17. Ensure and confirm that the Trade Subcontractors are maintaining as-built drawings in conformance with the requirements of the Contract Documents. The CM/GC shall participate in a regular, monthly meeting with designated representatives of the TJPA, its consultants, and the Architect to review the as-built drawings in detail. The CM/GC will compile the as-built drawings and submit them at the end of the project to the TJPA for review, approval and further processing.
18. Coordinate the training of TJPA-designated personnel on the operations and maintenance of the building systems.
19. Prepare a recommendation for final acceptance of the Project after the Trade Subcontractors have corrected deficient work and satisfied all Contract conditions. The CM/GC will prepare a final payment request and final report. CM/GC will provide a complete set of contract files to the Project Manager and necessary closeout documents including, but not be limited to, as-built drawings, operation and maintenance manuals, additional materials, and warranties.

3.02 Working Requirements. The CM/GC and Trade Subcontractors must have the ability to prepare documents using the following software applications during all phases of the Work.

1. All drawings shall conform to TJPA CAD Standards
 - a. All drawings on Autodesk AutoCAD 2008, minimum file compatibility of DWG files with Autodesk AutoCAD R17.1.
 - b. Roadway and bridge drawings on Autodesk AutoCAD 2008 and Bentley Microstation V8 XM.
2. Building Information Modeling on Rhinoceros 4.0 and Autodesk Revit Building 9 or current compatible/adopted National Building Information Modeling Standard.
3. At the time of construction, the most recent version of Rhinoceros 3-D Modeling software, Autodesk Revit and Autodesk NavisWorks.
4. Text documents on Microsoft Word TM 2007.
5. Spreadsheets on Microsoft Excel TM 2007.
6. Database information on Microsoft Access TM 2007.
7. Schedules on Primavera 6.0.
8. Audio/visual presentations in Microsoft PowerPoint TM 2007.
9. Graphics on Adobe Creative Suite 3 TM.

Project team communication methods may include the following features, either individually, or as part of a dedicated electronic suite of services:

1. E-mail addresses for the Project team will be assigned using the TJPA domain – xxxx@transbaycenter.org.
2. The project has standardized on Constructware, a web-based electronic collaboration tool to connect the Project team, TJPA staff members, and other participants to provide access to project documents, and to facilitate project development tasks. The TJPA will provide licenses and training in the use of Constructware which will be the main information sharing tool for the project. As a minimum, Constructware will be used to document the following program elements:
 - Project Contact List
 - Drawings
 - Meetings
 - ASIs
 - Correspondence
 - Submittals
 - RFIs
 - Daily Reports
 - Punch Lists
 - Contract Change Orders
 - Payment Applications

3.03 Permit Documents. The San Francisco Department of Building Inspection (DBI), Fire Department, Public Works, and other governmental agencies, will be retained to provide the project with plan check and inspection services as needed. Plan checking will be

submitted and reviewed in a manner so as to facilitate the sequence of work as determined by the construction schedule. The plans and specifications may be divided into the following review packages: (1) Foundation package including retaining wall up to street level; (2) Superstructure, as defined by the structural steel and decking; (3) Exterior envelope including the curtain wall; (4) Architectural package, including mechanical, electrical, plumbing, sprinklers and fire alarm; (5) Tenant Improvements; and (6) Final – any additional items not listed above. The CM/GC may propose an alternate packaging plan for TJPA review and approval.

The demolition of the existing building, and the shoring of the excavation work at three sides adjacent to sidewalks, will not be submitted for plan check review by City agencies. The underpinning work at the adjacent property located at 301 Mission Street, however, will require the review, approval and issuance of a building permit by City agencies.

ARTICLE 4 - CONTRACT TIME

4.01 Completion Dates. The Work will be Substantially Complete within 1,825 consecutive calendar days (approximately five years) for Phase I of the Project, beginning with and including the official date of the Notice To Proceed with Pre-Construction Services, as established by the EXECUTIVE DIRECTOR, and Finally Complete in accordance with Article 9 of the General Conditions (Section 00 07 00) within 90 consecutive calendar days after the TJPA issues a Notice of Substantial Completion.

4.02 Liquidated Damages. The TJPA and the CM/GC understand and agree that time is of the essence in all matters relating to the Contract Documents and that the TJPA will suffer financial loss if the Work is not completed within the above-stated Contract Time, as may be extended in accordance with Article 7 of the General Conditions (Section 00 07 00). The TJPA and the CM/GC further understand and agree that the actual cost to the TJPA which would result from CM/GC's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, the TJPA and the CM/GC agree that as liquidated damages for delay (but not as a penalty), the CM/GC will pay the TJPA as set forth in the following table. The parties acknowledge and agree that the maximum aggregate amount of liquidated damages which may be assessed under this paragraph shall be \$45,000,000.

Delay Period	Liquidated Damages Amount
For the first 30 calendar days (days 1-30) that transpire with the Work not Substantially Complete after the time limit for achieving Substantial Completion specified in Article 4:	\$5,000 per day for calendar days 1-30
For the next 30 calendar days (days 31-60) that transpire with the Work not Substantially Complete after the time limit for achieving Substantial Completion specified in Article 4:	\$10,000 per day for calendar days 31-60

Delay Period	Liquidated Damages Amount
For the next 30 calendar days (days 61-90) that transpire with the Work not Substantially Complete after the time limit for achieving Substantial Completion specified in Article 4:	\$25,000 per day for calendar days 61-90
If the Work is not Substantially Complete more than 90 calendar days (days 91 and later) after the time limit for achieving Substantial Completion specified in Article 4:	\$50,000 per day for calendar days 91 and later
If the Work is not Finally Complete after the time limit for achieving Final Completion specified in Article 4:	\$5,000 per calendar day

ARTICLE 5 – CONTRACT SUM

5.01 Contract Sum. The amount to be paid to the CM/GC for all Work performed under this AGREEMENT shall not exceed Six Hundred Million Dollars and No Cents (\$600,000,000.00). The Contract Sum is comprised of the following: (A) the Pre-Construction Services Fee and (B) the Construction Services Fee of (1) the aggregate value of the awarded Trade Work subcontracts (Direct Costs) and (2) the CM/GC Construction Services Markup (the "CM/GC Markup"). This not-to-exceed amount does not include any payments made to the CM/GC for allowed and approved expenditures from the CM/GC Contingency, described in Article 6 of this AGREEMENT, or Reimbursable Expenses, as described below. In the event that during the bidding of Trade Work Packages, the TJPA determines that the budgeted amount for the Trade Packages will or most likely will be exceeded, the TJPA shall have the right to direct the re-bid of certain Trade Packages to reduce the cost and shall, if necessary, have the right to terminate the Contract for its convenience. If, upon Final Completion of the Work, the final Contract Sum (less the Pre-Construction Services Fee and Contingency Payments) is less than the budgeted amount, the difference between the final Contract Sum and the not-to-exceed amount will accrue to the benefit of the TJPA.

The TJPA will adjust the value of the Contract Sum during the course of the Project to reflect the amount of: (a) the cost of Pre-Construction Services, (b) awarded Trade Work Subcontracts plus CM/GC Markup, and (c) any other changes in the Work that affect the value of the Contract.

- A. Pre-Construction Services. The CM/GC will be paid for Pre-Construction Services based on the blended rate of \$122 (One Hundred Twenty-Two Dollars)/hour as set forth in the CM/GC's Project Fee Proposal Schedule (attached as Attachment B to this AGREEMENT), up to a maximum of 45,000 hours. The blended hours rate includes all of the CM/GC's profit for Pre-Construction Services, and all costs incurred by the CM/GC profit for Pre-Construction Services, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, insurance, incidents, and any other fees or expenses incurred by CM/GC in providing Pre-Construction Services.

1. The TJPA, at its sole discretion, will assign Pre-Construction phase Work to CM/GC. The TJPA makes no representation that all 45,000 hours will be required for Pre-Construction Services during the course of the Project.
 2. The blended hourly rate shall apply to all members of CM/GC's team who provide Pre-Construction Services. Payment for Pre-Construction Services will be subject to CM/GC providing the TJPA with sufficient back-up documentation demonstrating to the TJPA's reasonable satisfaction that services were performed justifying payment at the agreed-upon hourly rate.
- B. Construction Services. CM/GC will be paid for Construction Services on the Direct Costs of the Work, as described in subparagraph B.1, below, plus the CM/GC Markup for overhead, profit, and general conditions, as described in subparagraph B.2, below.
1. Direct Costs of the Work include, but are not limited to, the total costs for awarded bid and negotiated Trade Packages. Refer to Attachment 1 to this AGREEMENT for categories of Work included under Direct Costs.
 2. CM/GC's Markup will be 7.81 percent of the actual, total costs for awarded bid and negotiated Trade Packages. The CM/GC Markup percentage shall remain in effect throughout the term of this Contract, as may be extended by written modification to include Phase II construction.

The CM/GC Markup includes all of CM/GC's overhead, profit, and general conditions fee for administering and coordinating Construction Services. Attachment 1 allocates to the CM/GC and to the TJPA certain anticipated costs. Other general condition costs which may or may not be specifically identified in Attachment 1 and which fall under the following categories of costs shall be the responsibility of the CM/GC and included in its Markup: (i) all field and home/regional office personnel including but not limited to principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, drafts persons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries; (ii) all field and home/regional office expenses including but not limited to field trailers, parking, storage sheds, office equipment and supplies, telephone service, 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, shoring equipment, job vehicles, security and fencing, conformance to all regulatory requirements including safety equipment and compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs; (iii) 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, carting, cleaning, protecting the Work, and other incidental Work; and (iv) costs of insurance (including all premiums).

The CM/GC will perform all categories of Work included in the CM/GC Markup (see Attachment I to this AGREEMENT) and will not include any of this Work in any of the Trade Packages.

3. At the time of award of the final Phase I Trade Package, if the total Direct Costs are less than \$500,000,000, the TJPA may at its sole option and discretion either (a) add Direct Costs to bring the Contract Sum to \$500,000,000 or (b) negotiate with the CM/GC an equitable adjustment to the CM/GC Markup. If at that time the total Direct Costs are greater than \$500,000,000, the TJPA may at its sole option and discretion negotiate with the CM/GC an equitable adjustment to the Markup in favor of the TJPA.

C. Reimbursable Expenses. The TJPA will reimburse the CM/GC for the actual, approved costs of copying and binding the Trade Packages, for permits and specified fees (see Attachment I to this AGREEMENT). To be eligible for reimbursement, such costs must have the prior written approval of the TJPA. The CM/GC shall not be entitled to any markup on Reimbursable Expenses.

D. Bond Premiums. For the Phase I Performance and Payment Bonds (each in the amount of \$600,000,000 (see paragraph 9.03)), the TJPA shall reimburse the CM/GC's actual Phase I Performance and Payment Bond premium costs, up to the amount stated by the CM/GC in its Cost Proposal. The TJPA shall not be responsible for any CM/GC Markup on any bond premium costs. For any Phase II Performance and Payment Bonds, the TJPA shall reimburse the CM/GC its actual costs as a Reimbursable Expense.

5.02 Progress Payments. The CM/GC shall submit separate payments requests for Pre-Construction and Construction Services, in an invoicing procedure to be approved by the TJPA. The TJPA will endeavor to make progress payments for undisputed amounts within fifteen (15) days, but not later than forty-five (45) days, of receiving a payment request and the required documentation including, without limitation, certified payrolls. Under no circumstances, however, shall the TJPA be liable for interest or late fees for failure to issue timely any progress payment. Progress payments involving the work of the Trade Subcontractors shall include a retention as provided in the General Conditions for Construction (Section 00 07 00), Article 9.

5.03 Certification by Chief Financial Officer. This AGREEMENT is subject to the budget and fiscal provisions of the TJPA. Charges will accrue only after prior written authorization certified by the TJPA Chief Financial Officer, and the amount of the TJPA's obligation under this AGREEMENT will not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Upon written request from the CM/GC for the status of funds allocated for the Project, TJPA shall respond within fifteen (15) days. If the TJPA becomes aware of any material changes to its ability to fund services to be provided by the CM/GC, it shall promptly notify the CM/GC.

ARTICLE 6 – CM/GC CONTINGENCY

6.01 The TJPA Project budget includes a CM/GC Contingency equal to four percent (4%) of the Direct Costs of the Work. The CM/GC Contingency is not a design contingency, and is not to be used for changes in the scope of the Work or for upgrades in the quality of the Work as reflected in the Contract Documents. In general, it is to be used for coordination of items necessary to complete the Work, *i.e.* the cost to complete Work that was inadvertently omitted from trade package(s) but the cost of which would have been a cost

to the Project had it been included originally. The CM/GC Contingency is also intended to cover the following categories of costs in connection with the Work:

- A. Coordination issues or other disputes by and between Trade Subcontractors arising from conflicts in the Contract Documents that the CM/GC should have recognized during Pre-Construction Services (made in its capacity as a contractor and not a design professional), requiring revisions and/or reorganization of the Work in the field;
 - B. Additional costs, not covered by bonds, attributable to the insolvency of a subcontractor or supplier;
 - C. Costs incurred for the correction of damaged, defective or non-conforming work, provided that CM/GC shall be required to make all reasonable good faith efforts to first obtain such costs from any and all responsible trade contractors and/or any applicable insurance.
 - D. Costs for overtime to maintain or accelerate the Project Schedule, unless such acceleration is required by TJPA for the TJPA's benefit, provided that CM/GC shall be required to make all reasonable good faith efforts to first obtain such costs from any and all trade contractors responsible for such delay(s).
- 6.02. The costs of the Work identified in Paragraph 6.01, above, will be paid for exclusively from the CM/GC Contingency, to the extent funds are available. The CM/GC may apply for use of the CM/GC Contingency by written request to the TJPA. The TJPA will confirm that the Contingency is being used for the purposes set forth in this Article and may issue approval in writing, which approval will not be unreasonably withheld. CM/GC will not be entitled to a Markup on any expenditure from the CM/GC Contingency.
- 6.03. Any and all costs identified in Paragraph 6.01, above, that exceed the CM/GC Contingency amounts set forth above will be the responsibility of CM/GC and will not be chargeable to the TJPA. CM/GC will continue to perform the Work at no additional cost to the TJPA until the Work is complete.
- 6.04. As an incentive for CM/GC to perform in the best interest of the contracting parties and for the overall success of the Project, the TJPA shall pay the CM/GC 50% of the unspent amount of the CM/GC Contingency once the Project is accepted as Finally Complete and provided all conditions for payment are satisfied.

ARTICLE 7 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) OPPORTUNITIES

- 7.01 Disadvantaged Business Enterprise (DBE) Program: The TJPA has set an advisory availability percentage of 17% for DBE participation under this Contract. The DBE Program requirements are set forth in Contract Document Section 00 08 21.

ARTICLE 8 – LABOR REQUIREMENTS

- 8.01 Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this AGREEMENT will be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22E.
- 8.02 Prevailing Wages. 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 and the Director of the California Department of Industrial Relations, and,

when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this AGREEMENT, will be included in this AGREEMENT and are hereby incorporated by this reference. The CM/GC agrees that any person performing labor in the provision of the Work will be paid not less than the highest general prevailing rate of wages as so determined. Because federal funds are involved, where the minimum rate of pay for any classification may differ among State, City and Federal wage rate determinations, the highest of the three rates of pay will prevail. The CM/GC will include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract will be paid not less than the highest prevailing rate of wages for the labor so performed. The CM/GC will require any contractor to provide, and will deliver to TJPA 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 TJPA, 201 Mission Street, Suite 2100, San Francisco, CA 94105.

- 8.03 Penalties. CM/GC will forfeit to the TJPA back wages due plus fifty dollars (\$50.00) for:
- A. 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
 - B. 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.

ARTICLE 9 -- INDEMNITY, INSURANCE, BONDS, AND DAMAGES

- 9.01 Indemnification. To the fullest extent permitted by law, and consistent with California Civil Code section 2782 and Contract General Conditions (Section 00 07 00), Article 3, the CM/GC will assume the defense of, indemnify and hold harmless the TJPA, the TJPA Board, TJPA Board members, agency members of the TJPA, the Federal Transit Administration, CalTrans, and the City and County of San Francisco, and all of their officers, directors, employees, and 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, damages, actions, losses and liabilities 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 or nonperformance of the Work.
- A. The liability of the CM/GC will not be limited to the amount of insurance coverages required under the Contract Documents.
 - B. This indemnification will not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- 9.02 Insurance. The CM/GC shall at all times under this AGREEMENT maintain the insurance coverages as required under Contract Document Section 00 07 00 Article 10 and Section 00 08 05. The TJPA will not fund or participate in any owner-controlled (OCIP) or contractor-controlled (CCIP) insurance program.
- 9.03 Bonds. The CM/GC shall furnish and maintain (1) a corporate surety bond to guarantee the faithful performance of the Contract ("Performance Bond") and (2) a corporate surety

bond to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond"), each in an amount not to exceed \$600,000,000, with the CM/GC as Principal and the TJPA as sole obligee, in the form provided by the TJPA (Contract Document Section 00 06 10), in conformance with the bond requirements under the General Conditions (Section 00 07 00, Article 10) (together, the "Phase I Performance and Payment Bonds"). The CM/GC shall furnish the Phase I Performance and Payment Bonds within 120 days of the award of the CM/GC Contract, or within 14 days of the request by the TJPA, whichever is earlier. Failure to submit timely Performance and Payments Bonds shall result in a forfeiture of the CM/GC's Bid Bond.

- A. In the event that, upon mutual agreement of the parties, the TJPA adds Phase II Work to the scope of this AGREEMENT, the CM/GC shall furnish either (1) a rider or other appropriate instrument to increase the penal sums of the Phase I Performance and Payment Bonds and to incorporate Phase II Work or (2) furnish new Phase II Performance and Payment Bonds in an amount to be determined by the TJPA and from a surety acceptable to the TJPA.
- B. In the event that either party opts not to proceed with Phase II Work under this AGREEMENT, the CM/GC shall complete the Work of all awarded Trade Packages in conformance with the terms and conditions of the Contract Documents; the exercise of such option by the CM/GC shall not itself constitute Grounds for Default under the Contract General Conditions (Section 00 07 00), Article 14, or the Bonds already furnished.

9.04 Damages. The TJPA and the CM/GC mutually waive claims against each other for incidental or consequential damages arising out of or relating to the Contract. This mutual waiver includes (a) damages incurred by the TJPA for rental expenses, for losses of use, revenue, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (b) damages incurred by the CM/GC for principal office expenses including the compensation of personnel, for losses of revenue (including profit), financing, business and reputation, and for loss of management or employee productivity or of the services of such persons. (See also General Conditions (Section 00 0700), paragraph 3.21B.) For the purposes of these Contract Documents, liquidated damages are direct damages and nothing contained in this Article shall preclude an award of liquidated damages, when applicable, in accordance with the terms and conditions of the Contract Documents.

ARTICLE 10 – RIGHTS AND REMEDIES

- 10.01 General. The provisions of the Contract Documents 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 Contract Documents, or condone a breach thereunder, unless expressly agreed to by the Parties in writing. All remedies provided in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the TJPA shall have any and all equitable and legal remedies that it would in any case have.
- 10.02 No Waiver. No waiver of any breach of any provision of the Contract Documents shall be held to be a waiver of any other or subsequent breach. The only waiver by the TJPA shall be a waiver in writing that explicitly states the item or right being waived.

10.03 TJPA's Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22M, the CM/GC or any Subcontractor or Supplier who fails to comply with the terms of this AGREEMENT, who violates any provision of San Francisco Administrative Code Chapter 6, 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 the 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.*

- A. Additionally, the CM/GC or its Subcontractor or Supplier who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in San Francisco Administrative Code section 6.80, *et seq.*, California Government Code section 12650, *et seq.*, and the Federal False Claims Act.
- B. CM/GC shall include in each subcontract and purchase order for Work a clause incorporating the provisions of this Article 10.03.

ARTICLE 11 – COMPLETE AGREEMENT; MODIFICATIONS IN WRITING

- 11.01 This AGREEMENT and the Contract Documents as set forth in General Conditions (Section 00 0700) constitute the complete agreement between the TJPA and the CM/GC. This AGREEMENT supersedes and shall control over any other agreement written or oral as between the TJPA and the CM/GC.
- 11.02 This AGREEMENT and all of the terms and conditions of the Contract Documents shall remain in full force and effect through expiration unless modified in writing and approved by the TJPA or the TJPA Board, as appropriate.

ARTICLE 12 – RESOLUTION OF CONFLICTING TERMS

- 12.01 The Contract Documents and any other agreements between the Parties relating to the Project are intended to be read together and integrated as a whole, and will be construed and interpreted in a manner so as to avoid any conflicts to the extent possible. Supplementary provisions in the Contract Documents will not be deemed to be in conflict. It is expressly agreed by and between the TJPA and the CM/GC that should there be any conflict between the terms of this AGREEMENT and the CM/GC's Proposal, then this AGREEMENT will control and nothing herein will be considered as an acceptance of any terms of the ' Proposal which conflict with this AGREEMENT.

ARTICLE 13 – GOVERNING LAW AND VENUE

- 13.01 Governing Law. The Contract Documents shall be interpreted in accordance with the laws of the State of California, the TJPA By-Laws, and applicable provisions of the San Francisco Administrative Code.
- 13.02 Venue. All Claims, counter-claims, disputes and other matters in question between the TJPA and the CM/GC arising out of or relating to this AGREEMENT or its breach will be decided by a court of competent jurisdiction with the State of California.

ARTICLE 14 – NOTICES TO PARTIES

- 14.01 Unless otherwise indicated in the Contract Documents, all written communications sent by the Parties may be by U.S. mail, e-mail, or facsimile, and shall be address as follows:

To TJPA: Maria Ayerdi-Kaplan
 Executive Director
 201 Mission Street, Suite 2100
 San Francisco, CA 94105

mayerdi-kaplan@transbaycenter.org
(415) 597-4615 fax

To CM/GC: Jes Pedersen
Senior Vice President
951 Mariners Island Blvd., 7th Floor
San Mateo, CA 94404
jes@webcor.com
(650) 524-7399 fax

- 14.02 From time to time, the Parties may designate new address information by notice in writing, delivered to the other Party.
- 14.03 The delivery to the CM/GC at the legal address listed above, as it may be amended upon written notice, or the depositing in any United States Post Office or Post Office Box regularly maintained by the United States Postal Service in a postage-paid wrapper directed to the CM/GC at such address, of any drawing, notice, letter or other communication shall be deemed legal and sufficient service thereof upon the CM/GC.

ARTICLE 15 – PROPRIETARY OR CONFIDENTIAL INFORMATION OF TJPA

- 15.01 CM/GC understands and agrees that, in the performance of the Work under this AGREEMENT or in contemplation thereof, CM/GC may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the TJPA. The CM/GC agrees that all information disclosed by the TJPA to CM/GC and marked or otherwise identified as "confidential" shall be held in confidence and used only in performance of the AGREEMENT. CM/GC shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.
- 15.02 CM/GC shall retain all confidential information and maintain such confidentiality for a period of not less than four years from the date of Final Completion. The TJPA at its sole option and discretion may, within the four-year period, notify the CM/GC in writing that it must preserve the information and its confidentiality for longer than four years. At the expiration of the confidentiality period, CM/GC shall request direction from the TJPA as to whether the CM/GC should return or destroy the confidential information. Shipment to a TJPA-designated storage facility, shall be made at TJPA's sole expense.

ARTICLE 16 – TERMINATION

- 16.01 This AGREEMENT and the other Contract Documents, unless sooner terminated, will terminate upon Final Completion of the Work or as set forth in Article 14 of the General Conditions (Section 00 07 00).

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IN WITNESS WHEREOF, the TJPA and the CM/GC have hereunto set their hands and seals, and have executed this AGREEMENT in duplicate, the day and year first above written.

TRANSBAY JOINT POWERS AUTHORITY WEBCOR/OBAYASHI JOINT VENTURE

BY: 
Maria Ayerdi-Kaplan
Executive Director

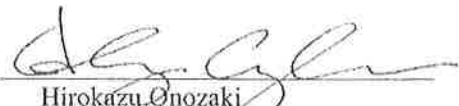
BY: WEBCOR CONSTRUCTION L.P.
BY: WEBCOR GP, LLC, Its General Partner

By: 
Andrew J. Ball
President

Awarded and Approved by Resolution No.
09-004

BY: 
TJPA Board Secretary

By: OBAYASHI CORPORATION

By: 
Hirokazu Onozaki
Vice President, U.S. Heavy/Civil
Operations

Approved as to form:
Dennis J. Herrera
City Attorney

BY: 
Deputy City Attorney

END OF SECTION 00 05 20

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- Sections marked with a check (✓) are part of current package scope of work.
- An asterisk rather than a volume number indicates that section contains Sensitive Security Information (SSI) and is available only on the TJPA's secure website.
- A subset of sections containing SSI is designated "view only" SSI. Two asterisks rather than a volume number denote sections containing "view only" SSI. "View only" SSI is not transmitted to the CM/GC or plan room and is available to bidders only on the TJPA's secure website.

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DIVISION 00 – CONTRACTING REQUIREMENTS							
00 01 04	List of Consultants	3	02/11/2015	1 thru 5	TJPA	1	X
00 01 07	Seals	4	10/15/2013	1 Only	TJPA	1	X
00 01 07/APA	Buttress, Shoring and Excavation Seals	0	12/10/2010	1 thru 2	AAI	1	X
00 01 07/APB	Transit Center – Below Grade Seals	0	08/30/2012	1 thru 2	AAI	1	X
00 01 07/APC	Relocation of Utilities Seals	0	10/14/2010	1 thru 2	ΔECO M	1	X
00 01 07/APD	Transit Center – Superstructure Seals	1	07/17/2013	1 Only	AAI	1	X
00 01 07/APE	Transit Center – Bus Ramps Seals	0	04/21/2014	1 thru 2	AAI ARC	1	X
00 01 07/APF	Transit Center – Main Package Seals	0	03/31/2014	1 thru 2	AAI	1	X
00 01 07/APG	Transit Center – Structural Concrete Superstructure Seals	0	03/31/2014	1 Only	AAI	1	X
00 01 07/APH	Transit Center – Design/Build Glazing Systems (W-2, W-3, W-4, W-6, W-8, W-10)	0	12/16/2014	1 Only	AAI	1	X
00 01 07/API	Transit Center – Design/Build Exterior Awning System	0	12/16/2014	1 Only	AAI	1	X
00 01 07/APJ	Transit Center – MEP/Telecom/Security & Vertical Transportation (Elevators, Escalators & Metal Stairs)	0	12/16/2014	1 thru 2	AAI	1	X
✓ 00 01 10	Table of Contents (Volume 1 Only)	23	07/13/2015	1 thru 6	TJPA	1	X
00 01 15	List of Drawings	-	02/11/2015	1 thru 60	TJPA	1	X
00 02 12	Escrow Bid Documents	0	07/30/2010	1 thru 3	TJPA	1	X
00 02 15	Bid Protests	3	08/11/2014	1 thru 2	TJPA	1	X
00 03 20	Geotechnical Data	3	02/13/2014	1 thru 2	TJPA	1	X
00 03 21	Geotechnical Data – Utilities Work	0	08/06/2010	1 Only	TJPA	1	X
00 03 31	Existing Conditions: Buildings and Improvements	8	05/21/2013	1 thru 3	TJPA	1	X
00 03 35	Existing Conditions: Hazardous Materials	2	05/21/2013	1 thru 2	TJPA	1	X
00 03 50	Available Project Information – Design Reports	5	12/16/2014	1 Only	TJPA	1	X
00 03 51	Available Project Information – Protected Information	2	12/13/2013	1 Only	TJPA	1	X
00 03 51/APA	Protected Information, Bus Ramps (TG18.1)	2	01/07/2014	1 thru 2	ARC	1	X
00 03 51/APD	Protected Information, Main Package	2	12/16/2014	1 thru 10	AAI	1	X
00 03 51/APE	Protected Information (TG07.2)	0	03/31/2014	1 Only	AAI	1	X
00 04 20	Value Engineering Proposals	5	01/02/2015	1 thru 6	TJPA	1	X
00 04 21	Value Engineering Change Proposal	1	04/21/2014	1 thru 2	TJPA	1	X
00 04 30	Bid Bond	0	07/30/2010	1 Only	TJPA	1	X
00 04 40	Request for Substitution	0	07/30/2010	1 thru 2	TJPA	1	X

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00 04 41	Pre-Bid Request for Substitution	0	08/11/2014	1 thru 2	TJPA	1	X
00 04 52	Escrow Bid Document Declaration	0	07/30/2010	1 Only	TJPA	1	X
00 04 54	Business Tax Registration Declaration	0	07/30/2010	1 Only	TJPA	1	X
00 04 57	CityBuild/First Source Referral Program Certification	0	07/30/2010	1 Only	TJPA	1	X
00 04 60	Highest Prevailing Wage Rate Certification Federally Funded Projects	1	09/23/2010	1 Only	TJPA	1	X
00 04 65	Certificate of Bidder Regarding Apprenticeship Training Program	0	07/30/2010	1 Only	TJPA	1	X
00 04 66	Certificate of Subcontractor Regarding Apprenticeship Training Program	0	07/30/2010	1 thru 2	TJPA	1	X
00 04 80	Noncollusion Affidavit	0	07/30/2010	1 Only	TJPA	1	X
00 04 82	Certification of Bidder Regarding Debarment and Suspension	0	07/30/2010	1 thru 2	TJPA	1	X
00 04 83	Certification of Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension	0	07/30/2010	1 Only	TJPA	1	X
00 05 20	Agreement	2	01/09/2014	1 thru 19	TJPA	1	X
00 05 20A	Agreement Schedule A	0	08/25/2010	1 thru 3	TJPA	1	X
00 05 21	Project Labor Agreement Letter of Assent	0	11/10/2011	1 Only	TJPA	1	X
00 06 10	Performance Bond and Payment (Labor and Material) Bond	1	01/02/2014	1 thru 2	TJPA	1	X
00 06 30	Escrow Agreement for Security Deposits in Lieu of Retention	0	07/30/2010	1 thru 3	TJPA	1	X
✓ 00 07 00	General Conditions	8	07/13/2015	1 thru 83	TJPA	1	X
00 08 05	Insurance Requirements	2	03/17/2014	1 thru 3	TJPA	1	X
00 08 06	Project Labor Agreement	0	11/10/2011	1 thru 53	TJPA	1	X
00 08 06/APA	List of Schedule A Agreements	0	11/10/2011	1 thru 2	TJPA	1	X
00 08 06/APB	Letter of Assent	0	11/10/2011	1 Only	TJPA	1	X
00 08 06/APC	Elements of Phase 1 and Phase 2 Project Work	0	11/10/2011	1 thru 2	TJPA	1	X
00 08 06/APD	Disadvantaged Business Enterprise Program	0	11/10/2011	1 thru 18	TJPA	1	X
00 08 06/APE	Small Business Enterprise Program	0	11/10/2011	1 thru 15	TJPA	1	X
00 08 06/APF	Substance Abuse Policy	0	11/10/2011	1 thru 16	TJPA	1	X
00 08 07	CADD Document Liability Waiver and Release	1	08/10/2010	1 Only	TJPA	1	X
00 08 10	Existing Utility Facilities	1	08/10/2010	1 thru 4	TJPA	1	X
00 08 10/APA	San Francisco Public Works Code Section 906 et Seq.	0	07/30/2010	1 thru 2	TJPA	1	X
00 08 10/APB	Utility Crossings Specifications	1	08/10/2010	1 thru 7	TJPA	1	X
00 08 12	Archaeological Conditions	1	08/10/2010	1 thru 2	TJPA	1	X
00 08 13	Specific Project Requirements	4	10/19/2012	1 thru 8	TJPA	1	X
00 08 13/APA	USDOT Requirements for Agreements with the TJPA	3	12/21/2012	1 thru 25	TJPA	1	X
00 08 13/APB	Noise Control Ordinance	0	07/30/2010	1 Only	TJPA	1	X
00 08 13/APC	Department of Public Works Guidelines for Placement of Barricades at Construction Sites	0	07/30/2010	1 thru 5	TJPA	1	X
00 08 13/APD	Industrial Waste Ordinance No. 19-92	0	07/30/2010	1 thru 2	TJPA	1	X
00 08 13/APE	Industrial Waste Discharge Limits Into City's Sewerage System	0	07/30/2010	1 Only	TJPA	1	X

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00 08 13/APF	ARRA Jobs Report Form	1	01/20/2011	1 thru 4	TJPA	1	X
00 08 14	Health and Safety Criteria	1	08/10/2010	1 thru 2	TJPA	1	X
00 08 20	CityBuild/First Source Program Requirements	0	07/30/2010	1 thru 4	TJPA	1	X
00 08 20/AT1 & AT2	Form 1: CityBuild Workforce Projection Form & Form 2: CityBuild Workforce Hiring Plan	0	07/30/2010	1 thru 3	TJPA	1	X
00 08 21	Disadvantaged & Small Business Enterprise and Equal Employment Opportunity/Employment Non-Discrimination Requirements	1	08/01/2012	1 thru 4	TJPA	1	X
00 08 21/AT1	DBE Program Requirements (Caltrans Exhibit 10-I)	0	07/30/2010	1 thru 3	TJPA	1	X
00 08 21/AT2	Disadvantaged Business Enterprise Standard Agreement for Subcontractor/DBE Participation (Caltrans Exhibit 10-J)	1	08/01/2012	1 thru 3	TJPA	1	X
00 08 21/AT3	TJPA DBE/SBE Forms and Instructions	0	07/30/2010	1 thru 12	TJPA	1	X
00 08 22	Statutory Requirements	0	07/30/2010	1 thru 5	TJPA	1	X
00 08 22/APA	Minimum Compensation Ordinance	1	06/18/2012	1 thru 3	TJPA	1	X
00 08 22/APB	Health Care Accountability Ordinance	1	06/18/2012	1 thru 2	TJPA	1	X
<i>DIVISION 01 – GENERAL REQUIREMENTS</i>							
01 10 10	Summary of Work	1	10/06/2010	1 Only	TJPA	1	X
01 10 20	Unit Prices and Allowances	0	07/30/2010	1 thru 2	TJPA	1	X
01 10 20/APA	Schedule of Unit Prices and Allowances for Buttresses, Shoring, and Excavation Work (TG03)	3	10/25/2010	1 thru 3	TJPA	1	X
01 10 20/APB	Schedule of Unit Prices and Allowances for Relocation of Utilities (TG04.5.1)	1	09/03/2010	1 Only	TJPA	1	X
01 10 20/APC	Schedule of Unit Prices and Allowances for Relocation of Utilities (TG04.3)	0	10/01/2010	1 Only	TJPA	1	X
01 10 20/APD	Schedule of Unit Prices and Allowances for Relocation of Utilities (TG04.4)	0	10/01/2010	1 Only	TJPA	1	X
01 10 20/APE	Schedule of Unit Prices and Allowances for Relocation of Utilities (TG04.1)	1	12/13/2010	1 Only	TJPA	1	X
01 10 20/APF	Schedule of Unit Prices and Allowances for Relocation of Utilities (TG04.2)	1	12/13/2010	1 thru 2	TJPA	1	X
01 10 20/APG	Schedule of Unit Prices and Allowances for Relocation of Utilities (TG04.6)	0	10/06/2010	1 Only	TJPA	1	X
01 10 20/APH	Schedule of Unit Prices and Allowances for Glazing Design-Build Work	0	12/16/2014	1 Only	TJPA	1	X
01 10 20/API	Schedule of Unit Prices and Allowances for Below Grade Structural Concrete Substructure, Waterproofing, Mechanical, Electrical and Plumbing (TG06.0)	0	08/30/2012	1 thru 3	TJPA	1	X
01 10 20/APJ	Schedule of Unit Prices and Allowances for Bus Ramps (TG18.1)	1	02/13/2014	1 thru 3	TJPA	1	X
01 10 26	Schedule of Values	1	04/19/2013	1 Only	TJPA	1	X
01 10 26/APA	Schedule of Values Cashflow Template	0	04/19/2013	1 thru 3	TJPA	1	X
01 10 30	Alternates	0	07/17/2013	1 thru 2	TJPA	1	X
01 10 30/APA	Schedule of Alternates for Glazing Design-Build Construction Services Work	1	12/16/2014	1 Only	AAI	1	X

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01 10 30/APE	Schedule of Alternates for Main Package	2	12/16/2014	1 thru 2	AAI	1	X
01 10 30/APG	Schedule of Alternates for Bus Ramps (TG18.1)	0	04/21/2014	1 Only	ARC	1	X
01 10 40	Coordination	2	10/31/2013	1 thru 2	TJPA	1	X
01 10 42	Method of Procedure	2	06/18/2012	1 thru 2	TJPA	1	X
01 10 42/AT1	Method of Procedure Template	0	07/30/2010	1 thru 3	TJPA	1	X
01 10 42/AT2	Utility Shutdown Request Template	0	07/30/2010	1 Only	TJPA	1	X
01 10 50	Survey and Control	1	08/10/2010	1 thru 2	TJPA	1	X
01 10 90	References	2	06/18/2012	1 thru 6	TJPA	1	X
01 12 00	Project Meetings	0	07/30/2010	1 thru 3	TJPA	1	X
01 13 00	Submittals	3	10/31/2013	1 thru 8	TJPA	1	X
01 13 10	Progress Schedule	1	12/13/2010	1 thru 6	TJPA	1	X
01 13 40	Contractor's Activities	0	07/30/2010	1 thru 2	TJPA	1	X
01 13 50	Hazardous Materials Procedures	1	05/21/2013	1 thru 9	TJPA	1	X
01 13 50/APA	Site Mitigation Plan	0	07/30/2010	1 thru 44	TJPA	1	X
01 13 50/AT1	Waste Manifest Form	0	07/30/2010	1 thru 2	TJPA	1	X
01 14 00	Quality Control	0	07/30/2010	1 thru 7	TJPA	1	X
01 14 10	Regulatory Requirements	3	05/21/2013	1 thru 4	TJPA	1	X
01 14 10/APA	Permit/Approval Responsibility Matrix	2	05/21/2013	1 thru 4	TJPA	1	X
01 14 19	Restriction to Use of Site Areas	2	05/21/2013	1 thru 3	TJPA	1	X
01 15 00	Construction Facilities and Temporary Controls	0	07/30/2010	1 thru 2	TJPA	1	X
01 15 01	Project ID Signs	2	05/21/2013	1 thru 2	TJPA	1	X
01 15 05	Mobilization	1	02/13/2013	1 thru 2	TJPA	1	X
01 15 40	Protection of Property	0	07/30/2010	1 thru 3	TJPA	1	X
01 15 42	Protection of Trees	0	07/30/2010	1 thru 2	TJPA	1	X
01 15 45	Health and Safety Criteria	0	07/30/2010	1 thru 7	TJPA	1	X
01 15 61	Stormwater Pollution Prevention, Erosion and Sediment Control	0	07/30/2010	1 thru 7	TJPA	1	X
01 15 70	Traffic Routing Work	3	05/21/2013	1 thru 29	TJPA	1	X
01 15 70/AT1	Instruction Sheet for Off-Duty Police Officers	0	07/30/2010	1 Only	TJPA	1	X
01 15 70/AT2	Daily Traffic Inspection Report	0	07/30/2010	1 Only	TJPA	1	X
01 15 70/AT3	Sign Inventory Form	0	07/30/2010	1 Only	TJPA	1	X
01 15 70/APA	Maintaining Traffic—Bus Ramps	1	01/07/2014	1 thru 3	TJPA	1	X
01 15 70/APB	Traffic Control System for Ramp Closure—Bus Ramps	1	01/07/2014	1 Only	TJPA	1	X
01 15 70/APC	Traffic Handling Equipment and Devices—Bus Ramps	0	05/21/2013	1 thru 14	TJPA	1	X
01 15 90	Field Offices and Sheds	2	05/21/2013	1 Only	TJPA	1	X
01 16 00	Material and Equipment	0	07/30/2010	1 thru 3	TJPA	1	X
01 16 30	Product Options and Substitutions	1	08/10/2010	1 thru 5	TJPA	1	X
01 17 00	Completion and Contract Closeout	2	01/23/2015	1 thru 3	TJPA	1	X
01 17 20	Project As-Built Drawings	0	07/30/2010	1 thru 3	TJPA	1	X
01 17 30	Operation and Maintenance	0	07/30/2010	1 thru 4	TJPA	1	X
01 17 40	Warranties	1	08/10/2010	1 thru 4	TJPA	1	X
01 31 25	Project Management Software	2	09/19/2012	1 thru 2	TJPA	1	X
01 31 26	Project Database Administration	0	07/30/2010	1 thru 4	TJPA	1	X
01 31 29	Project Database Management	0	07/30/2010	1 thru 2	TJPA	1	X
01 35 65	Mitigation Measures and Monitoring	1	09/04/2012	1 thru 7	TJPA	1	X

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01 35 70/AT1a	Instructions	1	10/31/2013	1 Only	TJPA	1	X
01 35 70/AT1b	Non-Disclosure Agreement	-	07/24/2013	1 thru 6	TJPA	1	X
01 35 70/AT1c	Attachment—View Only SSI	8	01/23/2015	1 thru 2	TJPA	1	X
01 35 70/AT2	Affidavit of Return or Destruction	0	06/07/2013	1 Only	TJPA	1	X
01 53 13	Temporary Bridges	1	09/23/2010	1 thru 10	TJPA	1	X
01 74 00	Construction and Demolition Debris Recovery Plan	1	06/18/2012	1 thru 10	TJPA	1	X
01 74 00/APA	C&D Debris Recovery Worksheet	0	03/13/2012	1 thru 3	TJPA	1	X
01 80 50	Seismic Design Criteria for Nonstructural Components	2	09/12/2014	1 thru 5	TT/AA 1	1	X
01 80 51	Seismic Design Criteria for Nonstructural Components—Bus Ramps	0	05/21/2013	1 thru 4	ARC	0	X
01 81 13	General LEED Building Design and Construction Requirements	4	01/27/2014	1 thru 16	TJPA	1	X
01 91 00	General Commissioning Requirements	1	01/23/2015	1 thru 9	TJPA	1	X
01 91 00/APA	Construction Phase Commissioning Plan	0	10/02/2014	1 thru 104	ENO	1	X

LEGEND

Issuer Abbreviations:

<i>AAI</i>	<i>Adamson Associates, Inc.</i>	<i>Executive Architect</i>
<i>AECOM</i>	<i>AECOM</i>	<i>Utility Relocation Consultant</i>
<i>AGF</i>	<i>Auerbach Glasow French</i>	<i>Lighting Consultant</i>
<i>ARB</i>	<i>Arup Blast</i>	<i>Blast Consultant</i>
<i>ARC</i>	<i>Arup Civil</i>	<i>Civil Consultant</i>
<i>ARF</i>	<i>Arup Fire Life and Safety</i>	<i>Fire Life and Safety Consultant</i>
<i>ARG</i>	<i>Arup Geotechnical</i>	<i>Geotechnical Consultant</i>
<i>ARS</i>	<i>Arup Security</i>	<i>Security Consultant</i>
<i>ARU</i>	<i>Arup Utilities</i>	<i>Utilities Consultant</i>
<i>BVM</i>	<i>BVM Engineering</i>	<i>LEED Consultant</i>
<i>CHS</i>	<i>CHS Consulting</i>	<i>Traffic Consultant</i>
<i>DHC</i>	<i>Door + Hardware Consultants</i>	<i>Hardware Consultants</i>
<i>ENO</i>	<i>Enovity</i>	<i>Commissioning</i>
<i>EWC</i>	<i>Edgett Williams Consulting Group</i>	<i>Vertical Transportation Consultant</i>
<i>WSP</i>	<i>WSP Flack + Kurtz</i>	<i>MEP Consultant</i>
<i>FS</i>	<i>Fountain Source Engineering & Design</i>	<i>Fountain Consultant</i>
<i>H&B</i>	<i>Henshell & Buccellato</i>	<i>Waterproofing Consultant</i>
<i>HMA</i>	<i>HMA Consulting</i>	<i>Mechanical Controls Consultant</i>
<i>LB</i>	<i>Lerch Bates</i>	<i>Building Maintenance Consultant</i>
<i>MDS</i>	<i>Mechanical Design Studio</i>	<i>Plumbing and Fire Protection Consultant</i>
<i>MMR</i>	<i>Martin M. Ron Associates</i>	<i>Land Surveyors</i>
<i>PCPA</i>	<i>Pelli Clarke Pelli Architects</i>	<i>Architect</i>
<i>PWP</i>	<i>Peter Walker & Partners</i>	<i>Landscape Consultant</i>
<i>RJA</i>	<i>Rolf Jensen Associates</i>	<i>Mass Notification Consultant</i>
<i>RWDI</i>	<i>Rowan Williams Davies & Irwin Inc.</i>	<i>Wind Consultant</i>
<i>SBP</i>	<i>Schlaich Bergermann and Partner LP</i>	<i>Structural Consultant, Special Construction</i>
<i>SFDPW</i>	<i>San Francisco Department of Public Works</i>	<i>Auxiliary Water Supply System</i>
<i>SMW</i>	<i>Shen Milsom & Wilke</i>	<i>Acoustic/Audiovisual Systems/Telecom Infrastructure/Security Consultant</i>
<i>TJPA</i>	<i>Transbay Joint Powers Authority</i>	<i>Owner</i>
<i>TT</i>	<i>Thornton Tomasetti</i>	<i>Structural Consultant</i>
<i>URS</i>	<i>URS Corporation</i>	<i>Demolition Representative</i>
<i>WRNS</i>	<i>WRNS Studio</i>	<i>Environmental Graphics Consultant</i>

END OF SECTION 00 01 10

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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, Sections, or Documents are provided for convenience but not to exclude other Paragraphs, Sections, 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 TJPA, unless otherwise specified. Where used in conjunction with the TJPA's response to submittals, requests, applications, inquiries, proposals and reports by CM/GC, the term "approved" shall be held to limitations of the TJPA's responsibilities and duties as specified in these General Conditions. In no case shall the TJPA's approval be interpreted as a release of CM/GC from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of the TJPA's right under the Contract.
 2. Addenda: Written or graphic instruments issued prior to the opening of Bids which make changes, additions or deletions to the Bid Documents.
 3. Agreement: The Agreement or Contract between the TJPA and CM/GC covering the Work to be performed; other Contract Documents are attached to the Agreement and made part of the Agreement as provided in these General Conditions. The Contract is fully executed upon certification by the Chief Financial Officer of the TJPA as to the availability of construction funds. Refer to Section 00 05 20 for the Agreement.
 4. Alternate Bid Item: A Bid item that may be added to or deducted from the Total Bid Price of any Trade Work package to meet Project construction budget requirements.
 5. Application for Payment: Written request submitted by CM/GC to TJPA for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Article 9, Section 00 07 00.
 6. Approved Equal: Accepted in writing by the TJPA as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the TJPA Representative. The burden of proof of equality is the responsibility of CM/GC. Refer to Division 1 for procedures for proposing substitutions.
 7. BIM: Building Information Modeling, a technological tool used to convey multi-dimensional information for the Project. The CM/GC shall use the BIM system established by the Architect and shall regularly utilize the modeling data provided in the construction process and development of the shop drawings for the Work, and input data based on as-built conditions as part of its Construction Services and General Conditions Markup.
 8. Bonds: Performance and payment (labor and materials) bonds and other instruments of security acceptable to the TJPA, in a form to be provided by the TJPA.
 9. Bulletin: Refer to "Field Order."

10. By Others: Work on this Project that is outside the scope of Work to be performed by CM/GC under this Contract, but that will be performed by the TJPA, other Contractors, or other means and at other expense.
11. Change Order: A written instrument prepared by the TJPA issued after the effective date of the Agreement and executed in writing by the TJPA and CM/GC, 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.
12. Change Order Request (COR): Refer to Paragraph 6.03.
13. City: The City and County of San Francisco, California, where the Project is located, identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number.
14. Claim: A written demand by CM/GC for an adjustment in the Contract Sum or Contract Time, or both, which is submitted in accordance with the requirements of the Contract Documents. Refer to Paragraph 13.02.
15. Clarification: A document consisting of supplementary details, instructions or information issued by the TJPA 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 CM/GC and approved by the TJPA in accordance with the Contract Documents. Refer to Article 6.
16. CM/GC: The Construction Manager/General Contractor providing pre-construction and construction services under these Contract Documents. The entity with which the TJPA has entered the Agreement, identified as such in the Agreement (Section 00 05 20) and referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "CM/GC" means CM/GC or its authorized representative. The "CM/GC" also means the Construction Manager/General Contractor (CM/GC).
17. Code: Code or codes in force under this Contract. Wherever reference is made to Code, that reference shall be construed to mean the codes, laws or orders specified in the Contract Documents.
18. Completion List: A punch list prepared by the TJPA identifying deficient Items to be corrected by CM/GC prior to Final Completion. Refer to Paragraph 9.08.
19. Contract: Refer to "Agreement."
20. Contract Documents: Refer to Paragraph 1.02.
21. Contract Sum: The sum stated in the Agreement and, including authorized adjustments, the total amount payable by the TJPA to CM/GC for the performance of the Work under the Contract Documents. Refer to Section 00 05 20.
22. Contract Time(s): The number of successive days as stated in Section 00 05 20 to: (i) achieve Substantial Completion and (ii) complete the Work so that it is ready for final acceptance as evidenced by the TJPA's issuance of written acceptance as required by section 6.22(K) of the San Francisco Administrative Code.
23. Contracting Requirements: See Paragraph 1.02.
24. Contractor: Refer to "CM/GC."

25. CPM: Refers to critical path method scheduling.
26. Day: Reference to "day" shall be construed to mean a calendar day of 24 hours, unless otherwise specified.
27. Default: Refer to Paragraph 14.01.
28. Deficiency List: The list provided by the TJPA identifying Items that shall be corrected or completed before the TJPA considers the Work Substantially Complete. Refer to Paragraph 9.07.
29. Delivery: In reference to an item specified or indicated shall mean to unload and store with proper protection at the Site. Refer to Paragraph 9.03 for delivery to another (off-Site) location.
30. Designated, Determined, Directed: Required by the TJPA, unless otherwise specified. Refer to Paragraph 2.01.
31. Differing Conditions: Refer to Paragraph 3.05.
32. Division: A grouping of sections of the Specifications describing related construction products and activities. Refer to Section 00 01 10 – Table of Contents for a listing of Division and section numbers and titles.
33. Document: Refer to Section 00 01 10 – Table of Contents for a listing of the Sections.
34. Drawings: The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
35. Effective Date of the Agreement: The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date when the Chief Financial Officer of the TJPA initially certifies the availability of funds.
36. Executive Director: The TJPA Executive Director, the contracting officer for the Contract, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Section 00 05 20.
37. Field Order: A written order issued by the TJPA which requires minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Article 6.
38. Final Completion: The date of written acceptance of the Work by the TJPA, issued in accordance with section 6.22(K) of the San Francisco Administrative Code, when the Contract has been fully performed, including all punch list items, and when all contractual and administrative requirements have been fulfilled.
39. 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.
40. 3 FRA: Federal Railroad Administration. The FRA is a federal agency providing funding and oversight for the Project.
41. FTA: Federal Transit Administration. The FTA is the federal agency providing funding and oversight for the Project.

42. 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.
43. General Requirements: Refer to Paragraph 1.02.
44. Indicated: Shown or noted on the Drawings or written in the Specifications.
45. 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.
46. Installer: A person engaged by CM/GC, 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. It is a requirement that installers be experienced in the operations they are engaged to perform.
47. Item: A separate, distinct portion of the whole Work, which may comprise material, equipment, article, or process.
48. 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 CM/GC, Subcontractor or Lower-Tier Subcontractor, as applicable.
49. Modification: A document incorporating one or more Change Orders approved by the TJPA.
50. Non-conforming Work: Work that is unsatisfactory, faulty, defective, 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 prior to Final Completion.
51. Notice of Default: Refer to Paragraph 14.01.
52. Notice of Potential Claim: Refer to Paragraph 13.02.
53. Notice of Substantial Completion: The written notice issued by the TJPA to CM/GC acknowledging that the Work is Substantially Complete as determined by the TJPA. Said Notice shall not be considered as final acceptance of any portion of the Work or relieve CM/GC from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.
54. Notice to Proceed: The written notice issued by the TJPA to CM/GC authorizing CM/GC to proceed with the Work and establishing the date of commencement of the Contract Time.
55. Owner: Refer to "TJPA."
56. 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.
57. Partial Utilization: Right of the TJPA to use a portion of the Work or assume beneficial occupancy prior to Substantial Completion of the Work.
58. Project: Refer to Agreement (Section 00 05 20), Article 1.

59. Project Manual: The bound written portion of the Contract Documents prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which consists of the Documents and Specification sections and may include schedules, is contained in the Section 00 01 10 – Table of Contents.
60. Proposed Change Order (PCO): A document prepared by the TJPA requesting a quotation of cost or time from CM/GC for additions, deletions or revisions in the Work initiated by the TJPA or CM/GC.
61. ~~6~~Protected Information: Information pertaining to sensitive, financial, commercial, or proprietary business information and/or the security of the Project. Protected information is classified as Confidential Information, Sensitive Security Information, or Protected Critical Infrastructure Information. Refer to Section 01 35 70.
62. Provide: Furnish and Install or Supply and Install complete in place at the Site.
63. Regular Working Hours: 7:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.
64. Request for Information (RFI): A document prepared by CM/GC or the TJPA during the performance of Construction Services requesting information from one of the parties regarding the Project or Contract Documents.
65. Request for Substitution: A request from CM/GC in accordance with the conditions specified in Division 1 to substitute an Item, type of construction, or process indicated in the Contract Documents with another item, type of construction or process that shall be equal in all respects to that so indicated.
66. Required: In accordance with the requirements of the Contract Documents.
67. Resident Engineer: See "TJPA Representative."
68. RFP: The Request For Cost Proposals issued on or about October 20, 2008, to the qualified Respondents following the TJPA's Request For Qualification (RFQ) for CM/GC Services.
69. Site: Geographical location of the Project as indicated elsewhere in the Contract Documents.
70. Special Provisions: The part of the Contract Documents that amends, modifies, or supplements these General Conditions.
71. Specifications: The portion of the Project Manual comprising Division 1 through Division 48 and listed in Section 00 01 10 - Table of Contents, consisting of requirements and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related administrative services, which the CM/GC acknowledges and agrees shall be developed during the Pre-Construction Services Phase.
72. Specified: Written in the Contract Documents.
73. Subcontractor: A person or entity who has a direct contract with CM/GC 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 CM/GC or subcontracts of a separate CM/GC. The term "Subcontractor" shall also include contracts assigned to CM/GC if so provided in the Supplementary Conditions or specified in the General Requirements (Division 1). Any reference to Trade Contractor shall have the same meaning as "Subcontractor."

74. 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. In the event that either party exercises its option under subparagraph 9.03.D of the Agreement (Section 00 05 20) not to proceed with further Trade Packages, Substantial Completion will mean completion of all awarded Trade Packages in conformance with the terms and conditions of the Contract Documents.
75. Supplementary Conditions: The part of the Contract Documents that amends, deletes or modifies these General Conditions. The Supplementary Conditions, if any, will be set forth in Section 00 08 00.
76. Supplier: A manufacturer, fabricator, distributor, or vendor having a direct contract with CM/GC or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.
77. Supply: Refer to "Furnish."
78. TJPA: The Transbay Joint Powers Authority or its authorized representative.
79. TJPA Representative: The authorized on-Site representative of the TJPA, as identified at the pre-construction conference convened by the TJPA, in the performance of on-Site inspection and administration of the Contract. All liaison between the TJPA and CM/GC shall be directed through the TJPA Representative.
80. Trade Subcontractor: Refer to "Subcontractor".
81. Unavoidable Delay: Refer to Paragraph 7.02.
82. Unilateral Change Order: A written Change Order to CM/GC issued after the effective date of the Agreement in accordance with Paragraph 6.05.
83. Unit Price Work: Work to be paid for on the basis of unit prices and actual quantities of Work. Refer to Paragraph 6.08.
84. ~~6.3~~ Work: The performance by CM/GC of all its responsibilities and obligations set forth in the Contract Documents. Work shall include, but not be limited to, Pre-Construction Services and Construction Services, including all labor services, and documentation to build the Project as required by the Contract Documents. References in the Contract Documents to "Work" may be to items of Work. Refer to Paragraph 1.03.

1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS

- A. The Contract Documents form the entire Contract for the construction of the Work, and consist of the following:
 1. the Drawings, Project Manual, BIM baseline digital data platform (prepared by the Architect through the Design Development Phase of the Architect's Services), and all Addenda thereto;
 2. the Agreement, the Bonds, and other documents listed in the Agreement;
 3. Change Orders, Unilateral Change Orders, and Field Orders issued after execution of the Contract; and
 4. all provisions of the RFQ and the RFP, including all attachments, not in conflict with the foregoing.

- B. Nothing in the Contract Documents shall be construed to create a contractual relationship between the TJPA and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier or a person or entity other than the TJPA and CM/GC.
- C. The Contracting Requirements and the General Requirements contain information necessary for completion of every part of the Project and are applicable to each section of the Specifications.
 - 1. The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Section 00 07 00), Sections 00 05 20, and the 00 08 00-series Sections as listed under Special Provisions in the Table of Contents (Section 00 01 10), as provided in the Request For Cost Proposals or as later developed and incorporated by modification into the Contracting Requirements
 - 2. The General Requirements include all Sections in Division 1, and govern the execution of the Work of all sections of the Specifications.
 - 3. Where items of Work are performed under subcontracts, each item shall be subject to the Contracting Requirements and General Requirements.

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 TJPA's Charter and Administrative Code, and applicable building codes and statutes of the TJPA 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 constructed in accordance with the Contract Documents. 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 CM/GC 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. CM/GC may arrange and delegate its Work in conformance with trade practices, but CM/GC shall be responsible for planning and assembling logical, seamless, and distinct Trade Work Packages for all scopes of work. The TJPA 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 TJPA 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. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, CM/GC shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be submitted to the TJPA for approval. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

- F. In the event of a conflict in the Contract Documents regarding the quality of a product, CM/GC shall request Clarification from the TJPA as provided in Paragraph 6.02 before procuring said product or proceeding with the Work affected thereby.
- G. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols 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 are not necessarily shown. If rerouting, 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, results in a total linear footage which exceeds 125% of the indicated route if the structural interferences did not exist, then CM/GC will be compensated for the amount in excess of 125% under the provisions for Change Orders of Article 6. 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; shall provide adequate clearances as required for operation and maintenance; and shall be reflected in the BIM. Clear access shall be defined as within arm's reach without required use of special equipment or the dismantling of building systems or equipment.
- H. The Drawings shall not be scaled for dimensions. When a true dimension cannot be determined from figured dimensions in the Contract Documents, CM/GC shall request promptly the same from the TJPA and shall obtain a written interpretation from the TJPA before proceeding with the Work affected thereby.
- I. 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.
- J. When there is a conflict between existing on-Site conditions and information indicated on the Contract Documents, other than Differing Conditions as defined in Paragraph 3.05, the existing condition shall govern. CM/GC shall perform the Work and adjust to the existing condition at no additional cost to the TJPA, provided CM/GC should have known of such conflicts based on its reasonable investigation of the Site prior to submitting its Cost Proposal in accordance with the requirements of the RFP.
- K. 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 TJPA 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 1.03.B. Such determinations of the TJPA Representative shall be final and conclusive.
- L. An item of Work shall be deemed reasonably inferable from the Contract Documents if it is a required component of a specific assembly. Such assembly must be indicated in the plans and/or specifications with sufficient detail to determine quantities and be necessary for the proper execution and completion of the Work.

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 following the NTP for construction, or to modify the terms and conditions thereof in one or more of the following ways: (i) Change Order, or (ii) 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 TJPA; or (iii) the TJPA's review and acceptance of a shop drawing or sample in accordance with Paragraph 2.01.

1.05 PRECEDENCE OF CONTRACT DOCUMENTS

- A. 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 in inverse chronological order, and in same order as specific portions they are modifying.
 2. Executed Agreement.
 3. Addenda.
 4. Division 1.
 5. The Documents (Bidding and Contracting Requirements).
 6. Divisions 2 through 48, CSI MasterFormat 2004 edition.
 7. Contract Drawings.
- B. 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

- A. The Contract Documents are being 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 TJPA. Any unauthorized use of the Contract Documents is at the sole liability of the user.

ARTICLE 2 - TJPA'S RESPONSIBILITIES AND RIGHTS

2.01 ADMINISTRATION OF THE CONTRACT

- A. The TJPA shall administer the Contract as described in the Contract Documents. Reference is made to Division 1 for administrative requirements and procedures.
- B. The Executive Director will designate in writing an authorized representative with limited authority to act on behalf of the TJPA. The TJPA may at any time during the performance of this Contract make changes in the authority of any representative or may designate additional representatives. These changes will be communicated to CM/GC in writing. CM/GC 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. The review, acceptance, or other action taken by the TJPA upon CM/GC'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 CM/GC from its responsibility to notify the TJPA of errors or omissions therein in accordance with Article 3, 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 TJPA's action will be taken with such reasonable promptness provided that the TJPA shall be provided a reasonable time, as set forth in Division 1, to permit adequate review. Approval or acceptance of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely CM/GC's obligation. CM/GC shall be responsible to provide engineering or other costs necessary to prepare the submittals and obtain action required by the Contract Documents from the TJPA or other authorities having jurisdiction. The TJPA is not precluded, by virtue of any such approval, from obtaining a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

2.02 INFORMATION AND SERVICES

- A. The TJPA shall furnish surveys and reports describing physical characteristics, legal limitations and known utility locations for the Site.
- B. The TJPA shall apply and pay for the building permit if required for the Work and shall pay all other permits, easements, approvals, permanent utility service connection fees, and other charges required for construction in accordance with Paragraph 3.08. Fees shall be reimbursable expenses as provided in the Agreement (Section 00 05 20) and Schedule A to Section 00 05 20.
 - 1. The TJPA's responsibility with respect to certain inspections, tests, and approvals is set forth in Article 8.

2.03 RIGHT TO STOP THE WORK

- A. The TJPA may order CM/GC 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 and shall be signed by the TJPA Representative.
- B. The right of the TJPA to stop the Work shall not give rise to a duty on the part of the TJPA to exercise this right for the benefit of CM/GC or other person or entity.
- C. Reasons for ordering CM/GC to stop the Work, or a portion thereof, include but are not limited to the following:
 - 1. CM/GC fails to correct Work which is not in accordance with the requirements of the Contract Documents; or
 - 2. CM/GC fails to carry out Work in accordance with the Contract Documents; or
 - 3. CM/GC disregards the authority of the authorized TJPA Representative; or
 - 4. CM/GC disregards the laws and regulations of a public body having jurisdiction over the Project; or
 - 5. CM/GC violates in any substantial way any provisions of the Contract Documents; or
 - 6. CM/GC fails to maintain current certificates of insurance on file with the TJPA; or
 - 7. original Contract Work is proceeding but will be modified by a pending Change Order.

2.04 RIGHT TO CARRY OUT THE WORK

- A. In the event that CM/GC 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 TJPA, or other such period as may be specified elsewhere in the

Contract Documents, the TJPA may, without prejudice to other remedies the TJPA may have, correct such deficiencies.

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

2.05 AUDIT

- A. The TJPA 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, escrow bid documents, bid cost data, schedules, subcontracts, job cost reports, and other data, including computations and projections, of CM/GC, Subcontractors, Lower-Tier Subcontractors and Suppliers related to bidding, negotiating, pricing, or performing the Work covered by: (i) a Change Order Request or Proposed Change Order; (ii) Force Account Work; or (iii) a Contract Claim. In the event that CM/GC 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. The Pre-Construction Services billing rate and the CM/GC Markup Percentage shall not be subject to audit except to verify that the rate and percentage, respectively, are correct as provided in the Contract Agreement; that the hours billed for Pre-Construction Services are accurate and consistent with the terms and conditions of the Contract Documents; and that the component charges of the CM/GC Markup percentage conform to the terms and conditions of the Contract Documents. These limitations do not affect any other audit rights, including but not limited to the right to audit subcontractor books and records.
- B. Upon written notice by the TJPA, CM/GC 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 TJPA 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 TJPA's written notice of examination and/or audit, CM/GC shall provide the TJPA with copies of electronic documents and electronically stored information in a reasonably usable format that allows the TJPA to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, CM/GC shall provide the TJPA with two licenses with maintenance agreements authorizing the TJPA to access and analyze all such documents and information.
- C. The TJPA has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.
- D. The TJPA may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until four years after Final Completion, unless such period is extended by written notice from the TJPA to the CM/GC within the four-year period.
- E. Failure by the CM/GC 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. CM/GC shall insert a clause containing all the provisions of this Paragraph in all subcontracts of Subcontractors and Lower-Tier Subcontractors and Suppliers for this Contract over \$10,000.

2.06 NO WAIVER OF RIGHTS

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

1. inspection by the TJPA 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 TJPA; or
3. any extension of time; or
4. any position taken by the TJPA or its authorized agents or representatives.

2.07 OWNERSHIP OF DOCUMENTS

- A. All plans, specifications, documents, and electronic information, written or graphic materials, including BIM files, and other computer files created for the Project shall be made and remain the property of the TJPA, including all intellectual property rights to all documents or materials.

ARTICLE 3 - CM/GC'S RESPONSIBILITIES

3.01 GENERAL RESPONSIBILITIES

- A. **Services and Standards.** The CM/GC shall perform or furnish all pre-construction, construction, and related services as set forth in the Contract Documents. CM/GC shall provide all pre-construction 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 as set forth in the Contract Documents, including, but not limited to, compliance with industry standards and all applicable codes and regulations. The CM/GC assumes responsibility for on-budget, on-schedule delivery of the Project regardless of its contractual agreements with parties other than TJPA.
- B. **Key Personnel.** The CM/GC acknowledges and agrees that the TJPA selected the CM/GC upon the representation that the Key Personnel identified in the CM/GC's Qualification Statement would be the Key Personnel involved in the Pre-Construction Services for the Project. The CM/GC shall identify its Key Personnel for the Construction Services within 30 days of the date the TJPA first approves the Architect's Design Development Documents, or any portion of the Design Development Documents, and authorizes the Architect to proceed with all or any part of the Construction Documents. Any changes in assignment or replacement of the Key Personnel, may be done only with the prior written consent of the TJPA, which consent may be given or withheld in the sole, subjective (but not arbitrary) discretion of the TJPA. In the event of a withdrawal from the Project by Key Personnel due to circumstances outside the control of the CM/GC, such as death, long-term illness, or resignation by any such Key Personnel, the CM/GC shall promptly notify the TJPA in writing and shall submit for TJPA approval its candidate to replace such individual.
- C. **Cooperation.** The CM/GC shall provide the TJPA, 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 Contract and shall maintain civil decorum on the Project site. 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.
- D. **Review of Contract Documents.** The CM/GC will be acting as a knowledgeable and experienced contractor in carrying out its responsibilities under the Contract Documents. The TJPA acknowledges and agrees that except with respect to any portions of the Work to be provided on a design-build basis, the CM/GC is not acting, and does not purport to act, as a design professional. Except with respect to those portions of the Work to be provided on a design-build basis, the CM/GC is not required to ascertain that the plans and specifications are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The CM/GC, however, shall promptly report to the TJPA any nonconformity discovered or made known (or

which reasonably should have been known). When the CM/GC provides portions of the work on a design-build basis, the Architect shall be responsible for the final coordination of the CM/GC's design work with the Architect's plans and specifications.

3.02 PRE-CONSTRUCTION SERVICES

- A. The scope of Pre-Construction Services to be provided by CM/GC for the Project are set forth in the Contract Agreement at Section 00 05 20. Refer to the Contract Documents for additional, specific requirements.
- B. The CM/GC shall perform all Pre-Construction Services through industry professionals with licenses, certifications, training, experience, and other qualifications appropriate to the discipline involved. The standard of care shall be as a professional performing similar services for a construction project of similar size and complexity in a major city with a dense urban environment such as Boston, New York, or Chicago.
- C. All submittals during Pre-Construction Services, including but not limited to cost estimates, recommendations, and constructability reviews, shall be signed by CM/GC Key Personnel.

3.03 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

- A. The Contract Documents are not complete in every detail but show the purpose and intent only, and CM/GC 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. CM/GC 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 CM/GC shall be responsible for the accuracy of such dimensions and determinations.
- C. CM/GC 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. CM/GC shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by CM/GC's untimely review of the Contract Documents.
- D. CM/GC shall notify the TJPA in writing promptly as specified in Paragraph 6.02 upon discovery of errors, omissions, discrepancies or ambiguities, and the TJPA will issue a Clarification or RFI reply as to the procedure to be followed. If CM/GC 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. CM/GC 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 in accordance with the requirements of Division 1. CM/GC shall be responsible for costs incurred by the TJPA for the work of the TJPA's consultants and TJPA's administrative efforts in answering CM/GC's RFIs where the answer could reasonably be found by reviewing the Contract Documents.
- F. Prior to start of Work, CM/GC and the TJPA Representative shall visit the site and adjacent properties as necessary to document existing conditions. CM/GC shall document these conditions and shall submit prior to the start of Work a complete report of existing conditions determined by the site survey as indicated in Division 1.

3.04 SUPERVISION OF THE WORK

- A. Unless there are specific provisions in the Contract Documents to the contrary, CM/GC shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. CM/GC shall be solely responsible for CM/GC's failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of CM/GC, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- B. CM/GC 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 is dependent upon the work of other Subcontractors or CM/GCs, then CM/GC shall require the 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 CM/GC 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. CM/GC shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the TJPA in accordance with the terms of this Contract, but nothing herein contained shall be taken to relieve CM/GC of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision.
- E. CM/GC shall at all times permit the TJPA, 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 CM/GC 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 TJPA as set forth in Article 8.
- F. Whenever CM/GC desires to perform Work outside regular working hours, CM/GC shall give notice to the TJPA of such desire and request and obtain the TJPA'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 TJPA may make the necessary arrangement for testing and inspection.
- G. If CM/GC receives a written notice from the TJPA that a Clarification is forthcoming from the TJPA, all Work performed before the receipt of the Clarification shall be coordinated with the TJPA to minimize the effect of the Clarification on Work in progress. All affected Work

performed after receipt of the TJPA's written notice but before receipt of the Clarification and not so coordinated shall be at CM/GC's risk.

- H. During all disputes or disagreements with the TJPA, CM/GC 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 TJPA and CM/GC may otherwise agree in writing.

3.05 UNFORESEEN OR DIFFERING CONDITIONS

- A. Under section 7104 of the Public Contracts Code, if any of the following conditions are encountered at the Site, CM/GC shall promptly, and before such conditions are disturbed, notify the TJPA in writing.
 - 1. Material that CM/GC believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing Law.
 - 2. Subsurface or latent physical conditions at the Site differing materially from those indicated by information about the Site made available to the bidding Subcontractors prior to the deadline for submitting bids.
 - 3. 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. CM/GC's written notice shall inform the TJPA as to how such conditions affect its Work and recommend methods to overcome such conditions.
- C. Differing Conditions shall not include:
 - 1. All that is indicated in or reasonably interpreted from the Contract Documents or Reference Documents;
 - 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 Reference Documents.
 - 4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Reference Documents.
 - 5. Conditions which the CM/GC knew or reasonably should have known exercising due diligence during Pre-Construction Services.
- D. The TJPA will promptly investigate the conditions reported in CM/GC's written notice, and will issue a written report of findings to CM/GC.
- E. Only if the TJPA determines, in its sole discretion, that the conditions reported do materially so differ, or do involve hazardous waste, or do cause a decrease or increase in CM/GC's scope of Work, will the TJPA issue a Change Order as provided in Article 6 of these General Conditions, and/or a time extension as provided in Article 7 of these General Conditions, as appropriate.
- F. Should CM/GC disagree with the TJPA's determination, CM/GC shall submit a written Notice of Potential Claim to the TJPA as provided in Paragraph 13.02 of these General Conditions. In the event of such disagreement, CM/GC 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.

- G. CM/GC shall be responsible for the safety and protection of the affected area of the Work for the duration of the TJPA's investigation of potential Differing Conditions.

3.06 SUPERINTENDENTS

- A. CM/GC shall at all times be represented at the Site by CM/GC's competent project manager or superintendent whom it has authorized in writing to make decisions and receive and carry out any instructions given by the TJPA. CM/GC will be held liable for the faithful compliance with such instructions. Prior to the issuance of Notice to Proceed, CM/GC shall inform the TJPA 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 and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. The CM/GC shall immediately notify the TJPA in writing of any changes to such information.
- B. The TJPA reserves the right to reject CM/GC's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided above. The TJPA shall be given written notice of, and shall have the right to approve, replacement of CM/GC's project manager, superintendents and foremen.

3.07 LABOR, MATERIALS AND EQUIPMENT

- A. CM/GC 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 TJPA's notification CM/GC shall discharge from the Work and replace at no additional cost to the TJPA an employee, Subcontractor or Supplier used on the Work who, in the TJPA's sole judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a TJPA employee, agent or member of the public; or (iii) is refusing to carry out the provisions of the Contract.
- B. In order that the TJPA can determine whether CM/GC has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work and materials, CM/GC 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, CM/GC shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work as specified in Paragraph 3.03. If a discrepancy exists, CM/GC shall notify the TJPA immediately and request the TJPA to clarify the intended design. Upon commencement of a particular item of Work, CM/GC 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 their original and sealed containers, marked with the brand and manufacturer's name, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. CM/GC shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.
- E. Unless otherwise specified in the Contract Documents, CM/GC 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 in accordance with Division 1.
- F. In the event that Division 1 does not require a field office for the TJPA Representative, CM/GC shall provide adequate separate sanitary facilities at the Site for the TJPA Representative.

3.08 PERMITS, FEES AND NOTICES

- A. CM/GC shall pay all utility charges for temporary connections to the Work.
- B. Unless otherwise provided in the Contract Documents, CM/GC 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 TJPA as provided in Article 8) necessary for proper execution and completion of the Work.
 - 1. CM/GC shall coordinate and obtain all permits prior to starting Work for which permits are required.
 - 2. The TJPA will reimburse CM/GC for reasonable costs incurred for obtaining permits that are listed in the Agreement (Section 00 05 20), Schedule A.
- C. Pursuant to section 832 of the California Civil Code, CM/GC shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work.
- D. CM/GC shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. CM/GC shall timely deliver, post and maintain all notices required by such permits. CM/GC 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 CM/GC's failure to coordinate or comply with the conditions of such excavation permits, CM/GC shall pay all costs, assessments, fines, and penalties resulting therefrom.
- E. If CM/GC observes that portions of the Contract Documents are at variance with the Code or other applicable laws, statutes, ordinances, rules and regulations, CM/GC shall promptly notify the TJPA in writing. If the TJPA determines that changes to the Contract Documents are necessary to comply with such laws, statutes, ordinances, rules or regulations, the TJPA will make necessary changes to the Contract Documents by appropriate amendment.
- F. If CM/GC 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 TJPA, CM/GC shall assume responsibility for such Work and shall bear all costs of correction.
- G. CM/GC shall keep the permits, an approved set of the Contract Documents (including the plans and specifications), and a copy of the Code at the Site readily available for inspection during regular working hours throughout the Contract Time.
- H. CM/GC shall coordinate all required inspections and special inspections with the appropriate agency having jurisdiction. CM/GC shall notify the TJPA Representative and the TJPA's testing agency or special inspector in accordance with Article 8, so that the appropriate TJPA representatives and inspectors will be present at these inspections.
- I. CM/GC 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.
- J. CM/GC shall submit to the TJPA 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. CM/GC shall maintain at the Site a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, BIM data, Addenda, Change Orders, RFIs, Clarifications, Field Orders, and 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, all in accordance with the Contract Documents. Additionally, record documents shall conform to the requirements specified in Division 1.
- B. CM/GC shall furnish on a monthly basis the aforesaid record documents for the TJPA to review and determine their sufficiency in conforming to the requirements set forth in sub. 3.09A. The TJPA shall have the right to withhold 10 percent of progress payments due CM/GC until CM/GC has complied with this Paragraph 3.09.
- C. Record documents shall be available for inspection by the TJPA at all times and shall be delivered to the TJPA prior to Substantial Completion.

3.10 CM/GC'S DAILY REPORT

- A. CM/GC shall complete, and submit to the TJPA on the next day, consecutively numbered daily construction reports in accordance with Division 1.
- B. In addition, whenever Force Account Work is in progress, CM/GC shall complete and submit to the TJPA detailed written daily Force Account Work reports as provided under Paragraph 6.07.

3.11 SCHEDULES

- A. In accordance with Section 00 05 20, Article 2, the CM/GC shall prepare a preliminary Construction Schedule upon commencing Pre-Construction Services.
- B. Prior to commencing Construction, CM/GC shall submit to the TJPA for review the following schedules:
 - 1. a baseline schedule for the Work which shall use, unless otherwise specified in Division 1, 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 the resources (crew sizes) to be committed to such tasks.
 - 2. a preliminary submittal schedule, coordinated with the baseline schedule in accordance with the requirements of Division 1, listing shop drawings, product data, samples, work descriptions, subcontractor qualifications, and field samples and indicating the times for submitting, reviewing, and processing such submittals.
 - 3. as the CM/GC awards Trade Packages, the CM/GC shall issue updated schedules to reflect the detailed schedule for the added scope.
- C. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the TJPA and CM/GC shall meet to review for acceptability to the TJPA the baseline and submittal schedules submitted under subparagraph 3.11.B. CM/GC shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the baseline schedules.
- D. No progress payments will be made to CM/GC until the baseline schedules are submitted and are acceptable to the TJPA.

- E. CM/GC shall adhere to the baseline schedules accepted by the TJPA in accordance with subparagraph 3.11.B and as may be adjusted during the performance of the Work. CM/GC shall submit to the TJPA for acceptance proposed revisions or adjustments in the baseline schedule. Proposed adjustments in the progress schedule that will change the Contract Times shall be submitted to the TJPA in accordance with Paragraph 7.02. The CM/GC may incorporate such adjustments into its subsequent progress or recovery schedules.
- F. Acceptance of baseline, progress, and submittal schedules by the TJPA will neither impose on the TJPA responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve CM/GC from its full responsibility therefor.
- G. CM/GC shall update its baseline progress schedule at least monthly and as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03. All updates shall be submitted to the TJPA for the TJPA's acceptance; if rejected, CM/GC shall correct and resubmit updates to the satisfaction of the TJPA 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. CM/GC's submission of updated, changed or revised progress schedules, reports, curves or narratives, or the TJPA's acceptance of such progress schedules, 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, CM/GC's obligations under this Contract.
 4. CM/GC waives its rights to time extensions based on changed Work if CM/GC has failed to meet its obligations to provide monthly schedule updates as specified herein.

3.12 SHOP DRAWINGS, BIM DATA, PRODUCT DATA AND SAMPLES

- A. Shop drawings, BIM data created, entered, added or altered by the CM/GC or its subcontractors, 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 CM/GC proposes to conform to the information given and the design concept expressed in the Contract Documents. Review or approval of CM/GC's submittals by the TJPA is subject to the limitations stipulated in Paragraph 2.01.
- B. CM/GC shall review, approve, stamp, and submit to the TJPA as specified in Division 1 shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by CM/GC that are not required by the Contract Documents may be returned without action.
- C. By approving and submitting shop drawings, product data, samples and other submittals, CM/GC 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. CM/GC shall perform no portion of the Work requiring submittal and approval of shop drawings, product data, samples and other submittals until the respective submittal has been received, reviewed, and approved by the TJPA and returned to CM/GC. Such Work shall be in accordance with approved submittals. CM/GC 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 TJPA's review and action on the pertinent submittal shall be at the sole expense, risk and responsibility of CM/GC.
- F. CM/GC shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the TJPA's approval of shop drawings, product data, samples and other submittals unless CM/GC has specifically informed the TJPA in writing, attached to the submittal, of such deviation at the time of submittal and the TJPA 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, CM/GC shall direct specific attention, by written attachment, to revisions other than those requested by the TJPA on previous submittals.
- G. CM/GC shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the TJPA's approval thereof.

3.13 SUBSTITUTIONS

- A. Consistent with section 3400 of the California Public Contract Code, CM/GC, within 10 calendar days after the date of the Award of any Trade Work Package, and related only to that awarded Trade Work Package, the CM/GC shall submit for approval to the TJPA a properly completed Request for Substitution (in a form to be provided by TJPA) for each material, article or equipment that it proposes to substitute in place of, and as the equal, of a material, article or equipment specified in the Contract Documents by trade name or by the names of any particular patentee, manufacturer or dealer. Failure to submit said Request for Substitution form within the 10-day period will be deemed adequate and reasonable grounds for refusal by the TJPA to consider any subsequent proposed substitutions.
- B. The requirements for obtaining approval of substitutions shall be as specified in Division I.

3.14 USE OF SITE

- A. CM/GC 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. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the boundaries described in the Contract Documents. CM/GC shall coordinate with the TJPA 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. CM/GC shall obtain necessary permits and rights-of-way. CM/GC shall obtain easements for CM/GC operations outside the Project site; the TJPA intends to provide any easements necessary for access to the Project site.
- 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. CM/GC 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. CM/GC shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall CM/GC subject part of the Work or adjacent property to stresses or pressures that will endanger it.
- E. CM/GC shall assume full responsibility and shall promptly settle all claims for damage to areas within the Contract limits, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work by CM/GC or its Subcontractors.

3.15 ACCESS TO WORK

- A. During the performance of the Work, the TJPA and its authorized representatives 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.

3.16 CUTTING AND PATCHING

- A. CM/GC 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 CM/GCs shown on, or reasonably implied by, the Contract Documents for the completed Work.
- B. CM/GC shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the TJPA or separate CM/GCs, by excavation or by cutting, patching or otherwise altering such construction. CM/GC shall not cut or otherwise alter such construction by the TJPA or a separate CM/GC except with written consent of the TJPA. CM/GC shall not withhold from the TJPA CM/GC's consent to cut or otherwise alter the Work.

3.17 CLEANING UP AND REMOVING DEBRIS

- A. CM/GC 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. CM/GC shall perform such clean up and removal in accordance with the requirements of the Specifications.
 - 2. Prior to Substantial Completion CM/GC shall remove from and about the Site excess materials, rubbish, CM/GC'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 CM/GC fails to clean up as provided in the Contract Documents, the TJPA may do so and deduct the cost of such cleanup from the amount due CM/GC under the Contract.
- C. CM/GC shall salvage and deliver to the TJPA removed equipment, appurtenances and other materials that are not reused in the Work and indicated by the TJPA to be salvaged. CM/GC 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 TJPA.

3.18 ROYALTIES AND PATENTS

- A. CM/GC 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. CM/GC 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, CM/GC shall save, defend, hold harmless, and fully indemnify the TJPA and all its officers and employees connected with the Project, other parties designated in Section 00 08 05, and all of their officers, agents, members, 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 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 TJPA, 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 CM/GC 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.
- D. If the TJPA 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, CM/GC shall, at its sole expense and at no cost to the TJPA, take reasonable steps to procure the right to operate or use the Work. If CM/GC cannot so procure such right within a reasonable time, CM/GC shall promptly, at CM/GC's sole expense and at no cost to the TJPA, (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.

3.19 WARRANTY

- A. CM/GC warrants and guarantees to the TJPA that materials and equipment provided under the Contract shall be at least of the quality specified and new unless otherwise required or permitted by the Contract Documents and if no quality is specified, then the materials and equipment 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. CM/GC shall assign and transmit all manufacturers' product warranties to the TJPA as may be required by the Contract Documents.
- B. CM/GC's warranty excludes damage or defects caused by abuse, modifications to equipment by the TJPA and not authorized by CM/GC, improper or insufficient maintenance, improper operation, or normal wear and tear.
 - 1. Testing shall not be construed as operation.

- C. CM/GC shall deliver warranties and guarantees conforming to the requirements of the Specifications to the TJPA Representative prior to Substantial Completion. In the event that TJPA takes beneficial occupancy of Work prior to Substantial Completion, then the warranty for such occupied Work shall commence on the date of early occupancy.
- D. The warranty provisions of this Paragraph 3.19 are separate and additional to the provisions for correction of Non-conforming Work as specified in Article 8.

3.20 TAXES

- A. CM/GC 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 Bid opening. The TJPA will adjust the Contract Sum to account for increases or decreases in sales or payroll taxes. CM/GC shall advise the TJPA of such changes by written COR, documented in conformance with Article 6 of these General Conditions.
- B. Earned Income Credit (EIC) Forms. San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.
 1. CM/GC shall provide EIC Forms, if made available by the IRS, to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Contract becomes effective (unless CM/GC has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by CM/GC; and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract. Advance EIC is not available to workers in 2011 or 2012.
 2. Failure to comply with any requirement contained in subparagraph 3.20.B.1 shall constitute a material breach by CM/GC of the terms of this Contract. If, within thirty days after CM/GC receives written notice of such a breach, CM/GC fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, CM/GC fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Contract or applicable Law.
 3. Any Subcontract entered into by CM/GC shall require the Subcontractor to comply, as to the Subcontractor's Eligible Employees, with each of the terms of this Paragraph 3.20.
 4. Capitalized terms used in this Paragraph 3.20 and not defined in Article 1.01 shall have the meanings assigned to such terms in Chapter 12O of the San Francisco Administrative Code.
- C. The TJPA will adjust the Contract Sum to account for increases or decreases in sales or payroll taxes. CM/GC shall advise the TJPA of such changes by written COR, documented in conformance with Article 6 of these General Conditions.

3.21 INDEMNIFICATION

- A. Consistent with California Civil Code section 2782, CM/GC shall assume the defense of, indemnify and hold harmless the TJPA, its boards and commissions, other parties designated in Section 00 08 05, and all of their officers, agents, members, 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 intentional tort of any person indemnified herein.

- B. The TJPA, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to CM/GC for any type of special, consequential or incidental damages arising out of or connected with CM/GC's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or recession of the Work or this Contract, negligence or strict liability by the TJPA, its boards and commissions, and their representatives, consultants or agents.
- C. CM/GC acknowledges that, with respect to any planned or specified hazardous materials Work, 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.
- D. On request, CM/GC shall defend any action, claim or suit asserting a claim covered by this indemnity. CM/GC shall pay all costs that may be incurred by the TJPA and all indemnified parties specified in subparagraph 3.21.A, including reasonable attorney's fees.
- E. CM/GC's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.
- F. In the event that CM/GC 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 CM/GC's performance of the Work, the TJPA 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 CM/GC under this Contract, or an appropriate amount shall be retained by the TJPA 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 TJPA.

ARTICLE 4 - SUBCONTRACTORS

4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- A. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with the governing regulations regarding subcontracts and section 6.21 of the San Francisco Administrative Code. Section 6.21 shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer and performance of subcontracts.
- B. CM/GC shall not employ a Subcontractor, Supplier or other person or entity that the TJPA has determined unqualified or non-responsible. The TJPA may give written notice of such determination prior to award of the Contract or at any time during the Contract Time, and upon receipt thereof CM/GC shall provide replacement with a qualified person or entity. The TJPA shall have the right of approval and shall not be responsible for added costs to CM/GC, if any, of employing such replacement person or entity.

4.02 SUBCONTRACTUAL RELATIONS

- A. CM/GC shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to CM/GC by the applicable terms and conditions of the Contract Documents, in the same manner CM/GC is bound to the TJPA. Each subcontract agreement shall preserve all rights of the TJPA 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 TJPA under the following conditions:
 - 1. the TJPA terminates the Contract for cause under provisions of Article 14;
 - 2. the TJPA 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 TJPA will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the TJPA wishes to accept.

4.04 SUCCESSORS AND ASSIGNS

- A. CM/GC shall constantly give its personal attention to the faithful prosecution of the Work. CM/GC 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 CM/GC, and no Subcontractor shall relieve CM/GC of any of its liabilities or obligations under the Contract.
- C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the TJPA, CM/GC shall remove such Subcontractor immediately upon written request of the TJPA, and shall request approval of a replacement Subcontractor to perform the Work at no added cost to the TJPA.
- D. The Contract shall not be assigned except upon the approval of the TJPA.

ARTICLE 5 - CONSTRUCTION BY TJPA OR BY SEPARATE CONTRACTORS OR OTHERS

5.01 TJPA'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 other forces within or adjacent to the limits of Work, or be underway at the time the Work was advertised for Bids, CM/GC 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 CM/GC's Bid price and no direct or additional payment will be made therefor.
- B. The TJPA 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 CM/GCs. If the performance of such other or additional work not indicated in the Contract Documents or underway at the time of advertising for Bids materially increases CM/GC's costs, then CM/GC may submit a Change Order Request therefor in accordance with Paragraph 6.03.
- C. If the TJPA gives CM/GC written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where CM/GC is already performing Work,

CM/GC 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 TJPA to allow the other forces or contractors to perform their work. CM/GC shall provide the TJPA Representative written notice when cleanup and demobilization has been completed. The TJPA Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, CM/GC 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 CM/GC requires access to a location where another CM/GC is performing work, CM/GC shall request such access in writing from the TJPA Representative. The TJPA Representative will provide written notice to CM/GC when the work of other forces or CM/GCs at the subject location is completed, and upon receipt of such notification, CM/GC shall have full access and shall commence or resume its operations in that location.
- E. If CM/GC believes it is entitled to a time extension caused by its obligations under subparagraphs 5.01.C or 5.01.D above, it shall comply with the notification requirements of Paragraph 7.02.
- F. When it is necessary for CM/GC 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 TJPA:
 - 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 CM/GC claims that delay or additional cost is involved because of such action by the TJPA, CM/GC shall make such Claim by the procedures as provided in Paragraph 13.02.
- G. The TJPA 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. CM/GC agrees to indemnify and hold the TJPA harmless for all claims or losses that CM/GC or other contractors may incur as a result of their inability to successfully obtain work areas under the control of one of the parties.
- H. In any agreement between the TJPA and other contractors who may affect the Work of the CM/GC, the TJPA shall require such other contractors to carry not less than \$5 Million in General Liability coverage, naming the CM/GC as an additional insured, and to comply with the same requirements of this Paragraph 5.01.

5.02 COORDINATION

- A. CM/GC shall afford other CM/GCs and the TJPA reasonable opportunity for storage of materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such CM/GCs, and shall cooperate with such other CM/GCs to facilitate the progress of the Work in such a manner as the TJPA may direct.
- B. Notice of Conflicting Conditions: Where CM/GC's Work is adjacent to or placed on top of that of another CM/GC, CM/GC shall examine the adjacent work and substrate and report in writing to the TJPA any visible defect or condition preventing the proper execution or increased cost of its Contract. If CM/GC 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. CM/GC shall report to the TJPA latent defects in another CM/GC's work promptly upon discovery.
- C. CM/GC shall notify the TJPA promptly in writing when another CM/GC 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 CM/GC and the other CM/GCs or TJPA forces in regard to their work shall be adjusted as determined by the TJPA.
- E. If so directed by the TJPA, CM/GC 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 CM/GC 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 TJPA may, by providing reasonable notice, require CM/GC to attend any conference of any or all of CM/GCs engaged in the Work.
- G. If the TJPA determines that CM/GC is failing to coordinate its Work with the work of other CM/GCs as directed, the TJPA may upon 72 hour written notice:
 1. withhold any payment otherwise owed under the Contract until CM/GC complies with the TJPA'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 CM/GC's failure to perform in accordance with the Contract.

5.03 CLEAN UP RESPONSIBILITIES

- A. CM/GC and other CM/GCs 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 TJPA, after issuing 24 hour written notice to the CM/GCs involved, will clean up the premises and deduct from the amount due CM/GC under the Contract the cost of said clean up as the TJPA determines equitable.

ARTICLE 6 - CLARIFICATIONS AND CHANGES IN THE WORK

6.01 GENERALLY

- A. The TJPA may, at any time between the Notice to Proceed with construction and Final Completion and without notice to CM/GC's surety, order additions, deletions, or revisions in the Work by Change Order or Field Order. CM/GC shall promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents. This Article shall not apply to Change Orders to add the individual Trade Work Subcontractor Packages to the overall scope of the Contract.
- B. CM/GC shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if CM/GC 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 CM/GC provides the TJPA with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the TJPA may evaluate each potential Change and proceed on an informed basis. The TJPA also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the CM/GC of additional, undisputed amounts.
- D. Failure by the CM/GC to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the TJPA at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the CM/GC arising out of such Clarification or Change Order.

6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS AND FIELD ORDERS

- A. Should there appear to CM/GC to be a discrepancy in the Contract Documents, should questions arise as to the meaning or intent of the Contract Documents, or should the TJPA's comments on submittals returned to CM/GC appear to CM/GC to change the requirements or scope of the Contract Documents, CM/GC shall submit a Request for Information ("RFI") to the TJPA promptly in accordance with Division 1. CM/GC shall coordinate and schedule its Work to provide the TJPA sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.
- B. The TJPA shall issue a reply to the RFI within 10 days of receipt of the same. The reply may include written Clarifications as deemed by the TJPA 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 TJPA will, within the 10-day reply period, notify the CM/GC of the longer reply period.
- C. Clarifications of the Contract Documents and Field Orders issued by the TJPA shall be binding on CM/GC and shall be promptly executed by CM/GC. The TJPA's right to Clarify any element of the Contract Documents shall not be construed to entitle CM/GC to a modification of the Contract Sum or a change in the Contract Time.

6.03 CHANGE ORDER REQUESTS AND PROPOSED CHANGE ORDERS

- A. COR Initiation: Should the TJPA's Clarification or other written directive, in the opinion of CM/GC, materially exceed or change the requirements of the Contract Documents, CM/GC shall submit to the TJPA a written Change Order Request (COR) within 21 days of receipt of the Clarification or other written directive. A COR shall reference the Clarification or other written directive and the relevant Specification and Drawings. 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 6.03.E and 6.03.F, below. Failure to submit a timely, documented COR shall constitute a waiver of any future claim for additional compensation or time relating to such Work.
- B. COR Review: The TJPA will review the COR. Within 10 days after receipt of the COR, together with the required supporting documentation, the TJPA shall render its determination in writing. If the TJPA does not issue a determination within the 10-day period, the COR is deemed rejected. If the TJPA requires additional time to issue a determination, it shall notify the CM/GC of the same in writing, within the initial 10-day period.
- C. PCO Initiation: The TJPA 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 CM/GC a quotation of cost and time for completing the proposed changes. After the TJPA issues a PCO, CM/GC shall not submit a COR for the same Work addressed in the TJPA's PCO.

- D. PCO Quotation Time Period: CM/GC shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the TJPA within 10 days after receipt of a PCO. If CM/GC fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the 10-day period, or if the price or time adjustment cannot be agreed upon, the TJPA may either direct CM/GC to proceed with the Work on a Force Account basis or issue a Unilateral Change Order instructing CM/GC to proceed with the PCO Work based on the TJPA's estimate of the cost and/or time adjustment.
- E. COR and PCO Cost Proposal Requirements: CM/GC shall furnish 2 copies of its PCO or COR cost proposal. 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 TJPA. The same shall be required for Subcontractor and Lower-Tier Subcontractor cost proposals, which shall be furnished on the same form as required for CM/GC.
1. At a minimum, CM/GC shall provide the following documentation to the TJPA in support of CM/GC 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
 - d. taxes, insurance and bonds.
- F. COR and PCO Time Adjustment Proposal Requirements: If CM/GC asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, CM/GC shall provide the following documentation to the TJPA in support of any CM/GC and Subcontractor time adjustment proposals:
1. CM/GC shall submit to the TJPA 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 TJPA, showing the detailed work activities involved in a change that may affect the Contract Time and 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 TJPA-approved 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 6.03.F shall constitute a waiver of any claim for delay, disruption, extended overhead and other associated costs or damages.
- G. Disputed CORs: In the event that the aggregate value of fully documented and timely but unapproved (disputed) CORs exceeds 2% of the unpaid Contract Sum, the TJPA and the CM/GC shall proceed to nonbinding mediation within 30 days of a written request from either party. Neither disputed CORs nor mediation shall relieve the CM/GC from performing approved base contract or change order work or from the Contract Claim requirements set forth in Article 13 of these General Conditions.

6.04 CHANGE ORDERS

- A. Execution of Change Orders: When the TJPA and CM/GC agree on the total cost and time of a COR or PCO, the TJPA will prepare for signatures of parties a Change Order to formally 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.

- B. Release of Claims: CM/GC shall agree to the terms and conditions of Change Orders and to release the TJPA from claims for additional compensation or time relating to the undisputed amount of the change in the Work.
 - 1. If CM/GC fails to provide timely documentation of delay to the TJPA as described in subparagraph 6.03.F.1, which shall be sufficient to entitle CM/GC to a time extension pursuant to Paragraph 7.02, CM/GC shall execute the Change Order without being granted any extension of time.
 - 2. CM/GC shall not condition or qualify any Change Order with a reservation of rights to seek at a later time additional Contract Amount or Time for the changed Work addressed in the Change Order.
- 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 CM/GC under the provisions of the Contract Documents, nor shall they relieve or release CM/GC'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. CM/GC 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 through the PCO process, or when the TJPA and CM/GC are unable to agree on the cost or time required to complete the change in the Work described in a PCO, the TJPA may issue a Unilateral Change Order instructing CM/GC to proceed with a change in the Work based on the TJPA's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, CM/GC shall proceed with the ordered Work.
- B. Protest: Should CM/GC disagree with any terms or conditions set forth in a Unilateral Change Order, CM/GC shall submit, within 7 days of receipt of the Unilateral Change Order, a Change Order Request (COR) in accordance with the requirements of Paragraph 6.03. If a COR is not submitted as required, CM/GC 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.
- C. Claim Notification: CM/GC waives all costs exceeding the TJPA's estimate for the Unilateral Change Order Work unless CM/GC submits a written Notice of Potential Claim in accordance with the requirements of Paragraph 13.02. Said Notice shall be submitted no later than 7 days after occurrence of one of the following, whichever occurs first:
 - 1. CM/GC submits an invoice for completion of the Unilateral Change Order Work; or
 - 2. upon CM/GC's receipt of written notice from the TJPA that the TJPA considers the Work completed.

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6.06 (1) COST OF THE CHANGE ORDER WORK (Applies to trade subcontracts issued for bid on and after April 3, 2012, through October 7, 2013, inclusive)

- A. Direct Cost Defined: Direct cost shall mean the sum of the direct costs for labor, materials and equipment used in performing the Change Order Work as determined by the procedures set forth in this subparagraph 6.06(1).A.
 - 1. Labor: Labor rates shall not exceed those prevailing in the locality and at the time the Work under the Change Order is being performed. The costs for all supervision, including general superintendents and foremen, shall be included in the markup defined herein. Working

foremen will be considered a direct cost only if the individual is on the Site physically installing Work under the Change Order. Contractor shall furnish to the TJPA within thirty (30) days of the date of the Notice to Proceed a thoroughly documented breakdown of CM/GC's and Subcontractor's hourly payroll rates and labor burden for each trade used on the Project, including apprentice levels. Labor burden shall be based on rates currently in effect at the time the Work under the Change Order is performed and shall include only fringe benefits by governing trade organizations, Federal Insurance Contributions Act, Federal and State Unemployment taxes, San Francisco business and payroll taxes, and net actual premium paid for public liability, workers' compensation, property damage, and other forms of insurance required by the TJPA. No other costs will be included as labor burden.

2. **Materials:** The TJPA will pay CM/GC on Change Orders only for those materials furnished by CM/GC and directly required for performing the Change Order. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether CM/GC, 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 CM/GC, such discount shall be credited to the TJPA 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 CM/GC, payment thereof shall not exceed the current wholesale price for the materials as determined by the TJPA. 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) Labor Surcharge & Equipment Rental Rate Book, 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 Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under CM/GC's control through direct ownership, leasing, renting, or other method of acquisition. 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.
 - a. 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. In the event that use of hourly rental rates is appropriate in computing the rental of equipment, any time less than 30 minutes shall be considered one-half hour. 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.
 - b. 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 CM/GC's markup for overhead and profit as defined in subparagraph 6.06(1).B.
 - c. Payment to CM/GC for the use of equipment as set forth herein shall constitute full compensation to CM/GC 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 CM/GC incidental to the use of the equipment.

- d. Costs of equipment not listed in the publications specified in subparagraph 6.06(1).A.3 shall be based on actual rental invoices. Copies of all invoices shall be provided as support documentation with each PCO cost proposal.
- B. Costs Included as Part of Markup for Overhead and Profit: A markup for overhead and profit as specified in subparagraph 6.06(1).C shall be added to the total of the direct costs computed as provided in subparagraph 6.06(1).A. 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 6.06(1).A as direct costs. No separate allowance or itemization for overhead costs shall be allowed. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:
1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, 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. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06(1).A.
- C. CM/GC's Markup for Overhead and Profit: The following limitations shall apply to CM/GC's markup for overhead and profit on all Change Orders:
1. For Work performed by CM/GC, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein.
 2. For Work performed by a Subcontractor, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein including Subcontractor bonds and insurance. CM/GC shall receive a maximum 5 percent markup on the Subcontractor's total cost.
 3. For Work performed by a Lower-Tier Subcontractor or Supplier, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein. CM/GC and Subcontractor shall each receive a 5 percent markup on the total cost of their respective Lower-Tier Subcontractors.
 4. In no case shall the sum of the individual markups applied to a Change Order exceed 25 percent, regardless of the number of Subcontractor tiers involved in performing the Work.
- D. 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 subparagraph 6.06(1).A, supported by a Cost Proposal as required by Paragraph 6.03. Neither

CM/GC nor the Trade 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, CM/GC'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.
 2. If the TJPA issues written notice of deletion of a portion of Work after the commencement of such Work or after CM/GC or its Trade Subcontractor has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by CM/GC because it is unnecessary due to actual Site conditions, payment will be made to CM/GC for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06(1).C.
 3. CM/GC shall not be compensated for costs incurred after receipt of the TJPA's written notice deleting the portion of Work.
 4. Materials ordered by CM/GC or its Trade Subcontractor prior to the TJPA's issuance of a notice of deletion and paid for by the TJPA shall become the property of the TJPA, and the TJPA will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the TJPA so directs, the material shall be returned and CM/GC will be paid only for the actual charges made by the vendor for returning the material including restocking charges.
- E. Bond and Insurance Costs: Only the actual cost of CM/GC insurance and bond premiums, with no markup for overhead and profit required because of the Change Order, will be allowed.
- F. Costs Not Included in the Work: CM/GC shall be solely responsible for determining which of its subcontractors receive Change Orders. No additional compensation will be provided CM/GC for the cost of its subcontractors to review, post, coordinate, and perform related tasks to administer Change Orders which do not result in direct cost charges from such subcontractors. Such costs shall be considered normal business costs, which are contractually determined between CM/GC and its subcontractors prior to Bid, and such costs shall be included in CM/GC's Total Bid Price.
- G. Records: CM/GC 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 CM/GC.

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6.06 (2) COST OF THE CHANGE ORDER WORK (Applies to trade subcontracts executed before June 14, 2012)

- A. Direct Cost Defined: Direct cost shall mean the sum of the following directly required for the performance of the Work under the Change Order.
1. Labor. Labor rates shall not exceed those prevailing wages required to be paid under the Contract Documents plus any actual payments by the employer for its workers' health and welfare, pension, vacation and similar purposes that do not exceed the charges of the local governing trade organizations for the trades employed. The costs for all supervision, including general superintendents and foremen, shall be in the markup defined herein. Working foremen will be considered a direct cost of the Work only if the individual is on the Site physically installing Work under the Change Order. CM/GC shall furnish to the TJPA within 30 days of the date of the Notice to Proceed a breakdown of CM/GC's and Subcontractors' hourly payroll rates and labor burden for each trade used on the Project, including apprentice levels.
 - a. Labor Surcharge. The Labor Surcharge shall be as set forth in the California Department of Transportation official labor surcharges which is in effect on the date upon which the extra work is accomplished and which schedule is incorporated by reference as though set fully herein. That surcharge is to compensate the CM/GC for all of its costs: under

the Federal Insurance Contributions Act ("FICA"); for federal and state unemployment taxes; for any and all other payroll taxes imposed by federal, state and local laws and ordinances; and for its cost of workers' compensation insurance and any and all forms of liability insurance. For projects insured under an Owner Controlled Insurance Policy ("OCIP"), the labor surcharge shall be 50% of the Labor Surcharge set forth in the California Department of Transportation official labor surcharges which is in effect on the date upon which the extra work is accomplished.

2. Materials: The TJPA will pay CM/GC on Change Orders only for those materials furnished by CM/GC and directly required for performing the Change Order. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether CM/GC, 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. If a trade discount by an actual Supplier is available to CM/GC, it shall be credited to the TJPA. If the materials are obtained from a Supplier or source owned wholly or in part by CM/GC, payment thereof shall not exceed the current wholesale price for the materials as determined by the TJPA. 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) "Labor Surcharge and Equipment Rental Rates," published by Caltrans Publications and available for download at <http://www.dot.ca.gov/hq/construc/equipmnt.html>; or (ii) "Cost Reference Guide for Construction Equipment," published by Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under CM/GC's control through direct ownership, leasing, renting, or other method of acquisition. 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.
 - a. 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. In the event that use of hourly rental rates is appropriate in computing the rental of equipment, any time less than 30 minutes shall be considered one-half hour. 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.
 - b. 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 CM/GC's markup for overhead and profit as defined in subparagraph 6.06(2).B.
 - c. Payment to CM/GC for the use of equipment as set forth herein shall constitute full compensation to CM/GC 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 CM/GC incidental to the use of the equipment.
 - d. Costs of equipment not listed in the publications specified in subparagraph 6.06(2)A.3 shall be based on actual rental invoices. Copies of all invoices shall be provided as support documentation with each PCO cost proposal.

- B. Costs Included as Part of Markup for Overhead and Profit: All Change Order costs not specifically listed in subparagraph 6.06(2).A as direct costs shall be included in the markup for overhead and profit. 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. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06(2).A.
- C. CM/GC's Markup for Overhead and Profit: The following limitations shall apply to CM/GC's markup for overhead and profit on all Change Orders:
1. For Work performed by CM/GC, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein.
 2. For Work performed by a Subcontractor, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein including Subcontractor bonds and insurance. CM/GC shall receive a maximum 5 percent markup on the Subcontractor's total cost.
 3. For Work performed by a Lower-Tier Subcontractor or Supplier, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein. CM/GC and Subcontractor shall each receive a 5 percent markup on the total cost of their respective Lower-Tier Subcontractors.
 4. In no case shall the sum of the individual markups applied to a Change Order exceed 25 percent, regardless of the number of Subcontractor tiers involved in performing the Work.
 5. For Change Orders that result in a net decrease in direct costs for Work performed by CM/GC or a Subcontractor, the T.J.P.A. shall receive a credit based on the actual net decrease in direct costs plus 10 percent of the direct cost credit amount. Neither CM/GC nor the Subcontractor shall receive a markup on their respective Lower-Tier Subcontractors to administer the credit Change Order.
 6. When both additions and credits are involved in any one Change Order, CM/GC'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.
- D. Bond and Insurance Costs: Only the actual cost of CM/GC insurance and bond premiums, with no markup for overhead and profit required because of the Change Order, will be allowed.

Account Work exceeding the "not to exceed" budget amount if CM/GC fails to provide the required notice before exceeding 80 percent of the Force Account budget.

- C. Reports: CM/GC shall diligently proceed with the approved Force Account Work and shall submit to the TJPA 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 TJPA. 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. CM/GC's authorized representative shall complete and sign the report. CM/GC will not be compensated for Force Account Work for which said timely report is not completed and submitted to the TJPA.
- D. Records: CM/GC shall maintain detailed records of all Work done on a Force Account basis. CM/GC 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 CM/GC and the TJPA reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, CM/GC'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. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Division 1, and 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 CM/GC to cover CM/GC'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 percent, the Work in excess of 125 percent 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 CM/GC with the payments made for 125 percent 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 percent of the quantity as indicated on the Schedule of Bid Price is less than \$5,000 at the unit price Bid therefor, the TJPA reserves the right to make no adjustment in said unit price if the TJPA so elects, except that an adjustment will be made if CM/GC submits a Change Order Request (COR) in accordance with the requirements of Paragraph 6.03.
 - 3. At the TJPA's option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08.B.1 or 6.08.B.2 above.

- C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75 percent of the estimated quantity indicated on the Schedule of Bid Prices, an adjustment in compensation will not be made unless CM/GC submits a COR in accordance with Paragraph 6.03. If CM/GC 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 6.08.B.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 percent of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price Bid therefor.
 3. At the TJPA'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 6.08.C.1 and 6.08.C.2 above.

6.09 DELETED ITEMS

- A. Should any Bid Item be deleted in its entirety, the Contract Sum shall be reduced by the amount Bid for that Bid Item.
- B. If the TJPA issues written notice of deletion of a Bid Item after the commencement of such Work or after CM/GC has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by CM/GC because it is unnecessary due to actual Site conditions, payment will be made to CM/GC for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06.C.
- C. CM/GC shall not be compensated for costs incurred after receipt of the TJPA's written notice deleting the Bid Item.
- D. Materials ordered by CM/GC prior to the TJPA's issuance of a notice of deletion and paid for by the TJPA shall become the property of the TJPA, and the TJPA will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the TJPA so directs, the material shall be returned and CM/GC will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

ARTICLE 7 - TIME

7.01 PROGRESS AND COMPLETION

- A. CM/GC shall commence the Work of the Contract within 5 days from the start date established in the Notice to Proceed issued by the TJPA and shall diligently and continuously prosecute the Work to its completion.
- B. No demolition, removal, or reconstruction Work at the Site shall be started until CM/GC has presented evidence satisfactory to the TJPA Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and specific authorization has been issued by the TJPA for Work to start. A progress schedule submitted by CM/GC and accepted by the TJPA in accordance with the requirements of the Contract Documents shall be the basis for determination of the date on which Work at the Site may start.

- C. The continuous prosecution of the Work by CM/GC 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, if required by the Contract Documents; 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 this Contract shall be brought to Substantial Completion and Final Completion, as determined by the TJPA, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in Section 00 05 20, 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. In the event that either party exercises its option under Paragraph 9.03 of the Agreement (Section 00 05 20) not to proceed with further Trade Packages, Substantial Completion will mean completion of all awarded Trade Packages in conformance with the terms and conditions of the Contract Documents; a Temporary Certificate of Occupancy might not, in such circumstances, be a condition precedent to Substantial Completion.
 2. During the time between Substantial Completion and Final Completion, CM/GC shall complete the punch list work, but CM/GC shall not disrupt the TJPA's beneficial occupancy of the Project or any public use of the Work; the CM/GC shall submit for TJPA approval a schedule for punch list work which at a minimum shall identify the times and locations of planned work so that physical access and public safety may be coordinated.
 3. Final Completion is a condition precedent to final payment. The TJPA will issue final payment to CM/GC acknowledging that the Project is complete and the Work is acceptable to the TJPA.
 4. The limits of Contract Time as specified in Section 00 05 20 shall not be affected by the acceptance of any of the Alternate Bid Items included in the Contract Documents provided that said Alternate Bid Items were incorporated into the Contract within the number of months after the date of the award of the subject Trade Package.
 5. 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 13.02.
- E. CM/GC 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. CM/GC 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.
- F. CM/GC shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other CM/GCs. CM/GC is required by virtue of this Contract to cooperate in every way possible with other CM/GCs 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.
- G. If, in the opinion of the TJPA, CM/GC has fallen behind schedule according to CM/GC's most current and TJPA-approved update of the progress schedule submitted as set forth in Paragraph 3.11, or if CM/GC delays the progress of other CM/GCs, and is not entitled to an extension of time as provided in these Contract Documents, CM/GC shall take some or all of the steps as follows to improve its progress at no additional cost to the TJPA and shall submit operational plans to the TJPA 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 TJPA, 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 TJPA.
- H. The TJPA may direct CM/GC to take steps enumerated in subparagraph 7.01.G for the convenience of the TJPA and if CM/GC is not at fault. Should the TJPA Representative direct CM/GC to take measures previously described, the TJPA will reimburse CM/GC for reasonable costs of complying.
- I. Should CM/GC 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 TJPA 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 San Francisco 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 CM/GC that could not have been avoided by CM/GC's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.11, CM/GC 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 CM/GC.
1. CM/GC will be entitled to a non-compensable time extension only for the following types of Unavoidable Delay: acts of God; acts of the public enemy; adverse weather conditions; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of CM/GC to procure labor; material shortages; inability of CM/GC to procure material; fuel shortages; freight embargoes; accidents; 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; the prevention of CM/GC from commencing or prosecuting the Work because of the acts of other persons or parties, excepting the TJPA, TJPA consultants or contractors, the CM/GC, or the CM/GC's Subcontractors, Suppliers, or Lower-Tier Subcontractors or Suppliers; and inability to procure or failure of public utility service.
 - a. Whenever CM/GC has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, CM/GC shall immediately give written notice thereof, including all relevant information with respect thereto, to the TJPA.
 - b. In addition, CM/GC shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, TJPA-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 TJPA to limit or eliminate the effect of the labor dispute on the Work. To the extent CM/GC 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 CM/GC-caused delay under any and all applicable provisions of the Contract Documents.

2. CM/GC shall be entitled to a compensable time extension for an Unavoidable Delay caused by the TJPA or by Unforeseen Conditions as provided in Article 3 of these General Conditions, provided such Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a CM/GC-caused delay or other type of Unavoidable Delay as previously defined. All other types of Unavoidable Delay shall not entitle CM/GC to a compensable time extension.
3. CM/GC shall be entitled to a non-compensable time extension in the event a TJPA-caused delay is concurrent with either a CM/GC-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 CM/GC; 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 CM/GC of the Contract Drawings and Specifications pursuant to subparagraph 3.03.C; or
4. any delay resulting from the TJPA responding to CM/GC-generated RFIs in accordance with subparagraph 6.02.B; 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 TJPA, but does not delay the date of Substantial Completion based on the specified limit of Contract Time.

C. Adverse Weather Delays:

1. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and CM/GC shall make every effort to continue work under prevailing conditions. Such efforts by CM/GC 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 TJPA may classify an adverse weather day as a non-compensable Unavoidable Delay, provided CM/GC made efforts to work during adverse weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and CM/GC is prevented by adverse weather or conditions from proceeding with at least 75 percent 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 TJPA-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and CM/GC will be granted a non-compensable time extension.

3. Regardless of the type and severity of the adverse weather, CM/GC 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 CM/GC to be detrimental to the progress of the Work. CM/GC shall plan the Work to allow for the following number of days of inclement weather during normal working hours:

<u>Month</u>	<u>Rain Days</u>	<u>Month</u>	<u>Rain Days</u>
January	3	July	0
February	3	August	0
March	2	September	0
April	1	October	1
May	0	November	1
June	0	December	3

- a. CM/GC'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 05 20) is predicated on the anticipated number of days of inclement weather specified herein.
- c. CM/GC 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 TJPA reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which CM/GC has requested a time extension because of adverse weather.

D. Notice of Delay:

1. Pursuant to section 6.22H.2.d of the San Francisco Administrative Code, CM/GC shall notify the TJPA 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 TJPA may take steps to prevent the occurrence or continuance of the delay, and the TJPA may determine to what extent Substantial Completion is delayed thereby.
2. Said notice shall constitute an application for an extension of time only if it requests such time extension, sets forth CM/GC'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 subparagraph 13.02.A, including the requirement that such Notice be submitted to the TJPA within 7 days of the event which the CM/GC contends affected the performance of the Work.
3. The TJPA's determination of whether an extension of time will be granted will be based on CM/GC's demonstration to the TJPA's satisfaction that such Unavoidable Delays will extend CM/GC's current critical path on the current, TJPA-approved updated progress schedule or require the formulation of a new extended critical path.
4. If CM/GC does not submit a notice as set forth in subparagraph 7.02.D.2, above, CM/GC thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and CM/GC understands and agrees that no extension of time or adjustment of the Contract Sum will be granted by the TJPA.

E. Extensions of Time:

1. In the event it is deemed necessary by the TJPA to extend the time for completion of the Work to be done 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 CM/GC 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 TJPA in accordance with section 6.22(H)(2)(d) of the San Francisco Administrative Code.
4. Extensions of time that cumulatively extend the Contract Time in excess of 10 percent of the time allowed for Substantial Completion as specified in Section 00 05 20 shall be subject to approval of the TJPA Board.
5. In no event shall such extensions of time be granted subsequent to the date of Final Completion.
6. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the TJPA of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests which the TJPA is entitled.
7. Should CM/GC, 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, CM/GC 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. All requests for time shall use actual progress data, methodology and analysis with reference to the original approved baseline schedule, as provided in the Division 1 Schedule Specification in these Contract Documents.
8. Neither this provision, nor any other provision of the Contract Documents, is 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 TJPA, the TJPA Representative, the TJPA'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 LIQUIDATED DAMAGES

A. Determination of Damages:

1. The actual fact of the occurrence of damages and the actual amount of the damages which the TJPA 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 TJPA 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 TJPA Representatives and consultants; costs of administration, inspection and supervision; and the loss suffered by the public 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 CM/GC and TJPA 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 TJPA in the event of and by reason of such delay.
1. CM/GC and TJPA agree that the amount of liquidated damages set forth in Section 00 05 20 represents the Parties' reasonable estimate of the approximate damages which the TJPA will sustain for each and every day of delay beyond the number of days specified in Section 00 05 20 for Substantial Completion (as such date may be modified in accordance with the Contract Documents).
 2. CM/GC and TJPA agree that the amount of liquidated damages set forth in Section 00 05 20 represents the Parties' reasonable estimate of the approximate damages which the TJPA will sustain for each and every day of delay beyond the number of days specified in Section 00 05 20 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 CM/GC shall pay such amount of liquidated damages as specified in Section 00 05 20, and in case such amount is not paid, CM/GC agrees that the TJPA may deduct the amount therefor from any money due or that may become due CM/GC under the Contract.
- C. Payment of Damages:
1. Should CM/GC become liable for liquidated damages, the TJPA, 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 9.05 which would otherwise be due or become due CM/GC until the liability of CM/GC has finally been determined.
 2. The TJPA shall have the right to use and apply such retained percentages, in whole or in part, to reimburse the TJPA for all liquidated damages due or to become due to the TJPA. Any remaining balance of such retained percentages shall be paid to CM/GC only after discharge in full of all liability incurred by CM/GC.
 3. If the retained percentage is not sufficient to discharge all such liabilities of CM/GC, CM/GC and its sureties shall continue to remain liable to the TJPA until all such liabilities are satisfied in full.
 4. Should the retention of moneys due or to become due to CM/GC be insufficient to cover such damages, CM/GC shall pay forthwith the remainder to the TJPA.

ARTICLE 8 - INSPECTION AND CORRECTION OF WORK

8.01 UNCOVERING OF WORK

- A. No Work shall be covered until inspected by the TJPA or other public authorities having jurisdiction.
- B. If any part of the Work is covered prior to inspection by the TJPA or other public authorities having jurisdiction, CM/GC shall, upon written request by the TJPA, uncover it for inspection by the TJPA or other public authorities having jurisdiction and subsequently replace it at no additional cost to the TJPA and without change in the Contract Times.
- C. Should the TJPA or other public authorities having jurisdiction wish to re-inspect a portion of the Work that has been covered, CM/GC shall uncover it upon written request. If the Work conforms to the requirements of the Contract Documents, the TJPA will pay the costs of uncovering and replacement; if the Work does not conform to the requirements of the Contract Documents, CM/GC shall pay said costs, including related disruptions and delays.

8.02 TESTS AND INSPECTIONS

- A. All testing and specialty inspection of the Work required by the Contract Documents shall be arranged and paid for by CM/GC through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the TJPA or other authority having jurisdiction.
- B. Special inspections to be performed by the TJPA as specified in the Contract Documents or as required to comply with the Code or other agency having jurisdiction shall be performed at the TJPA's expense. CM/GC shall give the TJPA Representative, the TJPA's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 2 working days notice, excluding weekends and TJPA holidays, of when and where such special inspections are required so the TJPA may arrange for the appropriate TJPA representatives and inspectors, and representatives from public other authorities having jurisdiction, to be present to perform the necessary inspections or tests.
 - 1. The TJPA 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 TJPA in connection with the Work.
- C. If the TJPA or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in subparagraph 8.02.A, the TJPA will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The TJPA shall bear such costs except as otherwise provided in subparagraph 8.02.D.
- D. If such procedures for testing, inspection or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, CM/GC shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the TJPA's additional testing and inspection services and expenses.
 - 1. If the TJPA'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 TJPA 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. CM/GC shall bear all costs thereof, including reimbursement to the TJPA for the TJPA's additional testing and inspection services if any are required, made necessary thereby. However, neither the TJPA's authority to act under Paragraph 8.02 nor any decision made by the TJPA Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the TJPA to CM/GC, any subcontractor, or any of their agents or employees, or any other person performing any of the Work.
- E. Neither observation by the TJPA nor inspections, tests, or approvals by the TJPA's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve CM/GC from CM/GC's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.
- F. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by CM/GC and furnished to the TJPA in accordance with the Specifications.

- G. If observation or testing is required outside the nine Bay Area counties, and does not take place at the Site, CM/GC shall reimburse the travel-related costs, including transportation, lodging, meals, long-distance telephone calls and facsimile transmittals, and associated expenses of the TJPA without adjustment to the Contract Sum.
- H. CM/GC shall provide promptly all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the TJPA. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.
 - 1. The TJPA reserves the right to charge to CM/GC any additional cost of inspection 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

- A. The TJPA shall have the sole and unfettered authority to disapprove or reject Non-conforming Work. Upon receipt of written notification thereof from the TJPA, Non-conforming Work shall be removed from the Site and replaced promptly by CM/GC with Work that conforms to the Contract Documents, regardless of when the Non-conformance is determined. CM/GC shall pay all claims, costs, losses, and damages, including the TJPA's expenses at the labor rates included in the contracts between the TJPA and the TJPA's testing and inspection services, of removal and replacement including but not limited to all costs of repair or replacement of work of others.
- B. Failure or neglect on the part of the TJPA 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 TJPA at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
 - 3. to relieve CM/GC from the responsibility of correcting Non-conforming Work or materials.
- C. If CM/GC fails to correct Non-conforming Work or proceed with corrections within 5 days of the date of written notification from the TJPA, the TJPA may correct the Non-conforming Work in accordance with Paragraph 2.04 or may remove it and store the salvageable materials or equipment at CM/GC's expense. If CM/GC does not pay the costs of such removal and storage within 7 days after written notice, the TJPA may sell, auction, or discard such materials and equipment. The TJPA will credit CM/GC's account for the excess proceeds of such sale, if any. The TJPA will deduct from CM/GC'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, CM/GC shall reimburse the TJPA.

8.04 CORRECTION PERIOD

- A. CM/GC shall repair or replace Non-conforming Work or damage resulting from such Non-conforming Work promptly at no additional cost to the TJPA, whether due to: (i) faulty materials or workmanship; or (ii) defective installation by CM/GC of materials or equipment manufactured by others; or (iii) disturbance of, or damage to, TJPA improvements by CM/GC's operations contrary to the Specifications; or (iv) other failure to conform to the requirements of the Contract Documents. Such repair or replacement shall commence within 5 days of the date of the TJPA's written notification of occurrence of such Non-conforming Work and shall forthwith be diligently prosecuted to completion during the following correction periods, or such longer period of time as may be prescribed by laws and regulations or by the terms of any applicable guarantees required elsewhere in the Contract Documents, as applicable:

1. any time during construction of the Work; or
 2. one year following the date of the Notice of Substantial Completion for Non-conforming Work or damage resulting therefrom in any part of the surface Work or in surface improvements of the TJPA such as building superstructures, pavements, curbs, walks, tracks, walls, stairways, poles, mechanical and electrical equipment, materials, appurtenances and accessories, or other surface structures; or
 3. two years following the date of the Notice of Substantial Completion for Non-conforming Work or damage resulting therefrom in any part of subsurface Work or in subsurface improvements of the TJPA not included in the Work, such as building foundations, sewers, side sewers, culverts, other drainage structures, pipes, valves, conduits, conductors, or other subsurface structures.
- B. This requirement to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced Items.
- C. 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 TJPA without necessity of separate transfer or assignment thereof.
- D. The remedies provided for in this Paragraph 8.04 shall not be restrictive but shall be cumulative and shall be in addition to all other legal remedies the TJPA may possess with respect to latent defects or frauds.

8.05 ACCEPTANCE OF NON-CONFORMING WORK

- A. If, in the sole and unfettered judgment of the TJPA, it is undesirable or impractical to replace any defective or Non-conforming Work, the Contract Sum shall be reduced by such amount as the TJPA or its authorized representatives deem equitable, or CM/GC shall rebate moneys previously paid by the TJPA.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.01 CONTRACT SUM

- A. Payment to CM/GC at the Contract Sum (see Agreement (Section 00 05 20), at Article 3 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 CM/GC for any purpose incidental to performing and completing the Work.
- B. Whenever the Contract Documents specify that CM/GC 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 CM/GC's Total Bid Price.

9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

- A. Within 30 days after award of each Trade Work Subcontract, or as otherwise specified in Division 1, CM/GC shall submit a detailed cost breakdown of its Subcontractor's Bid covering the lump sum Items, including Alternate Bid Items selected by the TJPA, by classification in accordance with the Construction Specifications Institute's 48-division MasterFormat 2004 edition and 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. No progress

payments will be made on account of lump sum Items until the TJPA has reviewed and accepted CM/GC's schedule of values.

1. The specific format, detail and submittal requirements for the schedule of values shall be as specified in Division 1 or as directed by the TJPA to facilitate and clarify progress payments to CM/GC for completed Work.
 2. The sum of the individual costs listed in the schedule of values for each lump sum Item shall equal the lump sum price Bid or negotiated therefor by the Trade Package Subcontractor.
- B. The total cost of performing each lump sum Item, including all labor, material, equipment, fixed cost elements, incidental expenses, and overhead and profit, shall be shown on CM/GC's schedule of values. All budgeted costs and manpower shown on the progress schedule shall be allocated to direct cost Bid Items.
1. Unless otherwise provided in the Contract Documents, CM/GC'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 CM/GC's Total Bid Price.
- C. The TJPA will review and return CM/GC's schedule of values with comments. CM/GC shall make all corrections requested by the TJPA and resubmit for approval.
1. The TJPA shall be the sole judge of the sufficiency in detail and proper proportioning of CM/GC's schedule of values.
 2. CM/GC's schedule of values will be acceptable to the TJPA as to form and substance if it provides a reasonable allocation of CM/GC's Bid amount to component parts of the Work.
- D. Upon concurrence by the TJPA, a written formal approval of CM/GC's schedule of values will be issued. If the TJPA later determines that the schedule of values is insufficient or incorrect, an adjustment shall be made as specified in subparagraph 9.02.C.

9.03 PROGRESS PAYMENTS

- A. Subject to the conditions set forth in these General Conditions, and to the authorization of the TJPA or the authorized representatives of the TJPA, payment shall be made upon demand of CM/GC and pursuant to the Contract Documents as follows.
- B. On the 25th day of each month during periods of construction, CM/GC shall submit to the TJPA for review a draft Application for Payment for the Work completed as of the end of the current calendar month. On the first day of the following month, the CM/GC shall incorporate any comments by the TJPA as to the draft and submit a formal Application for Payment, on a form approved by the TJPA and signed by CM/GC, covering the Work completed by CM/GC in the previous month and accompanied by such supporting documentation as specified in Division 1. For example, for work completed during the month of June, CM/GC shall submit a draft Application for Payment on June 25 (if the 25th falls on a Saturday, Sunday, or Holiday, then on the last business day before the 25th), with a final Application for Payment due on July 1 (if the first day of the month falls on a Saturday, Sunday, or Holiday, then on the next business day after the first day of the following month).
1. The monthly value of lump sum Work shall be estimated by CM/GC pursuant to the schedule of values prepared in accordance with Paragraph 9.02. CM/GC'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.

2. Progress payments on account of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the TJPA and the unit prices Bid by CM/GC, adjusted as specified in Paragraph 6.08 for the actual quantities of Work performed.
 3. Progress payments on account of allowances shall be made for such sums as may be acceptable to the TJPA and including costs as specified in Division 1. Prior to final payment, an appropriate Change Order will be issued as directed by the TJPA Representative to reflect actual amounts due CM/GC on account of Work covered by allowances, and the Contract Sum will be adjusted accordingly.
 4. Except as provided in subparagraph 9.03.1, no allowance will be made for materials or equipment not incorporated into the Work.
- C. The Application for Payment shall identify the amount of CM/GC's total earnings to date.
- D. Monthly progress payment amounts to CM/GC shall be based upon completed Work or percentages of Work completed prior to the end of the payment period, *i.e.*, the previous calendar month. A detailed payment application procedure will be transmitted to CM/GC by the TJPA following the formal approval of the schedule of values.
- E. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by CM/GC. Submission of acceptable 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 CM/GC until all cost information requested by the TJPA is submitted and reviewed.
- F. As soon as practical after estimating the progress of the Work, the TJPA will pay to CM/GC 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 last day of the previous month, less the appropriate retention and the aggregate of the amount of previous payments. Payments, however, may be withheld at any time that the Work, in the TJPA's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.05.
1. The TJPA shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a final Application for Payment for the previous month and the required documentation including, without limitation, certified payrolls. In no event shall the TJPA become liable for interest or other charges for late payment except as set forth in San Francisco Administrative Code section 6.22(J)(7).
- G. No inaccuracy or error in said monthly estimates shall operate to release CM/GC or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the TJPA shall have the right to correct any error made in any estimate for payment.
- H. In accordance with the provisions of section 22300 of the California Public Contract Code, CM/GC will be permitted to substitute securities for any moneys withheld by the TJPA to ensure performance under the Contract under the following conditions:
1. At the request and expense of CM/GC, 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 TJPA and CM/GC which are equivalent to the amount withheld under the retention provisions of the Contract Documents shall be deposited with the TJPA Chief Financial Officer who shall then pay such moneys to CM/GC. Upon satisfactory completion of the Project and all Work under the Contract, the securities shall be returned to CM/GC.
 2. CM/GC shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.

3. CM/GC shall enter into an escrow agreement with the TJPA Chief Financial Officer according to Section 00 06 30 ("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 CM/GC, and termination of escrow upon completion of the Contract.

1. Pursuant to section 6.22J of the San Francisco Administrative Code, payment for material or equipment procured by CM/GC but stored on or off the Site and not incorporated in the Project will not be allowed, subject to the following exception:

1. The TJPA will make payment for material or equipment procured by CM/GC and not incorporated in the Project if the material or equipment is (i) unique to the Project; and (ii) either stored on the Site or at an off-Site location approved in advance and in writing by the TJPA. Should the TJPA agree to make payment for such material or equipment, all of the following shall apply:
 - a. CM/GC shall submit to the TJPA proof of off-Site material purchases, including bills of sale, invoices, or other documentation warranting that CM/GC has received the materials free and clear of all liens, charges, security interests, and encumbrances.
 - b. Title to stored material shall be vested in the TJPA at time of delivery to the Site or off-Site warehouse or facility.
 - c. CM/GC shall obtain a negotiable receipt, if applicable, endorsed over to the TJPA, for material stored in an off-Site warehouse or facility. No payment will be made until endorsed receipts are delivered to the TJPA.
 - d. CM/GC, at no additional cost to the TJPA, shall insure stored material against theft, fire, loss, vandalism, and malicious mischief, and shall deliver the policy or certificate of such insurance to the TJPA Representative naming the TJPA as additional insured. Insurance shall not be cancelable for at least 30 days and cancellation shall not be effective until certificate thereof is given to the TJPA.
 - e. CM/GC shall furnish to the TJPA written consent from CM/GC's sureties approving the advanced payment for materials stored off Site.
 - f. ~~The~~ maximum prepayment allowed by the TJPA shall be 85 percent of the fair market value of the item being considered. The TJPA shall be the sole judge of fair market value. ~~4~~
 - g. CM/GC shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the Work.
 - h. Stored materials shall be available for inspection by the TJPA.
 - i. CM/GC shall deliver stored materials to the Site.
 - j. After delivery of stored materials to the Site, if any inherent or acquired defects are discovered therein, such defective material shall be removed and replaced with suitable materials at no additional cost to the TJPA.
 - k. In the event of loss of or damage to paid materials, CM/GC shall be responsible for replacing the lost or damaged materials at its own cost and shall be responsible for all delays incurred on the Project as a result of such loss or damage.
2. The TJPA will make payment for the Temporary Bracing steel, the Access Trestle steel, and the Temporary Traffic Bridge steel procured by the CM/GC for the Buttress/Shoring/Excavation Work only, as material which is necessary for the construction of the temporary bracing system, access trestles and temporary traffic bridges (the "Temporary Steel"), under the following terms and conditions:

- a. The total material cost of the Temporary Steel as bid shall equal the raw material and fabrication costs, plus a credit for re-sale, scrap, or re-use. The total material cost shall not include any other costs such as labor, general conditions, or profit.
 - b. Upon proof that the CM/GC or its subcontractor has incurred costs to order the Temporary Steel, the TJPA will pay as part of a regular progress payment the actual material cost incurred, up to 35% of the total material cost of the Temporary Steel.
 - c. Upon proof that the fabricated Temporary Steel is on-site, inspected, and ready for installation, the TJPA will pay as part of a regular progress payment the actual material cost incurred, up to 40% of the total material cost of the Temporary Steel.
 - d. Upon confirmation from the CM/GC that the Temporary Steel is fully installed and inspected, the TJPA will pay as part of a regular progress payment the actual material cost incurred, up to 25% of the total material cost of the Temporary Steel.
 - e. Any amount paid under this subparagraph 9.03.1.2 will be credited against the approved Direct Costs under the Contract. Early payment shall not imply acceptance of the Work in general or of the temporary bracing system in particular. Early payment of certain Direct Costs under this subparagraph 9.03.1.2 shall not affect the total amount of the CM/GC Fixed Fee as provided under Article 5 of the Agreement (Section 00 05 20).
 - f. The Temporary Steel shall not become part of the permanent structure or TJPA property and title shall not ever vest in the TJPA, except possibly in the event of termination under Article 14 of these General Conditions.
 - g. The Temporary Steel shall not include the Shoring Wall Soldier Piles, which material may be subject to paragraph 9.03.1.1, above.
3. The TJPA will make payment for the steel cast nodes procured by the CM/GC for the Superstructure work only under the following terms and conditions:
 - a. The conditions set forth in subparagraph 9.03.1.1 shall apply to the provisions in this subparagraph 9.03.1.3.
 - b. Upon proof of delivery of the steel cast nodes from the foundry to the Superstructure Trade Subcontractor, the TJPA will pay 100%, less 10% retention as provided for in the Contract, of the foundry fabrication costs for the steel cast nodes.
 4. The retention of funds provisions in paragraph 9.04 of these General Conditions apply to the sum of all the Contract work done, including stored materials.
 5. Nothing in this subparagraph 9.03.1 shall relieve CM/GC of its responsibility for incorporating materials in the Work that conform to the requirements of the Contract Documents
- J. The granting of any progress payment, or the receipt thereof by CM/GC, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of CM/GC 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 TJPA may withhold from any payment otherwise due CM/GC such amounts as may be necessary to protect the TJPA to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the TJPA to withhold any moneys from CM/GC 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 TJPA, CM/GC will be notified 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 TJPA shall be included on the payment authorization, and only that portion of

the Change Order Work actually performed shall be submitted for payment. CM/GC 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 CM/GC has submitted weekly certified payrolls to the TJPA 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. CM/GC shall submit certified payrolls to the TJPA electronically via the TJPA-selected Project Reporting System ("PRS"), an Internet-based system accessible on the World Wide Web through a web browser. The CM/GC 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 CM/GC, Subcontractors and Suppliers to enter 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. CM/GC's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
 3. The TJPA will provide basic training in the use of the PRS at a scheduled training session. CM/GC and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.
 4. CM/GC shall comply with the requirements of this subparagraph 9.03.M at no additional cost to the TJPA.
 5. The TJPA will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to CM/GC's failure to make a timely and accurate submittal of certified payrolls.
- N. Insurance and Bonds. Insurance and bonds, to the extent required by the TJPA or by 2.4 of the Public Works Code, will be a separate line on the Trade Subcontractor's schedule of values. Payment for insurance and bonds will be made only upon proof of payment by Trade Subcontractor.

9.04 RETENTION

- A. The TJPA shall hold 10 percent in retention from each progress payment. The TJPA shall administer retention in conformance with Administrative Code section 6.22J.
- B. When the TJPA determines that the Work is 50 percent or more complete, that CM/GC is making satisfactory progress, and that there is no specific cause for greater withholding, the TJPA, at its sole option and discretion and upon the written request of CM/GC, may (a) release part of the retention to the CM/GC so that the amount held in retention by the TJPA, after release to CM/GC, is reduced to not less than 5 percent of the total value of the labor and materials furnished, and the TJPA shall proceed to retain 5 percent of any subsequent progress payment under the contract or (b) continue to hold the already withheld retention amount, up to 5 percent of the total contract price, and shall not deduct further retention from progress payments.
- C. When the TJPA determines that the Work is 98 percent or more complete, the TJPA may reduce retention funds to an amount equal to 200 percent of the estimated value of work yet to be completed, provided that the contract is free of offsets by the TJPA and is free of stop notices, forfeitures, and other charges.
- D. The TJPA shall release the balance of retention only upon the following conditions: (i) the CM/GC has reached Final Completion as provided in Paragraph 9.09. below, and (ii) the Contract is free of offsets by the TJPA for liquidated damages and defective work and is free of stop notices, forfeitures, and other charges.

- E. The CM/GC may apply for early release of retention for Work performed by subcontractors The CM/GC shall make such application in writing and shall certify the following:
1. That the Work by the subcontractor is completed and satisfactory;
 2. The total final contract amount paid to the subcontractor (excluding retention); and
 3. The amount of retention associated with the Work performed by the subcontractor. CM/GC acknowledges and agrees that the release of retention under this subparagraph shall not reduce the responsibilities or liabilities of the CM/GC or its surety(ies) under the Contract or applicable law.

9.05 PAYMENT AUTHORIZATION

- A. The TJPA will, after receipt of CM/GC's Application for Payment, approve such amount as the TJPA determines is properly due.
- B. Payment will be issued by the TJPA based on the TJPA'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 TJPA 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 CM/GC's means, methods, techniques, sequences or procedures of construction; or
 3. ascertained how or for what purpose CM/GC has used money paid, or determined that title to any of the Work, materials, or equipment has passed to the TJPA free and clear of any liens.

9.06 WITHHOLDING PAYMENT; DELAYED PAYMENT AND CM/GC SUSPENSION OF WORK

- A. The TJPA may decide not to authorize payment, in whole or in part, to the extent reasonably necessary to protect itself if, in the TJPA's judgment, the determination required by subparagraph 9.04.B cannot be made. If the TJPA does not authorize payment in the amount of the application, the TJPA will notify CM/GC of the reasons for withholding payment. The TJPA may also decline to authorize payment based on subsequently discovered evidence, and the TJPA may nullify the whole or a part of a payment previously issued, for one or more of the following reasons:
1. The TJPA 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 TJPA 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 TJPA or another CM/GC.
 6. The TJPA 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 liquidated damages for the anticipated delay.
 7. The TJPA determines that CM/GC persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the causes enumerated under subparagraph 14.01.A).
 8. The TJPA determines that CM/GC fails to submit timely PCO cost proposal breakdowns in accordance with the Contract Documents.
 9. The TJPA determines that CM/GC fails to submit timely progress schedules, revised schedules, schedule updates and reports in accordance with the Contract Documents.

10. The TJPA determines that CM/GC fails to maintain timely updated Contract Documents or record documents.
 11. The TJPA determines that CM/GC fails to submit certified payroll records in accordance with the Contract Documents.
 12. The TJPA determines that CM/GC fails to comply with any other requirements of the Contract Documents.
- B. In the event that, due to no fault of the CM/GC, the TJPA fails to issue an undisputed progress payment within the time provided in the Agreement (Section 00 05 20, Article 5), the CM/GC may upon 15 days' written notice to the TJPA suspend Work until TJPA issues the undisputed progress payment. The CM/GC may submit a Change Order Request under Article 6 of these General Conditions for actual, documented costs associated with the suspension. The CM/GC may also submit a Notice of Delay and seek an Extension of Time for the suspension period as provided under Article 7 of these General Conditions.

9.07 PARTIAL UTILIZATION

- A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the TJPA, and the best interest of the TJPA requires such use, the TJPA may make a written request for CM/GC to permit the TJPA to take possession of and use the Work, or a part thereof, at no additional cost to the TJPA. When so used, maintenance and repair due to ordinary wear and tear caused by the TJPA will be made at the TJPA's expense. The use by the TJPA 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 CM/GC of any of its responsibilities under the Contract, nor act as a waiver by the TJPA of any of the conditions thereof.
- B. Such partial utilization may commence at any time as determined by the TJPA, 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 CM/GC agrees that such part of the Work is Substantially Complete, CM/GC shall notify the TJPA in writing and request a joint inspection of that part of the Work. Within 7 days from receipt of CM/GC's written notification, CM/GC and the TJPA shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record its status of completion.
- D. Partial utilization of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- E. CM/GC shall perform final cleaning of such partially utilized Work as specified in the Division 1 when directed to do so by the TJPA.

9.08 SUBSTANTIAL COMPLETION

- A. CM/GC shall notify the TJPA in writing when CM/GC considers that the Work is Substantially Complete and request that the TJPA inspect the Work and prepare a Notice of Substantial Completion. Completion of start-up services and submittal of warranties, guarantees, and record documents shall be a condition precedent to requesting an inspection for Substantial Completion. Attached to CM/GC's request for a Substantial Completion inspection shall be a preliminary list of items to be completed or corrected before Final Completion.
- B. Within 2 working days from receipt of CM/GC's written notification, the TJPA will make an inspection to determine whether the Work is Substantially Complete. If the TJPA determines that the Work is not Substantially Complete, the TJPA will provide CM/GC with a Deficiency List that lists all Items that shall be corrected or completed before the TJPA considers the Work Substantially Complete.
- C. Once CM/GC has completed all items on the Deficiency List, CM/GC shall request a second inspection by the TJPA to verify that the Work is Substantially Complete. If the TJPA determines that the Work is not Substantially Complete, the TJPA will follow the same procedure as for the first inspection as described in subparagraph 9.07.B. CM/GC shall reimburse the TJPA for costs incurred by the TJPA and its consultants related to all additional inspections necessary to achieve Substantial Completion.
- D. As a condition precedent to Substantial Completion, CM/GC shall obtain a temporary certificate of occupancy from the TJPA'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 TJPA to utilize the Work for the purposes for which it is intended.
- E. When the TJPA determines that the Work is Substantially Complete, the TJPA 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 TJPA will deliver to CM/GC (i) a Completion List identifying deficient items to be corrected by CM/GC 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 CM/GC considers all Work complete, including all items of Work on the punch list and all closeout requirements, CM/GC shall notify the TJPA in writing and request that the TJPA issue a certificate of acceptance.
- B. Within 5 working days of receipt of CM/GC's written notice, the TJPA will verify whether all Completion List items are completed. If the TJPA finds that any of the Completion List items are not complete, the TJPA will notify CM/GC in writing. CM/GC shall promptly take actions necessary to complete such Completion List items.
- C. Once CM/GC considers complete all items on the Completion List, CM/GC shall notify the TJPA in writing and request a second inspection. If the TJPA finds the Completion List items are still not complete, CM/GC shall be responsible for all costs for conducting such additional inspections incurred by the TJPA 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 the CM/GC's failure to achieve Final Completion within the time prescribed in Section 00 05 20, as may be modified by change order under the terms and conditions of the Contract Documents. All such costs of the TJPA and its consultants shall be deducted from amounts which are due or become due to CM/GC.
- D. While Completion List work is outstanding, the TJPA may, at its option, pay CM/GC any earned Contract funds, including retention, subject to offset for the following: (i) funds subject to

forfeiture or withholding for prevailing wage violations 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 percent 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 CM/GC has completed to the satisfaction of the TJPA all Completion List items and close-out requirements in accordance with the Contract Documents, the TJPA will issue a written certificate of acceptance as required by section 6.22(K) of the San Francisco Administrative Code stating that the Work is acceptable, and CM/GC may submit the final application for payment. TJPA shall endeavor to issue the final payment within 35 days after approval of the final application.
- F. CM/GC and each assignee under any assignment in effect at the time of final payment shall, if required by the TJPA, execute and deliver at the time of final payment, as a condition precedent to final payment, a release in form and substance satisfactory to, and containing such exemptions as may be found appropriate by the TJPA, discharging the TJPA and the TJPA's consultants, and their directors, officers, members, employees, agents and authorized representatives of all liabilities, obligations and Claims arising under this Contract.

ARTICLE 10 - INSURANCE AND BONDS

10.01 INSURANCE REQUIREMENTS

- A. CM/GC shall purchase and maintain in force throughout the Contract Time such liability and other insurance as provided in Section 00 08 05.

10.02 PERFORMANCE BOND AND PAYMENT BOND

- A. CM/GC shall purchase and maintain corporate surety Performance and Payment Bonds, each in a sum not less than \$600,000,000, in a form acceptable to the TJPA (Contract Document Section 00 06 10), as provided in the Agreement (Section 00 05 20), Article 9.
- B. Said Performance Bond shall cover all corrective Work required during the correction period pursuant to Paragraph 8.04, 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 and Bid bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the TJPA.
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- D. The provisions set forth in this Article 10.02, except with respect to Bid bonds, do not apply to trade subcontracts awarded after January 1, 2014. 7

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 6.22E and 6.22F of the San Francisco Administrative Code are incorporated as provisions of the Contract Documents including, but not limited to, the following:

1. CM/GC 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. CM/GC 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. CM/GC shall keep or cause to be kept an accurate record showing the name, place or residence, occupation, and per diem pay, of each person engaged in the execution of the Work, and 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 TJPA and its authorized representatives.
4. Should CM/GC, 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, CM/GC shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, CM/GC and the Subcontractor shall jointly and severally forfeit, to the TJPA back wages due plus the penal sum of \$50 per day for each laborer, worker or mechanic employed for each calendar day or portion thereof, while they shall be so employed and not paid the highest general prevailing rate of wages. The TJPA, when certifying any payment which may become due under the terms of the Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture or forfeitures as so certified.
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. CM/GC or any Subcontractor who violates this provision shall forfeit to the TJPA back wages due plus the penal sum of \$50 per day for each laborer, mechanic or artisan employed for each calendar day or portion thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more than the days and hours specified herein.

C. A copy of the most current highest general prevailing wage rates will be posted at the Site by the TJPA, and such highest prevailing wage rate determinations made at the time of the advertisement for Bids 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) 972-8628 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

11.02 PAYROLLS

A. Certification of Payroll Records: CM/GC shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the 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 and shall be submitted electronically to the TJPA as set forth in Paragraph 9.03.M. In addition, CM/GC shall make the payroll records available for inspection at all reasonable hours at the job site office of CM/GC 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 TJPA 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 the TJPA, 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 CM/GC.
 - d. CM/GC 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. Any copy of payroll records made available for inspection as copies and furnished upon request to the public or any public agency by the TJPA, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of CM/GC shall not be marked or obliterated.
3. CM/GC shall inform the TJPA 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 CM/GC receives a written notification of noncompliance with section 1776, CM/GC shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, CM/GC shall, as a penalty to the TJPA, forfeit \$25 for each day, or a portion thereof, of non-compliance, for each worker, until strict compliance is effected. 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. CM/GC is solely responsible for compliance with section 1776. The TJPA shall not be liable for CM/GC's failure to make timely or accurate submittals of certified payrolls.

11.03 APPRENTICES

- A. CM/GC 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 San Francisco Administrative Code, section 6.21(O). CM/GC shall be solely responsible for securing compliance with section 1777.5 for all apprenticeable occupations.
 1. CM/GC shall comply with all requests by the TJPA to provide proof that CM/GC and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.
 2. CM/GC 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 shall not apply to contracts of general CM/GCs involving less than thirty thousand dollars (\$30,000) and less than twenty working days, or to contracts of specialty CM/GCs not bidding for work through a general or prime CM/GC, involving less than two thousand dollars (\$2,000) or fewer than five working days.

- B. Should CM/GC fail to comply with the apprenticeship requirements of section 1777.5, CM/GC 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. CM/GC, if not signatory to a recognized apprenticeship training program under chapter 4 of the California Labor Code, shall provide to the TJPA with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). CM/GC shall require its Subcontractors who are not signatories to provide such evidence to the TJPA as a condition precedent for qualifying for payment from the TJPA. The TJPA reserves the right to demand such evidence upon request.
- D. Under California Public Contract Code section 6109, CM/GC 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 CM/GC 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. CM/GC shall return to the TJPA any public money that may have been paid to a debarred subcontractor by CM/GC.
 - 3. CM/GC shall be responsible for the payment of wages to workers of a debarred subcontractor that has been allowed to work on the Project.

11.04 LABOR STANDARDS ENFORCEMENT

- A. In accordance with Administrative Code section 6.22(E)(7) and section 6.24, CM/GC further acknowledges and agrees as follows:
 - 1. CM/GC will cooperate fully with the Labor Standards Enforcement Officer and other TJPA employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works CM/GCs by the Charter and Chapter 6 of the San Francisco Administrative Code.
 - 2. CM/GC agrees that 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 CM/GC, employee time sheets, inspection logs, payroll records and employee paychecks.
 - 3. CM/GC shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.
 - 4. CM/GC shall prominently post at each job-site a sign informing employees that the project is subject to the TJPA's prevailing wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer.
 - 5. The Labor Standards Enforcement Officer may audit such records of CM/GC as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter and this Chapter on public works CM/GCs.

ARTICLE 12 - SAFETY

12.01 PRECAUTIONS AND PROGRAMS

- A. CM/GC shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CM/GC shall be solely responsible for any and all fines, penalties or damages which result from CM/GC's failure to comply with applicable health and safety laws and regulations during performance of the Work.

- B. CM/GC shall designate in writing a responsible competent person of CM/GC'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 report directly to the CM/GC's Project Executive and shall be available 24 hours a day, 7 days a week by telephone or other approved means.
- C. In the event CM/GC encounters on the Site material not indicated on the plans or specifications to be hazardous and not part of a specified hazardous materials scope of Work, but which CM/GC believes to be hazardous (hazmat) that may present a substantial danger to persons or property exposed thereto in connection with the Work, CM/GC shall promptly stop Work in the area affected and, before disturbing the conditions believed to be hazardous, notify the TJPA in writing in accordance with the requirements of Paragraph 3.05. The TJPA shall, in consultation with the CM/GC, and through the use of appropriately licensed and/or certified professionals, confirm the existence of hazardous materials and mitigate the hazardous condition. The TJPA may perform such measures either through agreement with the CM/GC or by separate contract. The Work in the affected area shall not be resumed thereafter except by written notification of the TJPA or as mutually agreed between the TJPA and the CM/GC.
- D. CM/GC shall perform all Work relating to hazardous materials as required by the Contract Documents.
 - 1. Should hazardous materials be encountered that were not indicated in the Contract Documents and not contemplated to be part of the Work at the time that Bids were received, CM/GC shall be given an adjustment in the Contract Sum and Contract Time as specified in Paragraph 3.05.

12.02 PERSONS AND PROPERTY

- A. CM/GC 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. CM/GC 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. CM/GC 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 CM/GC'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, CM/GC shall maintain them as long as necessary for the proper conduct of the Work.
- D. CM/GC shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating, or otherwise protecting such facilities.
- E. CM/GC 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 CM/GC's operations.

- F. CM/GC 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. CM/GC 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 CM/GC, its Subcontractors or Lower-Tier Subcontractors, CM/GC shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the TJPA. The foregoing obligations of CM/GC are in addition to CM/GC'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 CM/GC has received acceptance from the TJPA of CM/GC's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. CM/GC'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 CM/GC'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 CM/GC who is registered as a civil or structural engineer in the State of California. The TJPA's acceptance of CM/GC's shoring plan shall not be construed to relieve CM/GC of its sole responsibility for damage or injuries related to the excavation resulting from unsafe shoring.
- J. CM/GC shall be responsible for each operation and all Work, both permanent and temporary. Contractor shall protect its Work and materials and fully or partially completed work of the TJPA or separate CM/GCs 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 CM/GC and damage or defects result, CM/GC shall make the whole Work affected good to the satisfaction of the TJPA and without expense to the TJPA.

12.03 SAFETY PERMITS

- A. A California industrial safety permit shall be obtained and paid for by CM/GC as a reimbursable expense 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. CM/GC shall obtain and pay for all other required safety permits as a reimbursable expense.

12.04 EMERGENCIES

- A. In emergencies affecting the safety or protection of persons or property at the Site, CM/GC shall act promptly to prevent threatened damage, injury or loss. CM/GC shall give prompt written notice to the TJPA if CM/GC 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 TJPA determines that a change in the Contract Documents is required because of action taken by CM/GC in response to such an emergency, a Change Order or Unilateral Change Order will be issued as provided in Article 6.

ARTICLE 13 - PARTNERING AND CLAIMS

13.01 PARTNERING

- A. The TJPA intends to encourage the foundation of a cooperative and cohesive partnership with CM/GC, its subcontractors and suppliers, and the TJPA's representatives and consultants. This cooperative partnership, if accepted by CM/GC and the TJPA as described in subparagraph 13.01.B, will be structured to draw on the strengths of each participant to identify and achieve mutual and reciprocal goals, including resolution of disputes in a timely, equitable, professional and non-adversarial manner, the establishment of an integrated, high-performance project team, and project metrics for all participants. The objective of the partnership shall be the successful completion of the Project.
- B. The partnership will be voluntary, subject to mutual acceptance of CM/GC, its Subcontractors and Suppliers and the TJPA and its consultants. CM/GC and the TJPA shall meet within 30 days after the date of the Notice to Proceed to decide whether to enter into partnering on the Project, and if agreeable to all parties, to determine how the participants will share the responsibilities and obligations for the partnership. Fees and expenses associated with the partnership arrangement shall be shared equally by the TJPA and CM/GC.
- C. CM/GC is not obligated to enter into partnering. There will be no penalties of any kind imposed should CM/GC not agree to use partnering.
- D. Partnering shall not alter the legal rights and obligations of CM/GC or the TJPA under the Contract.

13.02 CLAIMS

I Claims Originating From The CM/GC

- A. Notice Of Potential Claim
 - 1. For purposes of this Paragraph 13.02.I., "Potential Claim Event" means the rejection by the TJPA, in whole or in part, of a CM/GC Change Order Request (except for those Change Order Requests originating from a Trade Subcontractor, which are subject to Section 13.02(II) below) requesting a change in the Contract Sum or Contract Time. The rejection, in whole or in part, of a Change Order Request is a condition precedent to the occurrence of a Potential Claim Event. Failure by the CM/GC to submit a timely and properly documented Change Order Request in accordance with Paragraph 6.03 shall constitute a waiver of the CM/GC's right to claim a change in the Contract Sum or Contract Time for any impact or potential impact to the performance of its Work.
 - 2. To the extent other paragraphs of the General Conditions direct the CM/GC to this Paragraph 13.02 without first submitting a Change Order Request to the TJPA, those provisions are modified as follows: Submission of a Notice of Potential Claim to the TJPA in accordance with Paragraph 13.02 must be preceded by the submission by the CM/GC of a Change Order Request in accordance with Paragraph 6.03. Only after the requirements of Paragraphs 6.03 and 13.02.I.A.1. have been met, may the CM/GC submit a Notice of Potential Claim to the TJPA.
 - 3. Within fourteen (14) days of the occurrence of a Potential Claim Event, the CM/GC shall submit a Notice of Potential Claim with sufficient specificity that enables the TJPA to review

the matter. The Notice of Potential Claim must: (1) describe the Potential Claim Event; (2) provide a good faith estimate of any impact of the Potential Claim Event; and (3) reference any relevant provision of the Contract Documents and any schedules.

4. Failure to submit a timely and properly documented Notice of Potential Claim shall constitute a waiver of the CM/GC's right to submit any claim arising out of or related to the Potential Claim Event.

B. Contract Claim

1. Time And Nature Of Claim - No later than forty-five (45) days after submitting a Notice of Potential Claim to the TJPA, the CM/GC may submit a Contract Claim ("Claim") to the TJPA for additional compensation and/or time included in the CM/GC's Notice of Potential Claim.
2. Format And Content Of Claim - The Claim must be accompanied by the following information and documents:
 - a. A cover letter certifying the Claim as set forth in Paragraph 13.02.1.B.3., below;
 - b. A narrative summary of the Claim that includes the following information:
 - i. A summary of the Claim's merit and the amount and/or time claimed;
 - ii. The Contract clause(s) under which the Claim is based;
 - iii. A chronology of events and correspondence relating to and in support of the Claim;
 - iv. A detailed analysis of entitlement - the CM/GC shall set forth all facts and all reasons that support entitlement for the additional compensation and/or time included in the Claim. If the CM/GC's basis for entitlement has previously been rejected by the TJPA, the CMO and/or the Architect, the CM/GC shall also include a detailed response to such rejection;
 - v. A detailed analysis of quantum - the CM/GC shall itemize and explain all costs included in the Claim. If any costs included in the Claim have previously been rejected by the TJPA, the CMO and/or the Architect, the CM/GC shall also include a detailed response to such rejection. If the actual amount of the additional compensation or time claimed is unknown at the time the Claim is submitted to the TJPA, the CM/GC shall provide a good faith estimate of the additional compensation or time claimed. No later than thirty (30) days after the actual costs and/or schedule impacts become known to the CM/GC, the CM/GC shall submit an updated statement specifying the actual costs and/or schedule impacts.
 - vi. A list of all documents related to and in support of the Claim, including, but not limited to, change order requests, change orders, specifications, drawings and BIM data, clarifications/RFIs, correspondence (including emails), schedules, and supporting cost records; and
 - c. All documents related to and in support of the Claim, including, but not limited to, change order requests, change orders, specifications, drawings and BIM data, clarifications/RFIs, correspondence (including emails), schedules, and supporting cost records. Supporting cost records and other data shall conform to generally accepted auditing standards and shall be correlated with the elements of the Claim.
3. Certification Of Claim
 - a. The CM/GC, under penalty of perjury, shall certify that the Claim is:
 - i. made in good faith;
 - ii. the supporting data are accurate and complete to the best of the CM/GC's knowledge and belief; and

- iii. the amount requested accurately reflects the Contract adjustment for which the CM/GC believes the TJPA is liable.
 - b. The certification must be made and signed by an individual or officer of the CM/GC authorized to act on the CM/GC's behalf.
 - c. Failure to certify the Claim as specified above shall constitute a waiver of the Claim by the CM/GC.
- 4. Additional Requirements For Claims Regarding Time Extensions - All Claims regarding time extensions shall include, in addition to all other applicable requirements of this Paragraph 13.02, an analysis of the delays impacting the as-built critical path. The prescribed method for establishing entitlement to a time extension shall be through a comparison of an as-planned CPM schedule (using late start and late finish dates for schedule activities) to the current as-built CPM schedule. The as-planned CPM schedule shall be the CM/GC's baseline or "as-planned" CPM schedule (as approved by the TJPA). The "as-built" CPM schedule shall reflect the exact manner in which the Project has been actually constructed (including start and completion dates, actual sequence and durations of work activities, and logic). *See also*, Division 1 Schedule Specification.

The TJPA will not review or consider any Claim regarding time extensions based upon an impacted as-planned CPM, collapsed as-built schedule, time impact analysis or similar method that does not take into account actual events on the Project.

- 5. Failure to submit a timely and properly certified and documented Claim shall constitute a waiver by the CM/GC of the Claim.

C. Senior Project Staff Review of Claim

- 1. Within twenty (20) days of receipt of a Claim by the TJPA, senior project staff for the TJPA, the CMO, and the CM/GC shall meet in-person to discuss and review the Claim in an effort to resolve the Claim.
- 2. The parties may agree to extend the twenty (20) day period to meet, as necessary, to accommodate the parties' schedules. Any extension to the twenty (20) day period does not excuse or extend any subsequent Claim deadlines as set forth in this Paragraph 13.02.

D. Review Of Claim By The TJPA

- 1. The TJPA shall review only a timely, certified, and properly documented Claim.
- 2. The TJPA shall respond to a Claim in writing no later than forty-five (45) days after receiving a Claim from the CM/GC. In its response, the TJPA shall grant or deny the Claim, in whole or in part, with a written explanation of its decision. If the TJPA does not respond to a Claim within the forty-five (45) day period, the Claim is deemed denied in its entirety. For good cause, the TJPA may, in its sole discretion, extend the time for a reasonable duration to provide its response to a Claim. The TJPA's response may be by or through its CMO.

E. Review By Dispute Resolution Advisor

- 1. Provided a Dispute Resolution Advisor ("DRA") Agreement for the Project has been agreed to by the TJPA and the CM/GC, no later than ten (10) days after the TJPA's response to the Claim pursuant to Paragraph 13.02.I.D., or expiration of the forty-five (45) day period, whichever is earlier, the TJPA and/or the CM/GC may request review of and a hearing on the Claim under and in accordance with the DRA for the Project.
- 2. A hearing on the Claim by the DRA shall occur no later than thirty (30) days after the request for a hearing, or as soon thereafter as the DRA's calendar permits.
- 3. If the additional compensation or time claimed is based on a good faith estimate at the time of the Dispute Hearing, the DRA shall issue a written recommendation as to entitlement only.

and defer its determination on additional compensation and/or time until actual costs and schedule impacts are known to the CM/GC and such information is submitted by the CM/GC to the DRA.

F. Review Of Claim By Executive Director

1. Claims Not Previously Referred to the DRA

- a. For any Claim not previously referred to the DRA, no later than ten (10) days after the TJPA's response to the Claim, or expiration of the forty-five (45) day period, whichever is earlier, the CM/GC may request review of the Claim and the TJPA's response by the Executive Director. The request must be in writing, directed to the Executive Director, and copied to the CMO. Failure by the CM/GC to make a timely request to the Executive Director, copied to the CMO, shall constitute acceptance by the CM/GC of the TJPA's prior response to the Claim.
- b. Upon a timely and proper request for review, the Executive Director or his/her designee, shall review the relevant documents, discuss the Claim with the CM/GC and TJPA personnel assigned to the Project, and confirm or revise the TJPA's prior response to the Claim. The Executive Director or his/her designee, shall issue a determination confirming or revising the TJPA's prior response to the Claim no later than sixty (60) days after receiving a request for review from the CM/GC. The determination by the Executive Director or his/her designee shall constitute the final administrative determination of the TJPA. If the Executive Director takes no action on a request for review within the sixty (60) day period, the TJPA's prior response to the Claim shall constitute the final administrative determination by the TJPA. For good cause, the TJPA may, in its sole discretion, extend the time for a reasonable duration to provide a final administrative determination to the Claim.

2. Claims Previously Referred to the DRA

- a. For any Claim previously referred to the DRA, no later than fourteen (14) days after receiving the written recommendation of the DRA on the Claim, the CM/GC may request review of the Claim and the TJPA's response by the Executive Director. The request must be in writing (enclosing a copy of the DRA's written recommendation), directed to the Executive Director, and copied to the CMO. Failure by the CM/GC to make a timely request to the Executive Director, copied to the CMO, shall constitute acceptance by the CM/GC of the TJPA's prior response to the Claim.
- b. The Executive Director or his/her designee, shall issue a determination confirming or revising the TJPA's prior response to the Claim no later than thirty (30) days after receiving CM/GC's request for Executive Director review of the Claim. The determination by the Executive Director or his/her designee shall constitute the final administrative determination of the TJPA. If the Executive Director takes no action on a request for review within the thirty (30) day period, the TJPA's prior response to the Claim shall constitute the final administrative determination by the TJPA. For good cause, the TJPA may, in its sole discretion, extend the time for a reasonable duration to provide a final administrative determination to the Claim.

II. Claims By A Trade Subcontractor

A. Notice Of Potential Claim

1. For purposes of this Paragraph 13.02.II., "Potential Claim Event" means the rejection, in whole or in part, by or through the CM/GC, of a Trade Subcontractor Change Order Request requesting a change in the Trade Subcontract Contract Sum or Contract Time. The rejection, in whole in part, of a Change Order Request is a condition precedent to the occurrence of a Potential Claim Event. Failure by the Trade Subcontractor to submit a timely and properly documented Change Order Request in accordance with Paragraph 6.03, shall constitute a

waiver of the Trade Subcontractor's right to claim a change in the Trade Subcontract Contract Sum or Contract Time for any impact or potential impact to the performance of its Work.

2. To the extent other paragraphs of the General Conditions or the Trade Subcontractor's Subcontract direct the Trade Subcontractor to this Paragraph 13.02 without first submitting a Change Order Request to the CM/GC, those provisions are modified as follows: Submission of a Notice of Potential Claim to the CM/GC in accordance with Paragraph 13.02 must be preceded by the submission by the Trade Subcontractor of a Change Order Request in accordance with Paragraph 6.03. Only after the requirements of Paragraphs 6.03 and 13.02.II.A.1. have been met, may the Trade Subcontractor submit a Notice of Potential Claim to the CM/GC.
3. Within ten (10) days of the occurrence of a Potential Claim Event, the Trade Subcontractor shall submit a Notice of Potential Claim with sufficient specificity that enables the CM/GC to review the matter. The Notice of Potential Claim must: (1) describe the Potential Claim Event; (2) provide a good faith estimate of any impact of the Potential Claim Event; and (3) reference any relevant provision of the Contract Documents and any schedules.
4. Within ten (10) days of receiving the Notice of a Potential Claim from a Trade Subcontractor, the CM/GC shall submit the Trade Subcontractor's Notice of Potential Claim to the TJPA.
5. Failure to submit a timely and properly documented Notice of Potential Claim by the Trade Subcontractor to the CM/GC shall constitute a waiver of the Trade Subcontractor's right to submit any claim arising out of or related to the Potential Claim Event.
6. Failure to submit a timely and properly documented Trade Subcontractor's Notice of Potential Claim by the CM/GC to the TJPA shall constitute a waiver of the CM/GC's right to submit any claim arising out of or related to the Potential Claim Event.

B. Trade Subcontractor Claim

1. Time And Nature Of A Claim - No later than forty-five (45) days after timely submitting a properly documented Notice of a Potential Claim to the CM/GC, the Trade Subcontractor may submit a Trade Subcontractor Contract Claim ("Trade Subcontractor Claim") to the CM/GC for additional compensation and/or time included in the Trade Subcontractor's Notice of Potential Claim.
2. Format And Content Of Trade Subcontractor Claim - The Trade Subcontractor Claim must be accompanied by the following information and documents:
 - a. A cover letter certifying the Trade Subcontractor Claim as set forth in Paragraph 13.02.II.B.3., below;
 - b. A narrative summary of the Trade Subcontractor Claim that includes the following information:
 - i. A summary of the Claim's merit and the amount and/or time claimed;
 - ii. The Contract clause(s) under which the Trade Subcontractor Claim is based;
 - iii. A chronology of events and correspondence relating to and in support of the Trade Subcontractor Claim;
 - iv. A detailed analysis of entitlement - the Trade Subcontractor shall set forth all facts and all reasons that support entitlement for the additional compensation and/or time included in its Claim. If the Trade Subcontractor's basis for entitlement has previously been rejected by or through the CM/GC, the Trade Subcontractor shall also include a detailed response to such rejection;
 - v. A detailed analysis of quantum - the Trade Subcontractor shall itemize and explain all costs included in its Claim. If any costs included in the Trade Subcontractor Claim have previously been rejected by or through the CM/GC, the Trade Subcontractor shall also include a detailed response to such rejection. If the actual

amount of the additional compensation or time claimed is unknown at the time the Claim is submitted to the CM/GC, the Trade Subcontractor shall provide a good faith estimate of the additional compensation or time claimed. No later than twenty-five (25) days after the actual costs and/or schedule impacts become known to the Trade Subcontractor, the Trade Subcontractor shall submit an updated statement specifying the actual costs and/or schedule impacts. The CM/GC must submit the updated statement received from the Trade Subcontractor to the TJPA within five (5) days of receipt;

- vi. A list of all documents related to and in support of the Trade Subcontractor Claim, including, but not limited to, change order requests, change orders, specifications, drawings and BIM data, clarifications/RFIs, correspondence (including emails), schedules, and supporting cost records; and
 - c. All documents related to and in support of the Trade Subcontractor Claim, including, but not limited to, change order requests, change orders, specifications, drawings and BIM data, clarifications/RFIs, correspondence (including emails), schedules, and supporting cost records. Supporting cost records and other data shall conform to generally accepted auditing standards and shall be correlated with the elements of the Claim.
3. Certification Of Trade Subcontractor Claim
- a. The Trade Subcontractor, under penalty of perjury, shall certify that its Claim is:
 - i. made in good faith;
 - ii. the supporting data are accurate and complete to the best of the Trade Subcontractor's knowledge and belief; and
 - iii. the amount requested accurately reflects the Contract adjustment for which the Trade Subcontractor believes the CM/GC is liable.
 - b. The certification must be made and signed by an individual or officer of the Trade Subcontractor authorized to act on the Trade Subcontractor's behalf.
 - c. Failure to certify the Trade Subcontractor Claim as specified above shall constitute a waiver of the Trade Subcontractor Claim by the Trade Subcontractor.
4. Additional Requirements For Trade Subcontractor Claims Regarding Time Extensions - All Trade Subcontractor Claims regarding time extensions shall include, in addition to all other applicable requirements of this Paragraph 13.02, an analysis of the delays impacting the as-built critical path. The prescribed method for establishing entitlement to a time extension shall be through a comparison of an as-planned CPM schedule (using late start and late finish dates for schedule activities) to the current as-built CPM schedule. The as-planned CPM schedule shall be the CM/GC's baseline or "as-planned" CPM schedule (as approved by the TJPA). The "as-built" CPM schedule shall reflect the exact manner in which the Project has been actually constructed (including start and completion dates, actual sequence and durations of work activities, and logic). *See also*, Division 1 Schedule Specification.

The CM/GC will not review or consider any Trade Subcontractor Claim regarding time extensions based upon an impacted as-planned CPM, collapsed as-built schedule, time impact analysis or similar method that does not take into account actual events on the Project.

5. Failure to submit a timely and properly certified and documented Trade Subcontractor Claim shall constitute a waiver by the Trade Subcontractor of its Claim.

C. Certification Of Trade Subcontractor Claim By CM/GC

1. Within thirty (30) days of receipt of a timely submitted and properly documented and certified Trade Subcontractor Claim, and if not resolved by the parties, the CM/GC shall deny the Trade Subcontractor Claim or, in accordance with the procedure set forth below, submit the

Trade Subcontractor Claim to the TJPA. For good cause shown, the CM/GC may request in writing an extension of time from the TJPA to submit the Trade Subcontractor Claim. The TJPA may, in its sole discretion, which shall not be unreasonably withheld, grant the CM/GC an extension of time to submit the Trade Subcontractor Claim.

2. Procedure For Submission Of Trade Subcontractor Claim By CM/GC

a. Certification by CM/GC of Trade Subcontractor Claim:

- i. The CM/GC, under penalty of perjury, shall certify, subject to the Report and Recommendation established below, the Trade Subcontractor Claim in accordance with Paragraph 13.02.I.B.3., above.

b. Report And Recommendation By The CM/GC

- i. Upon receipt of a Trade Subcontractor Claim, and prior to certification and submission of the Trade Subcontractor Claim, the CM/GC shall review the Trade Subcontractor Claim and analyze the Trade Subcontractor's entitlement and the corresponding quantum for the Trade Subcontractor Claim presented. The CM/GC's analysis shall be memorialized in a written Report and Recommendation to the TJPA and submitted to the TJPA on or before the deadline for submission of the Trade Subcontractor Claim to the TJPA.

ii. The Report and Recommendation shall include the following:

- (1) A narrative summary of the merit of the Trade Subcontractor Claim and the amount and/or time claimed;
- (2) The subcontract clause(s) and/or the Contract clause(s) upon which the Trade Subcontractor Claim is based;
- (3) A chronology of events and correspondence relating to the Trade Subcontractor Claim;
- (4) A detailed analysis of entitlement - the CM/GC shall set forth all facts and all reasons that support the Trade Subcontractor's entitlement for the additional compensation and/or time included in the Trade Subcontract Claim. The CM/GC shall perform an analysis of the Trade Subcontractor's delay analysis to ensure it is in compliance with Paragraph 13.02.II.B.4., above. If the CM/GC determines that there is no entitlement or only partial entitlement, the CM/GC shall set forth all reasons supporting such a determination.
- (5) A detailed analysis of quantum - the CM/GC shall specify the amount of the additional compensation sought in the Trade Subcontractor Claim. The CM/GC shall determine whether the Trade Subcontractor is entitled to all, some, or none of the additional compensation requested, and shall set forth all reasons supporting such a determination.
- (6) A list of all documents supporting the Trade Subcontractor Claim including, but not limited to, change order requests, change orders, specifications, drawings and BIM data, clarifications/RFIs, correspondence (including emails), schedules, and supporting cost records;
- (7) A recommendation that the TJPA approve or deny, in whole or in part, the Trade Subcontractor Claim.

D. Senior Project Staff Review Of Trade Subcontractor Claim

1. Within twenty (20) days of receipt of a timely submitted and properly documented and certified Trade Subcontractor Claim by the TJPA, senior project staff for the TJPA, the CMO,

the CM/GC and the Trade Subcontractor shall meet in-person to discuss and review the Trade Subcontractor Claim in an effort to resolve the Trade Subcontractor Claim.

2. The parties may agree to extend the twenty (20) day period to meet, as necessary, to accommodate the parties' schedules. Any extension to the twenty (20) day period does not excuse or extend any subsequent Trade Subcontractor Claim deadlines as set forth in this Paragraph 13.02.II.

E. Review Of The Trade Subcontractor Claim By The TJPA

1. The TJPA shall review only a timely, certified, and properly documented Trade Subcontractor Claim.
2. The TJPA shall respond to a Trade Subcontractor Claim in writing no later than forty-five (45) days after receiving the Trade Subcontractor Claim from the CM/GC. In its response, the TJPA shall grant or deny the Trade Subcontractor Claim, in whole or in part, with a written explanation of its decision. If the TJPA does not respond to the Trade Subcontractor Claim within the forty-five (45) day period, the Trade Subcontractor Claim is deemed denied in its entirety. For good cause, the TJPA may, in its sole discretion, extend the time for a reasonable duration to provide its response to a Trade Subcontractor Claim. The TJPA's response may be by or through its CMO.

F. Review By Dispute Resolution Advisor

1. Provided a Dispute Resolution Advisor ("DRA") Agreement for the Project has been agreed to by the TJPA, the CM/GC, and the Trade Subcontractor, no later than ten (10) days after the TJPA's response to the Trade Subcontractor Claim pursuant to Paragraph 13.02.II.E., or expiration of the forty-five (45) day period, whichever is earlier, the TJPA and/or the CM/GC may request review of and a hearing on the Trade Subcontractor Claim under and in accordance with the DRA Agreement for the Project.
2. A hearing on the Trade Subcontractor Claim by the DRA shall occur no later than thirty (30) days after the request for a hearing, or as soon thereafter as the DRA's calendar permits.
3. If the additional compensation or time claimed is based on a good faith estimate at the time of the Dispute Hearing, the DRA shall issue a written recommendation as to entitlement only, and defer its determination on additional compensation and/or time until actual costs and schedule impacts are known to the Trade Subcontractor and such information is submitted by the Trade Subcontractor to the DRA.

G. Review Of The Trade Subcontractor Claim By The Executive Director

1. Claims Not Previously Referred to the DRA
 - a. For any Trade Subcontractor Claim not previously referred to the DRA, no later than ten (10) days after the TJPA's response to the Trade Subcontractor Claim, or expiration of the forty-five (45) day period, whichever is earlier, the CM/GC may request review of the Trade Subcontractor Claim and the TJPA's response by the Executive Director. The request must be in writing, directed to the Executive Director and copied to the CMO. Failure by the CM/GC to make a timely request to the Executive Director, copied to the CMO, shall constitute acceptance by the CM/GC of the TJPA's response to the Trade Subcontractor Claim.
 - b. Upon a timely and proper request for review, the Executive Director or his/her designee, shall review the relevant documents, discuss the Trade Subcontractor Claim with the CM/GC and TJPA personnel assigned to the Project, and confirm or revise the TJPA's prior response to the Trade Subcontractor Claim. The Executive Director or his/her designee, shall issue a determination confirming or revising the TJPA's prior response to the Trade Subcontractor Claim no later than sixty (60) days after receiving a request for review from the CM/GC. The determination by the Executive Director or his/her

designee shall constitute the final administrative determination of the TJPA. If the Executive Director takes no action on a request for review within the sixty (60) day period, the TJPA's prior response to the Trade Subcontractor Claim shall constitute the final administrative determination by the TJPA. For good cause, the TJPA may, in its sole discretion, extend the time for a reasonable duration to provide a final administrative determination to a Trade Subcontractor Claim.

2. Claims Previously Referred to the DRA

- a. For any Trade Subcontractor Claim previously referred to the DRA, no later than fourteen (14) days after receiving the findings and recommendation of the DRA on the Trade Subcontractor Claim, the CM/GC may request review of the Trade Subcontractor Claim and the TJPA's response by the Executive Director. The request must be in writing (enclosing a copy of the DRA's written recommendation), directed to the Executive Director, and copied to the CMO. Failure by the CM/GC to make a timely request to the Executive Director, copied to the CMO, shall constitute acceptance by the CM/GC of the TJPA's prior response to the Trade Subcontractor Claim.
- b. The Executive Director or his/her designee, shall issue a determination confirming or revising the TJPA's prior response to the Trade Subcontractor Claim no later than thirty (30) days after receiving CM/GC's request for Executive Director review of the Trade Subcontractor Claim. The determination by the Executive Director or his/her designee shall constitute the final administrative determination of the TJPA. If the Executive Director takes no action on a request for review within the thirty (30) day period, the TJPA's prior response to the Trade Subcontractor Claim shall constitute the final administrative determination by the TJPA. For good cause, the TJPA may, in its sole discretion, extend the time for a reasonable duration to provide a final administrative determination to the Claim.

III. General Provisions

- A. False Claims - The CM/GC acknowledges and agrees that if it submits a false Claim or a false Trade Subcontractor Claim, the CM/GC may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with applicable local, State, and Federal statutes. Submission of a false Claim or false Trade Subcontractor Claim shall also constitute grounds for termination for cause of this Contract.
- B. Government Code Claim - The administrative procedures under this Paragraph 13.02 shall not operate to toll, waive, or excuse the CM/GC's compliance with the Government Code Claim requirements under California Government Code section 900 *et seq.* or the San Francisco Administrative Code, Chapter 10.
- C. Exclusive Administrative Remedy- A Claim or Trade Subcontractor Claim shall be the CM/GC and/or the Trade Subcontractor's sole and exclusive administrative remedy for additional compensation or time associated with its performance of its Work. Failure to submit a timely, certified, and properly documented Claim and/or Trade Subcontractor Claim shall constitute a waiver by the CM/GC and/or the Trade Subcontractor as to any claim relating to the performance of their Work and a failure to exhaust their administrative remedies.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.01 NOTICE OF DEFAULT; TERMINATION BY THE TJPA FOR CAUSE

- A. Grounds for Default. CM/GC is in Default of the Contract if CM/GC:
 - I. 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 TJPA 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 TJPA may, without prejudice to any other rights or remedies that the TJPA may have, issue a written Notice of Default to the CM/GC. The TJPA shall provide a copy of any Notice of Default to the CM/GC's surety.

1. The Notice of Default shall identify the ground(s) for Default and provide the CM/GC 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 CM/GC or its subcontractors/suppliers, CM/GC shall, within the 14-day cure period, (i) provide the TJPA with a schedule, acceptable to the TJPA, for completing the corrective Work and/or actions; and (ii) commence diligently the corrective Work and/or actions. The TJPA, after accepting CM/GC's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The TJPA will provide a copy of the amended Notice of Default to the CM/GC's surety.

C. Termination for Cause. If CM/GC 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 TJPA may, without prejudice to any other rights or remedies that the TJPA may have, immediately terminate employment of CM/GC 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 CM/GC 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 TJPA may deem expedient.

D. When the TJPA terminates the Contract for one of the grounds set forth in subparagraph 14.01.A, CM/GC 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 CM/GC. If such costs exceed the unpaid balance, CM/GC shall pay the difference to the TJPA. The amount to be paid to CM/GC or TJPA, 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, CM/GC 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 CM/GC shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

- E. If the TJPA terminates the Contract for cause, and it is later determined that none of the grounds set forth in subparagraph 14.01.A exist, then such termination shall be deemed a termination for convenience pursuant to Paragraph 14.03.

14.02 SUSPENSION BY THE TJPA FOR CONVENIENCE

- A. The TJPA may, without cause, order CM/GC in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the TJPA may determine.
- B. An adjustment shall be made as specified in subparagraph 7.02.A 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 CM/GC is responsible; or
 - 2. that an equitable adjustment is denied under another provision of this Contract.
- C. In the event that a suspension of the Work exceeds a period of six months from the date the TJPA ordered such suspension, the CM/GC may, upon ten days' notice to the TJPA, treat the suspension as a Termination For Convenience by the TJPA under this Article 14. In such event, the effective date for the Termination For Convenience shall be the date of the CM/GC's notice under this subparagraph.

14.03 TERMINATION BY THE TJPA FOR CONVENIENCE

- A. Pursuant to section 6.22L of the San Francisco Administrative Code the TJPA 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 TJPA shall determine that such termination is in the best interest of the TJPA. Any such termination shall be effected by delivery to CM/GC 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 TJPA, CM/GC 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. At the TJPA's sole discretion, option, and direction, the CM/GC shall assign to the TJPA or to any third-party designated by the TJPA, any or all subcontracts for any aspect of the Project (whether related to Pre-Construction or Construction Services) and turn over all records, documents, or work product developed or prepared under the Contract Documents, in all existing formats (electronic and paper), regardless of whether such record, document, or work product had been previously submitted to the TJPA or its consultants.
 - 5. Assign to the TJPA, in the manner, at the times, and to the extent directed by the TJPA, all of the right, title, and interest of CM/GC under the orders and subcontracts so terminated. The TJPA 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.
 - 6. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the TJPA, in writing, to the extent it may

require. The TJPA's approval or ratification shall be final for all the purposes of this Paragraph 14.03.

7. Transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, (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 TJPA.
 8. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the TJPA directs or authorizes, any property of the types previously referred to herein, but CM/GC (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 TJPA. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the TJPA to CM/GC 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 TJPA may direct.
 9. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.
 10. Take such action as may be necessary, or as the TJPA may direct, for the protection and preservation of the property related to this Contract which is in the possession of CM/GC and in which the TJPA has or may acquire an interest.
- C. After receipt of a notice of termination, CM/GC shall submit to the TJPA its termination claim, in the form and with the certification the TJPA 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 TJPA upon written request of CM/GC within such 3-month period or an authorized extension period. However, if the TJPA 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 CM/GC fails to submit its termination Claim within the time allowed, the TJPA may determine, on the basis of information available to the TJPA, the amount, if any, due to CM/GC because of the termination. The TJPA shall then pay to CM/GC the amount so determined.
- D. Subject to the previous provisions of this Paragraph 14.03, CM/GC and the TJPA may agree upon the whole or any part of the amount or amounts to be paid to CM/GC 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 CM/GC shall be paid the agreed amount. Nothing following, prescribing the amount to be paid to CM/GC in the event of failure of CM/GC and the TJPA to agree upon the whole amount to be paid to CM/GC 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 CM/GC pursuant to this subparagraph 14.03.D.
- E. If CM/GC and the TJPA fail to agree, as subparagraph 14.03.D provides, on the whole amount to be paid to CM/GC because of the termination of Work under Paragraph 14.03, the TJPA shall determine, on the basis of information available to the TJPA, the amount, if any, due to CM/GC by reason of the termination and shall pay to CM/GC 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 CM/GC 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 14.03.D, that the TJPA determines to be fair and reasonable. But, if it appears that CM/GC 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 CM/GC 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 TJPA shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to CM/GC the fair value, as determined by the TJPA, of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the TJPA, or to a buyer as previously provided.
- F. CM/GC shall have the right to dispute in a court of competent jurisdiction within the State of California any determination the TJPA makes under subparagraph 14.03.E. But, if CM/GC 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 TJPA's determination. In any case where the TJPA has determined the amount owed, the TJPA shall pay to CM/GC 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 TJPA; 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 CM/GC under this clause there shall be deducted:
 - 1. all unliquidated advance or other payments on account theretofore made to CM/GC, applicable to the terminated portion of this Contract;
 - 2. any Claim which the TJPA may have against CM/GC 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 CM/GC or sold, under the provisions of this Paragraph 14.03, and not otherwise recovered by or credited to the TJPA.
- H. If the termination hereunder be partial, before the settlement of the terminated portion of this Contract, CM/GC may file with the TJPA 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 TJPA and CM/GC 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. CM/GC 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.

END OF SECTION

SPECIFICATION ISSUE LOG

Revision	Date
0	July 30, 2010
1	October 29, 2010
2	December 13, 2010
3	September 7, 2012
4	February 13, 2013
5	March 4, 2013
6	October 25, 2013
7	January 2, 2014
8	July 13, 2015