

**GENERAL CONDITIONS
OF
THE CONTRACT
FOR
CONSTRUCTION**

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Arena/Plaza Work and the Garage Work

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 DEFINITIONS AND CONTRACT DOCUMENTS

1.1 Definitions. In addition to other terms defined throughout these General Conditions, as used in these General Conditions, the following terms shall have the meanings indicated below:

"ADA" shall mean the Title III of the Americans with Disabilities Act and the regulations and guidelines issued thereunder by the United States Department of Justice concerning accessibility of places and public accommodation and commercial facilities.

"Addenda" shall mean written or graphic instruments issued by Architect, Managing Design Architect or Owner that modify or interpret the Contract Documents by addition, deletion, clarification or correction.

"ADR Procedures" shall have the meaning set forth in Section 7.11 hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, or which is a director, officer, employee, partner (limited or general), or joint venturer of such specified Person. For the purpose of this definition, "control," when used with respect to any specified Person, means the possession, direct or indirect, of the power to vote 5% or more of the securities having ordinary voting power for the election of directors or the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" shall mean the Construction Manager-at-Risk Agreement, by and between Owner and Construction Manager, as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof.

"Allowances" shall mean items of Work, if any, that Owner agrees are not detailed enough for Construction Manager to provide a definitive price at the time Owner and Construction Manager agree on the GMP.

"Applicable Laws" shall mean any applicable law, enactment, statute, code, ordinance, charter, resolution, order, rule, regulation, guideline, authorization, or other direction or requirement of any Governmental Authority enacted, adopted, promulgated, entered or issued.

"Application for Payment" shall mean Construction Manager's certified request for payment for completed portions of the Work, including a breakdown of the Arena/Plaza and the Garage Work, as applicable, in the form required by the Contract Documents.

"Architect" shall mean Kendall/Heaton Associates, Inc. and its permitted successors and assigns or such other firm as may be designated by Owner from time to time, which entity shall be the architect-of-record for the Project.

"Arena/Plaza Work" shall mean that portion of the Work attributable to the construction of the new, state-of-the-art, sports and entertainment center, with plaza (also known as podium area), gatehouse, and retail space, all as more particularly described on **Exhibit E** and elsewhere in the Contract Documents.

"As-Built Drawings" shall mean the Drawings marked-up by or for Construction Manager to show the "as built" condition of the Work and other changes made during the construction process.

"Business Day" shall mean any day other than a Saturday, Sunday or legal holiday on which the City of San Francisco, California offices are closed to the public.

"Certificate for Payment" shall mean Architect's certificate to Owner authorizing payment to Construction Manager for the amount Architect determines to be properly due pursuant to a particular Application for Payment.

"Change Order" shall mean a written order signed by Owner or Owner's authorized agent, Architect and Construction Manager issued after the execution of the Contract Documents authorizing a change in the scope of Work, Construction Manager's compensation, the scheduled interim completion dates or the Contract Time.

"Claim" shall mean any claim, demand or assertion as a matter of right for a change in the Contract Sum, extension of time, compensation for damage or other relief with respect to any of the terms of the Contract Documents.

"Commissioning Plan" shall mean the commissioning plan for the Project to be prepared by Construction Manager and approved by Owner.

"Construction Change Directive" shall mean a written order prepared by either Owner Representative or Architect and signed by Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, Contract Time or both.

"Construction Manager" shall mean Mortenson | Clark, A Joint Venture, and its permitted successors and assigns or such other firm as may be designated by Owner from time to time.

"Construction Plan" shall mean a plan for construction of the Work that will include: (a) the construction staging plan setting forth construction scheduling, laydown areas and storage, trailer areas, trailer locations, priorities as to Site use, ingress/egress and other similar Site logistic matters for the Project; (b) procedures for the assignment of responsibilities for safety precautions and programs for the Work; (c) procedures for pollution prevention, noise control and idling of construction vehicles; and (d) procedures and plans to facilitate adequate coordination of the construction and planning of the Arena/Plaza Work with the construction and planning of the Garage Work.

"Construction Schedule" shall mean a detailed and comprehensive schedule (as revised in accordance with the Agreement) prepared by Construction Manager and consistent with all milestone dates set forth in the Master Project Schedule, utilizing a critical path method (CPM) arrow diagram network that is in conformance with accepted industry standards for projects of

this size, scope and complexity and that: (a) shows all major elements and phases of the Work (consisting of and differentiating between the Arena/Plaza Work and the Garage Work) with no activity having a duration greater than fourteen (14) days except for Submittals and procurement activities (which shall be agreed to by Construction Manager, Owner, Managing Design Architect and Architect); (b) breaks down each element or phase by trade; (c) shows early and late start dates so that all "float" time will be accurately identified; and (d) otherwise is in a form satisfactory to Owner, Managing Design Architect and Architect.

"Contract Documents" or "Contract" shall mean: (a) the Agreement, (b) these General Conditions of the Contract, (c) the Drawings, (d) the Specifications, (e) all Addenda issued prior to execution of the Agreement, and (f) all Modifications issued after execution of the Contract.

"Contract Sum" shall mean the total amount payable by Owner to Construction Manager pursuant to the Contract Documents.

"Contract Time" shall mean the time allowed for substantial completion of the Work as set forth in the Construction Schedule and, where applicable, the time allowed for completion of each milestone, phase or element of the Work, as adjusted pursuant to the Contract Documents.

"Defective Work" shall mean any Work that does not comply with the requirements of the Contract Documents.

"Deficiency List" shall mean, at any time, the list of incomplete Work and Work requiring repair or replacement prepared by Architect, and approved by Owner, upon written notification from Construction Manager to Owner and Architect that a particular Subcontract is completed.

"Design Team" shall mean Architect, Managing Design Architect, Snøhetta Architecture Design Planning (Senior Design Advisor), Treadwell & Rollo, a Langan Company (Geotechnical Engineer), RichyWorks (Retail Design Consultant) and such other design consultants agreed to by Owner in writing from time to time.

"Drawings" shall mean 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.

"Equipment" shall mean all equipment, tools (other than small tools), machinery, implements, and other items used in connection with the temporary or permanent Work, but not incorporated into the permanent Work. The "equipment" that is incorporated into the permanent Work is included in the definition of Materials and is part of the Work.

"Final Completion" or "finally complete" shall mean the stage in the progress of the Arena/Plaza Work and/or the Garage Work, as applicable, when such Work is completed in accordance with the terms of the Contract Documents and Construction Manager has satisfied all of its other obligations under the Agreement and the Contract Documents, including, without limitation, (a) all Governmental Authorities have given final, written approval of the entire Project, (b) a final unconditional Certificate of Occupancy has been granted and issued to Owner by the appropriate Governmental Authorities, and (c) all Punch List items have been completed

or corrected. Notwithstanding the foregoing, if any certificate, inspection or approval contemplated by the foregoing clauses (a) or (b) is not delivered or is delayed due to causes that are not the fault of Construction Manager and Construction Manager has otherwise complied with the Contract Documents, then the determination of Final Completion shall not be withheld or delayed for the purposes of the Contract Documents.

"Force Majeure" shall mean an act of God, fire, tornado, hurricane, flood, earthquake, explosion, war, terrorism, embargoes, civil disturbance, unusually severe weather that is abnormal for the time of year (including named storms) or industry-wide labor strikes. Without limiting the generality of foregoing, the following shall not constitute events of Force Majeure: (a) changes in economic conditions or changes in the financial condition of Construction Manager, a Subcontractor or Supplier, (b) labor force shortages or the inability of Construction Manager, a Subcontractor or Supplier, to retain qualified personnel, and (c) delays caused by the failure of any Subcontractor, manufacturer or Supplier to timely deliver equipment or materials.

"Garage Work" shall mean that portion of the Work attributable to the construction of approximately 1,000 parking spaces, as more particularly described on **Exhibit E** and elsewhere in the Contract Documents.

"General Conditions" shall mean these General Conditions of the Contract for Construction.

"GMP" shall mean the guaranteed maximum price for the Arena/Plaza Work or the Garage Work, as applicable, to be established in the GMP Amendments for the Arena/Plaza Work and the Garage Work as set forth in the Agreement.

"Governmental Authority" shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Project or the Site.

"Hazardous Materials" shall mean any hazardous waste, toxic substance, asbestos containing material, petroleum product, or related materials including, but not limited to, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 *et seq.*; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.*; and the corresponding regulations (as amended) issued pursuant to these acts.

"Indemnitees" shall mean Owner, its Affiliates, GSW Real Estate LLC, Owner Representative, Strada Investment Group, Machete Development LP (d.b.a. Machete Group), and, if required by any contract, the Office of Community Investment and Infrastructure and the City and County of San Francisco, and their respective officers, directors, members, managers, representatives, board members, shareholders, partners, employees and agents.

"Joint Venture Partner" shall mean each of M. A. Mortenson Company and Clark Construction Group – California, LP.

"Lenders" shall mean any bank, insurance company, trust, corporation, association, firm, partnership, person, or other entity that has loaned or agreed to lend or otherwise provide funds or credit enhancement to enable Owner to build the Project.

"Managing Design Architect" shall mean Manica Architecture, PC and its permitted successors and assigns or such other firm as may be designated by Owner from time to time, which entity shall be the design architect for the Project.

"Master Project Schedule" shall mean a project schedule using a critical path method, prepared by Construction Manager that identifies, coordinates and integrates the anticipated design and construction schedules for the Project, Owner's responsibilities, Governmental Authority reviews and other activities as are necessary for the timely completion of the Work (consisting of the Arena/Plaza Work and the Garage Work), as set forth in **Exhibit C** hereof.

"Materials" shall mean all materials, supplies, appliances, equipment, systems, fixtures and other items to be incorporated into the Work or consumed in connection with the Work.

"Modification" shall mean (a) a written amendment to the Agreement signed by Owner and Construction Manager, (b) a Change Order or a Construction Change Directive, (c) a written interpretation issued by Architect pursuant to Section 4.1.3 hereof, or (d) a written order for a minor change in the Work issued pursuant to Section 12.15 hereof.

"NBA" shall mean the National Basketball Association.

"NBA Documents" shall mean, collectively, the 2012 NBA Facilities Standards and any other rules, guidelines, regulations or requirements of the Office of National Basketball Association, the Commissioner, and/or the Board of Governors, as applicable, all as the same now exists.

"Owner" shall mean GSW Arena LLC, a Delaware limited liability company.

"Owner Representative" shall mean David Carlock, an individual, or any successor to the foregoing designated in writing by Owner.

"Person" shall mean an individual, sole proprietorship, partnership, corporation, joint stock company, trust, unincorporated association, joint venture, limited liability company, limited liability association, unincorporated association, Governmental Authority, or any other entity.

"Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Construction Manager to illustrate a Material, product or system for some portion of the Work.

"Progress Report" shall mean a monthly progress report to be prepared by Construction Manager and will contain the following: (a) listing of actual costs for completed activities, estimates for uncompleted tasks and projections for anticipated funding requirements based on the most recently updated Master Project Schedule and/or Construction Schedule; (b) identification of variances between actual and budgeted or estimated costs; (c) the updated

Construction Schedule; (d) progress photos; (e) an executive summary; (f) a discussion of pending items and existing or anticipated problems, status of Requests For Information ("RFIs"); (g) a safety and accident report; (h) information on each Subcontractor and each Subcontractor's work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders and Construction Change Directives and relating such information to the Construction Schedule and the GMP; (i) a list of all identified Claims, any threatened claims and issues that, in the reasonable judgment of Construction Manager, may potentially become Claims, including any potential Change Orders as identified in Construction Manager's potential Change Order log (j) status of construction contingency, including a cumulative log with detailed descriptions of all uses of the construction contingency (including amount, description and date of such uses); (k) procurement decisions regarding furnishings, fixtures and equipment; (l) an Insurance Certificate Log, with attached Certificates of Insurance and endorsements from Construction Manager and all Subcontractors as required by the Contract Documents and (m) such other relevant information as may be reasonably requested by Owner from time to time.

"Project" shall mean the Arena/Plaza project and the Garage project described on **Exhibit E**, as more particularly described in the Contract Documents, for which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or by Separate Contractors.

"Punch List" shall mean the list prepared by Construction Manager, supplemented by Architect and approved by Owner, containing minor items of incomplete Work not impacting Substantial Completion and to be completed and/or corrected after Substantial Completion.

"Retail Work" shall mean that portion of the Work attributable to the construction of approximately 65,000 square feet of retail space, as more particularly described on **Exhibit E** and elsewhere in the Contract Documents

"Samples" shall mean physical examples that illustrate Materials or workmanship and establish standards by which the Work will be judged.

"Schedule of Values" shall mean the statement furnished by Construction Manager reflecting the portions of the GMP allocated to the various portions of the Work and, when approved by Owner, Managing Design Architect and Architect, used as the basis for reviewing Applications for Payment.

"Separate Contract" shall mean any contract or agreement between Owner and a Separate Contractor for services for the Project that must be coordinated with the Work.

"Separate Contractor" shall mean any entity hired by Owner to render any services for the Project that must be coordinated with the Work.

"Shop Drawings" shall mean drawings, diagrams, illustrations, schedules, performance charts, and other data specifically prepared for the Project by Construction Manager or any Subcontractor, manufacturer, supplier or distributor, and if prepared by a Subcontractor, manufacturer, supplier or distributor, then reviewed by Construction Manager for completeness and correctness, which illustrate how specific portions of the Work shall be fabricated and/or installed.

"Site" shall mean that portion of the approximately 11-acre site in San Francisco's Mission Bay neighborhood bounded by 3rd, 16th and South Streets, and Terry Francois Blvd on which the Project, consisting of the Arena/Plaza Work and the Garage Work, will be located, as more particularly identified in **Exhibit D** attached hereto.

"Specifications" shall mean that portion of the Contract Documents consisting of the written requirements for Materials, standards and workmanship for the Work, and performance of related services.

"Subcontract" shall mean any contract or agreement between Construction Manager and a Subcontractor for performance of a portion of the Work.

"Subcontractor" shall mean a person or entity who has a direct or indirect contract with Construction Manager to perform any of the Work (including Equipment leases and Material purchase agreements) at the Site. The term Subcontractor includes Suppliers, but does not include any Separate Contractor unless expressly assigned in writing to Construction Manager by Owner and accepted by Construction Manager.

"Submittals" shall mean Shop Drawings, Product Data, Samples and similar submittals.

"Sub-subcontractor" shall mean a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the Site. The term Sub-subcontractor means a sub-subcontractor or an authorized representative thereof.

"Substantial Completion" or "substantially complete" shall mean that the Work (or separable units or phases as provided in the Contract Documents) is complete in accordance with the Contract Documents, such that the Project is ready for opening to the general public and full occupancy or use by Owner. A minor amount of work, as determined by and at the reasonable discretion of Owner, Managing Design Architect and Architect, such as installation of minor accessories or items, a minor amount of painting, minor replacement of Defective Work that does not materially interfere with the beneficial occupancy and use of the Project will not delay determination of Substantial Completion. For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as substantially complete. In no event shall Substantial Completion be deemed to have occurred unless (a) a temporary Certificate of Occupancy has been issued by the appropriate Governmental Authorities (if applicable) and all designated or required governmental inspections and certifications have been made and posted, (b) all Work shall have been approved and accepted by Managing Design Architect, Architect and Owner, such approval and acceptance not to be unreasonably withheld, subject only to the Punch List items, and (c) all systems included in the Work are operational as designed and scheduled and instruction of personnel in the operation of such systems has been completed, and (d) to the extent applicable, the NBA shall have completed an inspection of the Work and shall have given permission, in compliance with NBA facility standards, for playing NBA games at the Project, in accordance with the NBA Documents. Notwithstanding the foregoing, if any certificate, inspection or approval contemplated by the foregoing provisions is not delivered or is delayed due to causes that are not the fault of Construction Manager and Construction Manager has otherwise complied with the Contract Documents, then the

determination of Substantial Completion shall not be withheld or delayed for the purposes of the Contract Documents.

"Substitution" shall mean any substitute product or process other than that specified in the Contract Documents that completely fulfills the requirements of the Contract Documents.

"Supplier" shall mean a Person who has an agreement with Construction Manager or its Subcontractors or Sub-subcontractors to supply by sale or lease, directly or indirectly, any Materials for the Work.

"Work" shall mean the furnishing of all Material, labor, detailing, layout, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements of the Arena/Plaza Work and the Garage Work, as applicable, as set forth in the Contract Documents and items reasonably inferable therefrom, as set forth in Section 1.5.2 hereof, and consistent therewith for the proper execution and completion of the construction and other services required of Construction Manager by the Contract Documents, whether provided or to be provided by Construction Manager or a Subcontractor, or any other entity for whom Construction Manager is responsible, and whether or not performed or located on or off of the Site.

1.2 Other Terms. Unless otherwise defined herein, terms in these General Conditions shall have the same meaning as those words that have well known technical or construction industry meanings and are used in these General Conditions with such recognized meanings.

1.3 Context. As the context of these General Conditions may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof, is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

1.4 Incorporation by Reference. All Exhibits referenced in these General Conditions are hereby incorporated into these General Conditions by such reference and are deemed to be an integral part of these General Conditions.

1.5 Correlation and Intent of Contract Documents.

1.5.1 The Contract Documents represent the entire and integrated agreement between Construction Manager and Owner hereto and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Managing Design Architect or Architect and Construction Manager or (b) between Owner and a Subcontractor or Sub-subcontractor.

1.5.2 The Contract Documents are complementary and are intended to include all items necessary for the execution and performance of the Work by Construction Manager. Construction Manager shall perform all Work indicated in or reasonably inferable

from and consistent with the Contract Documents for the proper execution and completion of the Work. If, however, any provision of the Agreement conflicts with a provision of the Contract Documents, or if there is a conflict within the Agreement or within any of the Contract Documents, then the provision that imposes the quality, quantity, duty or obligation most consistent with the intent of the Contract Documents, as reasonably determined by Owner, shall govern. In particular, the Specifications contain detailed procedures relating to certain Contract requirements contained in the Agreement and these General Conditions, including payment procedures, Contract modification procedures, Submittals, project meetings, schedules, reports, quality assurance and quality control. The detailed procedures and requirements of the Specifications shall be deemed supplementary to the requirements of the other Contract Documents and shall be followed in addition to the applicable requirements of the other Contract Documents.

1.5.3 In all instances where Construction Manager discovers any inconsistency in the quality or quantity of Work required under the Contract Documents before Construction Manager executes the Work, then Construction Manager shall promptly bring such inconsistency to the attention of Owner and such inconsistency shall be resolved by (a) Change Order, (b) a written interpretation issued by Managing Design Architect or Architect pursuant to Section 4.1.3 hereof, or (c) a written order for a minor change in the Work issued by the Managing Design Architect or Architect pursuant to Section 12.15 hereof.

1.5.4 The Specifications are separated into titled sections for convenience only and shall not control Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. No responsibility is assumed by Owner, Managing Design Architect, Architect or the Owner Representative for defining the limits of any Subcontractor's work or the work of any trade by reason of the arrangement of the Specifications or the Drawings. Such separation shall not relieve Construction Manager from the responsibility for the satisfactory coordination and completion of the entire Work.

1.6 Ownership and Use of Documents.

1.6.1 The Drawings, Specifications and other documents, including reports, surveys, and electronic data prepared by the Design Team or their respective consultants for the Project ("Instruments of Services") are and shall remain the property of Owner. Neither Construction Manager nor any Subcontractor shall own or claim a copyright in the Instruments of Services, and Owner shall be deemed the author of them and shall retain all common law, statutory and other reserved rights, in addition to the copyright. The Instruments of Services and copies thereof furnished to Construction Manager are for use solely with respect to this Project and are not to be used by Construction Manager or any Subcontractor on other projects or for additions to this Project after Final Completion without the specific written consent of Owner. Construction Manager and Subcontractors are granted a limited license to use and reproduce applicable portions of the Instruments of Services appropriate to and for use in the execution of their Work under the Contract Documents. If the Instruments of Services prepared by the Design Team contain the statutory copyright notice, then all copies made under this license shall also bear the statutory copyright notice. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of Owner's copyright or other reserved rights.

1.6.2 Construction Manager grants an irrevocable, royalty-free license to Owner in all reports, surveys, documents and other work product of Construction Manager relating to the Work or performance of the services under the Contract Documents, whether hard copy or on electronic media (collectively, "Work Product"). The foregoing license is granted solely for Owner's use in connection with completing the construction of the Project, commissioning the Project, maintenance and repair of the Project and for any future renovations, expansions or additions to the Project. Upon any termination of the Agreement, copies of all such Work Product shall be delivered to Owner within fourteen (14) days after any such termination, provided that Construction Manager shall be entitled to keep one record copy of such Work Project for archival purposes.

1.6.3 Construction Manager shall provide Owner access in the County of San Francisco, California at all reasonable times to the Work Product. Access to financial information shall be as set forth in Section 9.1.2 hereof. If Construction Manager asserts that any of the requested records or documents contain trade secrets or other proprietary material, then Construction Manager may take reasonable precautions to protect such trade secrets or other proprietary materials, including the requirement that private inspection only, and not copying, be permitted at a time and place reasonably convenient to Owner.

ARTICLE 2 ADMINISTRATION OF THE CONTRACT

2.1 Owner Representative.

2.1.1 Owner Representative is authorized to act on Owner's behalf with respect to the Project and any necessary approvals or authorizations under the Contract Documents and has the power to bind Owner. Notwithstanding anything to the contrary in the Contract Documents, the Owner Representative is not authorized to revoke, alter, or waive any requirements of the Contract Documents. Communications and authorizations provided to or received from Owner Representative shall be deemed to be provided to or received from Owner. Owner may change the Owner Representative by written notice to Construction Manager at least five (5) days in advance of such change. Owner Representative is not responsible for design or construction management, except as otherwise provided in the Contract Documents, and none of the activities of Owner Representative supplants any services or responsibilities customarily furnished by any member of the Design Team or required of Construction Manager except as otherwise provided in the Contract Documents.

2.1.2 All instructions by Owner to Construction Manager relating to services performed by Construction Manager will be issued or made through Owner Representative in writing. All communications and Submittals of Construction Manager to Owner shall be issued or made through Owner Representative. Owner Representative has authority to establish procedures, consistent with the Contract Documents, to be followed by Construction Manager and Subcontractors.

2.1.3 It is acknowledged and agreed that no provision of the Contract Documents that provides for any approval, review or similar participation by Owner shall be

construed or interpreted to limit Construction Manager's obligations and responsibilities pursuant to the Contract Documents.

2.2 Design Team. All communications, directives, instructions, interpretations and actions required of the Design Team shall be issued or taken only by or through Architect or (as applicable) Managing Design Architect, or such party's authorized representative. The authorized representatives Architect and Managing Design Architect may be one or more representatives designated in writing by Architect or Managing Design Architect (as applicable) and authorized to perform the duties and carry out the responsibilities of such party at the Site. The members of the Design Team shall not be liable to Construction Manager or any of the Subcontractors, their Sub-subcontractors, or Suppliers of any of them with respect to any agreement or obligation of Owner contained in the Contract Documents or otherwise arising out of the Work to be performed by Construction Manager.

2.3 Administration of the Contract.

2.3.1 Managing Design Architect and Architect (as applicable) will provide administration of the contract as herein described for the Work, and will advise and consult with Owner as related to their respective scopes of services. Managing Design Architect and Architect will have authority to act on behalf of Owner as related to the Work only to the extent provided in the Contract Documents unless otherwise modified by written instrument executed by Owner.

2.3.2 Managing Design Architect and Architect (as applicable) will determine in general that the Work of Construction Manager is being performed in accordance with the Contract Documents, and will endeavor to guard Owner against defects and deficiencies in the Work of Construction Manager. Owner Representative will be Owner's day-to-day representative at the Site with whom Construction Manager may consult and through whom Construction Manager shall obtain all instructions and actions required of Owner, Managing Design Architect or Architect by the Contract Documents. Owner Representative, Managing Design Architect and Architect will keep Owner informed of the progress of the Work and will be Owner's advisors concerning all instructions and actions requested of Owner during the course of the Work. Owner may, by separate written instrument, authorize Owner Representative to take certain actions on Owner's behalf, and to the extent so authorized, to execute instruments evidencing such action.

2.3.3 Managing Design Architect and Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, Managing Design Architect and Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as architects, Managing Design Architect and Architect will keep Owner informed of the progress of the Work, and will endeavor to guard Owner against defects and deficiencies in the Work of Construction Manager.

2.3.4 Managing Design Architect, Architect, Owner, and Owner Representative will not be responsible for or have control or charge of or specify any

construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for Construction Manager's failure to carry out the Work in accordance with the Contract Documents. Managing Design Architect, Architect, Owner, and Owner Representative will not be responsible for or have control or charge over the acts or omissions of Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.3.5 Managing Design Architect, Architect, Owner, and Owner Representative shall at all times have reasonable access to the Work wherever it is in preparation and progress. Construction Manager shall provide facilities for such access so that the Managing Design Architect, Architect, and Owner Representative may perform their functions under the Contract Documents. Managing Design Architect, Architect, and Owner Representative shall at all times comply with Construction Manager's rules for the Site, including the Project safety program.

2.3.6 Owner Representative will review and approve schedules for construction to be prepared and submitted by Construction Manager in accordance with the Contract Documents, and will monitor performance of the Work by Construction Manager so as to advise Owner as to Construction Manager's compliance with its schedules for performance of the Work, but Owner Representative shall have no responsibility to Construction Manager for Construction Manager's compliance therewith or its timely performance of the Work. Owner Representative will schedule and coordinate the Work of Separate Contractors on the Project, including their use of the Site consistent with the Construction Schedule and the Contract Documents, and Construction Manager shall cooperate with Owner Representative in connection with such scheduling and coordination.

2.3.7 Owner or Construction Manager may make written request to Managing Design Architect or Architect (as appropriate) for Requests for Information ("RFI") necessary for the proper execution or progress of the Work. Any RFI from Construction Manager shall be submitted in good faith and shall include, at a minimum, (a) a detailed written statement that indicates the specific Drawings or Specifications in need of clarification, (b) the nature of the clarification requested, and (c) the proposed answer or solution as required by Section 4.3 for the RFI. Architect shall issue a written answer for each RFI simultaneously to Construction Manager and Owner (along with necessary descriptive drawings, specifications, or other documents, as necessary) with reasonable promptness, not to exceed seven (7) days, to avoid unnecessary delay or impact to the critical path or cost to the Project. Construction Manager, Architect, and Owner shall develop and mutually agree to a protocol for issuing, managing and responding to RFIs.

2.3.8 Managing Design Architect and Architect shall advise Owner regarding disputes and other matters in question between Construction Manager and Owner that relate to the execution or progress of the Work or the interpretation of the Contract Documents. After consultation with Owner Representative, Managing Design Architect or Architect (as applicable) will make recommendations to Owner. All interpretations of Managing Design Architect and Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in graphic form.

2.3.9 Managing Design Architect, Architect and Owner Representative will have authority to reject Work that does not conform to the Contract Documents, and to require special inspection or testing. Whenever it is considered, in Owner Representative's reasonable opinion, necessary or advisable for the implementation of the intent of the Contract Documents, Owner Representative will have authority to require special inspection or testing of the Work in accordance with Section 4.14 hereof whether or not such Work has been then fabricated, installed or completed. However, neither Managing Design Architect, Architect nor Owner Representative's authority to act under this Section 2.3.9, nor any decision made by them in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of Managing Design Architect, Architect or Owner Representative to Construction Manager, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.3.10 Architect will receive from Construction Manager and review all Submittals and coordinate them with information contained in related documents. Such actions shall be taken with reasonable promptness so as to cause no delay in the progress of the Work and shall be consistent with the time periods set forth in any submittal schedule agreed to by Construction Manager and Architect, and if no such time periods are established, then in no event more than fourteen (14) days (except when additional time is reasonably required and Owner grants additional time to Architect). Construction Manager, Architect, and Owner shall develop and mutually agree to a protocol for Submittals.

2.3.11 Architect and/or Managing Design Architect (as applicable) will review and approve or take other appropriate action upon Construction Manager's Submittals, but only for conformance with the design concept of the Work and the information given in the Contract Documents and transmit the appropriate responses with the Submittal directly to Construction Manager. Such action shall be taken with reasonable promptness so as to cause no delay and shall be consistent with the time periods set forth in any submittal schedule agreed to by Construction Manager, Architect and, as necessary, Managing Design Architect, and if no such time periods are established, then in no event more than fourteen (14) days. Either Managing Design Architect's or Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.3.12 Owner Representative will assist Architect in conducting inspections to determine the dates of Substantial Completion and Final Completion, and will receive and forward to Owner for Owner's review written warranties and related documents required by the Contract Documents and assembled by Construction Manager. Architect will issue a final Certificate for Payment upon compliance with the requirements of Section 9.11 hereof.

2.3.13 The duties, responsibilities and limitations of authority of Managing Design Architect, Architect and Owner Representative as Owner's representatives during construction as set forth in the Contract Documents, may not be modified or extended without written consent of Owner, Construction Manager, and Managing Design Architect, Architect or Owner Representative (as applicable), which consents shall not be unreasonably withheld.

2.3.14 In no event shall an act or omission on the part of Owner, Managing Design Architect, Architect, or Owner Representative relieve Construction Manager from its obligation to perform the Work in full compliance with the Contract Documents.

ARTICLE 3

Owner

3.1 Information and Services Required of Owner. Upon request of Construction Manager, Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site, all to the extent available and necessary for proper performance of the Work. Construction Manager shall review all such materials submitted by Owner and notify Owner Representative within seven (7) days of Construction Manager's discovery of any inaccuracies or inconsistencies in such materials. Construction Manager waives any right to recover damages from any such inaccuracy or inconsistency to the extent such damages are caused by its failure to notify Owner Representative as and when required. Upon written request of Construction Manager, information or services under Owner's control, and reasonably required for proper performance of the Work, shall be furnished by Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2 Owner's Right to Stop the Work. If Construction Manager fails to correct Defective Work as required by Section 13.2 hereof, fails to carry out the Work in accordance with the Contract Documents or fails to comply with the Contract Documents without promptly rectifying any such failure, Owner may, by a written order signed by Owner, order Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Construction Manager or any other person or entity. Owner's exercise of its right to stop the Work shall not relieve Construction Manager of any of its responsibilities and obligations under or pursuant to the Contract Documents.

3.3 Owner's Right to Carry Out the Work. If Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within five (5) days after receipt of written notice from Owner to Construction Manager to commence and continue correction of such default or neglect with diligence and promptness, Owner may, after such five (5)-day period, and without prejudice to any other remedy Owner may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the GMP the cost of correcting such deficiencies, including compensation for the Managing Design Architect's, Architect's and Owner Representative's additional services made necessary by such default, neglect or failure. If the GMP is not sufficient to cover such amount, Construction Manager shall pay the difference to Owner.

3.4 Additional Rights. The rights stated in this Article 3 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 4
CONSTRUCTION MANAGER

4.1 Review of the Contract Documents.

4.1.1 Construction Manager shall carefully study and compare the Contract Documents and shall at once report to Architect and Owner Representative any error, inconsistency or omission or any variance from Applicable Laws that may be discovered and any necessary changes shall be accomplished by appropriate Modification. Notwithstanding the above Architect, and not Construction Manager, shall have responsibility to confirm that the Contract Documents comply with Applicable Laws relating to design matters. Construction Manager shall not be liable to Owner, Architect or Owner Representative for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents, unless Construction Manager discovered such errors, inconsistencies or omissions and failed to report as required by this Section 4.1. Construction Manager shall perform no portion of the Work at any time without Contract Documents or, where required, approved Submittals for such portion of the Work.

4.1.2 In event of conflicting requirements between items on the Drawings or between items in the Specifications, the more stringent shall govern. Figured dimensions on the Drawings shall take precedence over scaled dimensions, and large-scale Drawings shall take precedence over small-scale Drawings.

4.1.3 In the event of errors, inconsistencies or omissions are discovered by Construction Manager in the Contract Documents, Construction Manager shall not proceed with the affected portions of the Work until Construction Manager has requested and received written interpretation with respect thereto from Architect. Requests for interpretation shall not become a reason for an extension of time, unless Architect unreasonably delays providing such interpretation. If Construction Manager proceeds with Work involving an error, inconsistency or omission in the Contract Documents prior to receipt of a clarification thereof requested from Architect, or knowing that an error, inconsistency or omission exists nonetheless proceeds with Work without requesting such interpretation, Construction Manager shall, without increase to the GMP, correct Work performed, and/or furnish and install Work that may be required in accordance with the Contract Documents as determined by Architect.

4.1.4 Unless otherwise noted by Construction Manager to Owner in writing, commencement of any particular portion of the Work shall constitute a representation by Construction Manager that Construction Manager has reviewed the Contract Documents associated with such portion of the Work, and that to the best of Construction Manager's knowledge, the Contract Documents are sufficiently detailed and complete to permit Construction Manager to (a) commence that portion of the Work and (b) complete that portion of the Work in accordance with the Contract Documents and all Applicable Laws.

4.1.5 If Construction Manager observes that any of the Contract Documents are at variance with any permits or governmental notices pursuant to Section 4.8, Construction Manager shall promptly notify Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.2 Supervision and Construction Procedures.

4.2.1 Construction Manager shall provide administrative, management and related services as required to coordinate, supervise and direct the performance of the Work by all Subcontractors with each other and with the activities and responsibilities of Owner and Architect to complete the Work in accordance with the Contract Documents. Construction Manager shall be responsible for implementing the Construction Plan.

4.2.2 Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures, including those employed by Subcontractors in the performance of the Work and shall coordinate all portions of the Work under the Contract Documents.

4.2.3 Construction Manager shall coordinate all aspects of the Work with all Governmental Authorities and utility companies that may be involved in the Work, but is not responsible for their actual performance.

4.2.4 Construction Manager shall be responsible to Owner for the acts and omissions of Construction Manager's employees, Subcontractors and their respective agents and employees, and any other persons performing any of the Work under a contract with Construction Manager, or claiming by, through or under Construction Manager, for all damages, losses, costs and expenses resulting from such acts or omissions.

4.3 Communication. Construction Manager shall develop, in conjunction with Owner, Architect and (if requested by Owner) Managing Design Architect, procedures acceptable to such parties for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes, Construction Change Directives and Change Orders. All requests for information by Construction Manager shall be submitted in good faith and shall contain Construction Manager's proposed answer or solution to the request unless the requesting party, in good faith, has not identified a proposed solution. The foregoing or the submission or preparation by Construction Manager of a proposed answer or proposed solution shall not be deemed to create any liability on Construction Manager for design or adequacy of the proposed answer or solution.

4.4 Meetings; Reports; Schedule Updates.

4.4.1 Construction Manager shall schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems, safety and scheduling. Construction Manager shall hold progress and coordination meetings with Owner, Architect and (as requested by Owner) other members of the Design Team, at least weekly throughout the construction period. Construction Manager shall prepare and promptly distribute minutes of such meetings to Owner and all other persons or organizations in attendance, which meeting minutes shall include agreed to action items, due dates and the responsible party for each action item. Owner shall be notified in writing sufficiently in advance and may, at their option, attend such meetings.

4.4.2 Construction Manager shall update and distribute to Owner and Architect, on a monthly basis, the Master Project Schedule and Construction

Schedule incorporating its activities and those of Subcontractors, including processing of Submittals and delivery of products requiring long lead time procurement and showing current conditions and revisions required by actual experience. Construction Manager shall maintain the progress of the Work in accordance with the Construction Schedule.

4.4.3 Construction Manager shall keep a daily log containing a record of weather (including specific information regarding named storm preparation and costs incurred or lost time due to named storms), Subcontractor's Work on the Site, number of workers, Work accomplished, problems encountered, Project meetings held at the Site, and other similar relevant data as Owner may reasonably require. Construction Manager shall provide a copy of the log to Owner and Architect on a daily basis.

4.4.4 Construction Manager shall inspect the Work on an ongoing basis and shall maintain an ongoing log of non-conforming Work that has been installed. The log shall record any items that have been noted as non-conforming by Governmental Authorities, Owner, Architect, or other members of the Design Team. Such log shall be available to Owner during regular business hours and shall be included in Construction Manager's monthly Progress Report.

4.4.5 Construction Manager shall maintain a log of (a) recordable OSHA incidents and (b) recordable lost time accidents, a format that is acceptable to Owner. Such log shall be available to Owner during regular business hours.

4.4.6 Construction Manager shall maintain a log of all Submittals in a format that is acceptable to Owner, which log shall track the date of receipt of each Submittal, deadlines for review and approval of the Submittal and the status of when review or approval was completed. Construction Manager shall monitor the Submittal log to assure that deadlines are timely met. Such log shall be available to Owner during regular business hours.

4.4.7 Construction Manager shall provide Owner with periodic updates for the schedules and reports required pursuant to this Section 4.4.

4.4.8 Construction Manager shall maintain the reports, updates, schedules and other documents set forth in this Section 4.4 in a web-based system and update it daily. Such web-based system shall be made available to Owner, Owner Representative, Managing Design Architect and Architect.

4.5 Labor and Materials.

4.5.1 Unless otherwise provided in the Contract Documents, Construction Manager shall provide and pay for all labor, Materials, tools, construction Equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.5.2 Construction Manager shall at all times enforce strict discipline and good order among Construction Manager's employees and shall not employ on the Work at the Site of any unfit person (including any employee who reports for work under the influence of alcoholic beverages or drugs, who drinks alcoholic beverages, or illegally uses drugs on the Site)

or anyone not skilled in the task assigned them. Construction Manager shall promote and endeavor to maintain a workable and cooperative relationship among Subcontractors. Construction Manager shall take all steps necessary and appropriate to enforce the Subcontracts as needed to perform these General Conditions.

4.5.3 Owner and the San Francisco Building & Construction Trades Council (the "Building Trades Council") have entered into a Letter of Intent, a copy of which has been delivered to Construction Manager, setting forth the intent of Owner and the Building Trades Council to enter into a project labor agreement governing the construction of the Project. Construction Manager shall be signatory to the Building Trades Council Union(s) Master Labor Agreement(s) and shall enter into the Mission Bay Project Labor Agreement (a copy of which has been provided to Construction Manager), including any side letters mutually agreed to by the parties thereto, to govern construction work on the Project. All Work shall be performed by employees employed by Subcontractors signatory to the Master Labor Agreements of the Building Trades Council affiliated Unions. Consistent with Owner's Letter of Intent with Building Trades Council, Construction Manager shall pay Forty Dollars (\$40.00) for each hour that construction work was performed by employees of Subcontractors not signed to an agreement with the appropriate Building Trades Council affiliated union covering the geographic area of the Project and having traditional and customary jurisdiction over the work performed by that Subcontractor. The liquidated damages shall be paid as follows: Twenty Dollars (\$20.00) shall be paid to the qualified pension plan, and Twenty Dollars (\$20.00) shall be paid to the qualified health and welfare plan of the union having jurisdiction over the construction work performed on the Project.

4.6 Warranty. Construction Manager warrants and guarantees that all Materials furnished under the Contract Documents to be incorporated into the Project shall be new unless otherwise specified, and that all Work will be of the specified quality, free from faults or defects in Materials or workmanship (except those inherent in the materials specified), and in accordance with requirements of the Contract Documents. Construction Manager shall, or shall cause the applicable Subcontractor, to remove or correct, without increase to the GMP, all Work, including substitutions not properly approved and authorized, that is found to be defective in material and workmanship or not in conformance with Applicable Laws and the Contract Documents within a period of one year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the Contract Documents. Construction Manager also agrees to remove or correct, without increase to the GMP, to Owner any portions of the Work that may be damaged or destroyed by such Defective Work or by the removal or correction of such Defective Work.

4.7 Compliance with Applicable Laws.

4.7.1 In addition to its responsibilities under the Agreement, Construction Manager shall give all notices and comply with all Applicable Laws bearing on the performance of the Work. If Construction Manager performs any Work that it knows or, as an experienced contractor, reasonably should have known to be contrary to any Applicable Laws, and without prompt notice to Architect and Owner Representative, then Construction Manager shall assume full responsibility therefor and shall bear all costs attributable thereto to the extent such costs could have been avoided. Notwithstanding the foregoing, Construction Manager shall not be



responsible for corrections or additions to the Work that are required because the Contract Documents violate Applicable Laws.

4.7.2 In the event that the critical path of the Construction Schedule or Cost of the Work is adversely and materially affected as a direct result of the enactment, adoption, promulgation, issuance, modification, or repeal, after the execution date of the GMP Amendment (as defined in the Agreement), of any Applicable Law (other than any federal, state or local income, sales tax or similar law), then Construction Manager shall be entitled to an equitable adjustment in the GMP (in the event of a material adverse effect on the Cost of the Work) or an extension of time (in the event of a material adverse effect on the Construction Schedule), unless Construction Manager was, on or prior to the execution date of the GMP Amendment, informed or, through the exercise of due diligence, would have been informed of the potential for such enactment, adoption, promulgation, issuance, modification, or repeal of Applicable Law.

4.8 Permits, Fees and Notices. Unless otherwise provided in the Contract Documents, Construction Manager shall prepare, obtain and pay applicable fees (if any) for permits and governmental fees, licenses and inspections that are customarily secured after signing of the construction contract and that are legally required and necessary for the proper execution and completion of the Work. Except for permits and fees that are the responsibility of Construction Manager under the Contract Documents, Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

4.9 Royalties and Patents. Construction Manager shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall hold Owner harmless from loss on account thereof, except that Owner shall be responsible for all such loss, including costs of defense, when a particular design, process or the product of a particular manufacturer or manufacturers is selected by such person or such person's agent or is required by the Contract Documents. If Construction Manager has reason to believe that the design, process or product selected is an infringement of a patent, that party shall be responsible for such loss unless such information is promptly given to Owner and Architect.

4.10 Substitutions.

4.10.1 When several products or manufacturers are specified by the Contract Documents as being equally acceptable, Construction Manager has the option of using any product and manufacturer combination listed. When only one product or manufacturer is specified, no Substitution will be permitted, except as provided in Section 4.10.4 hereof.

4.10.2 The Materials described in the Contract Documents establish a standard, required function, size, type, appearance or quality to be met by any proposed Substitution. Should Construction Manager wish to substitute a product by another manufacturer, Construction Manager shall submit a written request for approval by Architect prior to incorporation into the Work. Each such request shall include the information required in the Agreement and the Specifications.

4.10.3 When a particular manufacturer's product or process is specified for an item of Work without designation of "or equal," no Substitution shall be made, and any Substitution is unacceptable except as provided herein. However, if, in the judgment of Construction Manager, one of the conditions enumerated below exists with respect to any item so specified, Construction Manager may offer for Owner's consideration a Substitution. Substitutions will only be considered if Construction Manager submits a written request to Architect and only under the following circumstances:

4.10.3.1 When the specified product or process is discontinued and not available from the manufacturer or Supplier;

4.10.3.2 When such Substitution, in the opinion of Architect or Owner, is otherwise in the best interest of Owner. Architect will make recommendations to Owner regarding Substitutions offered by Construction Manager and Owner may, in its reasonable discretion, reject or approve such Substitutions; or

4.10.3.3 When Construction Manager can demonstrate that the price of the specified Material is inflated due to a sole source specification.

4.10.4 Requests for Substitutions of products or processes other than those specified in the Contract Documents shall be timely, fully documented in writing and will be accompanied by evidence about the proposed Substitution including: (a) quality and serviceability to the specified item; (b) changes in details and construction of related work; (c) design and artistic effect; and (d) additional or reduced costs, if any, to Owner. Construction Manager's submission of a request for Substitution shall be deemed its representation that the Substitution meets or exceeds the standards and qualities of the specified item being substituted except to the extent disclaimed with submission of the request for Substitution. Adjustments to the GMP, if any, shall be described in an accompanying request for a Change Order. Construction Manager shall furnish with its request such drawings, specifications, Samples, performance data and other information as required to assist Owner in making its decision.

4.10.5 In responding to Construction Manager's request for Substitution, Architect shall consider whether such requested Substitution is: (a) permitted by the bidding documents, (b) proposed as alternates to specified items, and (c) provides a more economical solution, system or material without compromising quality. If such substitution is approved by Architect and Owner under the foregoing conditions, Architect shall prepare and submit to Construction Manager for distribution, addenda identifying approved Substitutions to all prospective bidders.

4.11 Documents and Samples at the Site. Construction Manager shall maintain at the Site (or such other place as approved by Owner), on a current basis: a record copy of all contracts entered into by Construction Manager for the Work (including the Agreement and all Subcontracts), Drawings, Specifications, Addenda, Construction Change Directives, Change Orders and other Modifications, in good order and marked to record all changes made during construction showing as-built locations and details; Submittals; the most recent Project Schedule and Construction Schedule; applicable handbooks; maintenance and operating manuals and instructions; and other related documents that arise out of such contracts or the Work.

Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations. Construction Manager shall make all Project records available to Owner, Managing Design Architect and Architect.

4.12 Shop Drawings, Product Data and Samples.

4.12.1 Construction Manager shall cooperate with Owner, Owner Representative, Architect and (as requested by Owner) Managing Design Architect to develop an online system to be used by such parties to facilitate quick and accurate communications and to provide for an up to date Submittal log accessible to such parties.

4.12.2 Shop Drawings shall show dimensions, note whether based on field measurement and shall indicate compliance with standards, and special coordination requirements.

4.12.3 It is Construction Manager's responsibility to check all Submittals for conformity with the Contract Documents and to correct any errors, omissions or deviation before transmittal to Architect with Construction Manager's review stamp. Architect will annotate and correct the sepia, stamp the Shop Drawings with indication of Architect's action as appropriate, and return the sepia and one print to Construction Manager.

4.12.4 Corrected drawings resubmitted for review and approval shall have no changes other than those called for in the review notes on the previous submission. If Construction Manager shall alter any information on previously submitted Shop Drawings, besides the notations called for by the reviewing parties, Construction Manager must circle this new information to bring it to Architect's attention as well as fully explain it in writing with the resubmission.

4.12.5 Upon Owner's request and to the extent then known, Construction Manager shall promptly provide a list of all products proposed for installation, including the name of the manufacturer of each, for approval by Architect. The list shall be tabulated by, and be complete for, each Specification section, and shall show the names of Subcontractors providing or installing such products. If the above information is requested prior to commencement of the Work, then (a) Owner may delay issuing its notice to proceed with the Work, or (b) Construction Manager shall not commence with the Work, until the information is provided in accordance with the above. If the above information is requested by Owner after commencement of the Work, then Architect shall not approve Construction Manager's Application for Payment as to any such portions of the Work until the information is provided in accordance with the above.

4.12.6 Construction Manager shall prepare (or cause to be prepared), review, approve and submit to Architect, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of Owner, all Submittals required by the Contract Documents. Construction Manager shall reasonably cooperate with Architect and Owner Representative in Architect's and/or Owner Representative's coordination of Construction Manager's Submittals with those of other Separate Contractors.

4.12.7 By preparing, approving and presenting Submittals, Construction Manager represents that Construction Manager has determined and verified all Materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents.

4.12.8 Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by Architect's approval of Submittals, unless Construction Manager has specifically informed Architect in writing of such deviation at the time of submission and Architect has given written approval to the specific deviation. Construction Manager shall not be relieved from responsibility for errors or omissions in the Submittals by Architect's approval of them.

4.12.9 Construction Manager shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by Architect on previous Submittals.

4.12.10 No portion of the Work requiring submission of Submittals shall be commenced until the Submittal has been approved by Architect. All such portions of the Work shall be in accordance with approved Submittals.

4.12.11 Without limiting the foregoing provisions of this Section 4.12, Submittals must also satisfy the requirements of and be submitted in accordance with the terms and conditions set forth in the Specifications.

4.12.12 Shop Drawings shall be complete, sharp, clear and easily readable. Shop Drawings within a set shall be of uniform size, each with a title block and a space for review stamps, all in the lower right hand corner. All items shall be clearly identified with the name of the manufacturer, fabricator and installer, item designation, project name and location. Each submission shall clearly show the date of the original submission and of each subsequent revisions or resubmission. Shop Drawings shall indicate model numbers and other designations and shall reflect relations to related work and equipment. A clear space, approximately 4 x 4 inches in size, shall be provided on each print or transparency for Construction Manager and Architect's approval stamp. Each person or entity reviewing Shop Drawings and affixing an approval stamp shall include on such stamp the name of the reviewing party, the date, outcome of the review and required further action (if any), among other items. The stamp, which defines Architect's approval, shall also include the following:

"Checking is only for conformance with the design concept of the Project expressed in the Contract Documents and compliance with the information given in the Contract Documents. Construction Manager is responsible for dimensions to be confirmed and correlated at the Site, for information that pertains solely to the fabrication process or to techniques of construction, and for coordination of the Work of all trades."

Approval does not imply that the Work shown on Shop Drawings is all-inclusive of Construction Manager's responsibilities.

4.12.13 Shop Drawings shall be submitted for complete systems. Partial submissions will not be permitted, without prior approval by Architect. Shop Drawings will be returned to Construction Manager without checking if they have been submitted in violation of specified procedures, have been inadequately checked by Construction Manager, are inadequate, or contain substantial error.

4.12.14 Product Data, brochures, illustrations, printed charts, schedules and other such pre-prepared data shall be submitted in a minimum of six copies. Such Submittals shall be clearly marked to show the particular characteristics or model of the product to be approved.

4.12.15 Construction Manager shall prepare and submit to Architect, for approval, all Samples as required by the various technical sections of the Specifications. If not otherwise specified as to size, all Samples shall be large enough to clearly represent all physical characteristics which have a bearing on the selection and appearance of the Material. Unless specified otherwise, Samples shall be submitted in quadruplicate. Samples shall be submitted in sufficient time to allow Architect reasonable time for consideration and so as not to delay progress of the Work in the event re-submission should be required. Each Sample should be labeled with the following information: (a) Project name and location; (b) name of Construction Manager; (c) name of Subcontractor and manufacturer; (d) name, finish and composition of the Material; (e) location or applicability to the Work; and (f) reference to specification section and drawing sheet number.

4.12.16 The labels shall include blank spaces sufficient for Construction Manager's and Architect's approval stamps. Upon approval, the Samples will be stamped or labeled to indicate approval and two Samples will be returned to Construction Manager. The approved Sample retained by Architect will constitute the standard of quality and appearance of all Materials of the type represented by the Sample to be installed. In the event Samples are not approved, Construction Manager will be given reasons for disapproval and Construction Manager shall re-submit Samples until approval is obtained.

4.12.17 Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering. Nothing herein shall be construed as preventing Subcontractors from performing design-assist services, required certifications, shop drawing preparations and submittals or similar services specifically required by the Contract Documents for a portion of the Work or necessary to carry out Subcontractor responsibilities for construction means, methods, techniques, sequences and procedures. With respect to certain systems or Materials where professional certifications or design-assist services are required by the Contract Documents, the Drawings and Specifications shall specify all performance and design criteria that such services must satisfy. Construction Manager shall cause such services or certifications to be provided as required by the Contract Documents. Owner and Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Drawings and Specifications have specified to Construction Manager all performance and design criteria that such services must satisfy. Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

4.13 Use of Site.

4.13.1 Construction Manager shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents, and as directed by Owner or Owner Representative so as to avoid unreasonably encumbering the Site with Materials and Equipment. Construction Manager shall coordinate all of Construction Manager's operations with, and secure approval from, Owner Representative before using any portion of the Site.

4.13.2 All Work required by the Contract Documents shall be conducted in such manner as to cause as little interference with the continuous conduct of business on and within the Site and adjacent property as is possible, and in such manner as will reduce to a minimum any inconvenience to those occupying the Site and such adjacent property, their patrons, employees and other invitees.

4.13.3 Construction Manager shall be wholly responsible for all storage and safekeeping of tools, Equipment and Materials at all times.

4.13.4 Construction Manager shall arrange for storage, protection and security for Owner-furnished/contractor-installed Materials that are a part of the Work and that have been delivered to the Site (Owner is responsible to Construction Manager for the delivery of such items on schedule and in the condition required by the Contract Documents) until such items are incorporated into the Project. Owner shall keep Construction Manager informed of any problems with the on schedule delivery of such items.

4.13.5 Construction Manager shall carefully examine the Site and shall be presumed to be familiar with all general and local conditions of the Site that may in any way affect the Work.

4.13.6 Signs, placards, posters, or other advertising material will not be allowed on any part of the Site without the prior written permission of Owner.

4.13.7 Construction Manager shall provide Owner Representative and Architect with office area/Project trailer with sufficient desks, chairs and filing cabinets as provided in the Contract Documents.

4.13.8 LEED Certification. The Project shall comply with the requirements of CalGreen and be designed and constructed to achieve, at minimum, LEED Gold certification. As such, Construction Manager shall perform the Work in accordance with specified Leadership in Energy and Environmental Design (LEED) principles and shall provide LEED certification services as set forth in the Contract Documents so that the Project achieves LEED Gold certification.

4.14 Testing.

4.14.1 As part of the Commissioning Plan, Construction Manager shall develop a checking and testing procedure and schedule that will ensure that all systems are adequately tested and balanced prior to their acceptance. Construction Manager shall manage such testing schedule and provide a record to Owner of all such testing as it is completed.

Construction Manager shall cooperate with all testing provided by others as required by the technical sections of the Drawings, Specifications and Applicable Laws. Construction Manager shall keep an accurate record of all tests, inspections conducted, findings, and test reports for the Work to the extent prepared by or on behalf of Construction Manager or provided to Construction Manager.

4.14.2 If the Contract Documents or Applicable Laws require any portion of the Work to be inspected, tested or approved, Construction Manager shall give Architect and Owner Representative timely notice of its readiness so Architect and Owner Representative may observe such inspection, testing or approval. Except as set forth in the GMP Amendments for the Arena/Plaza Work or the Garage Work (as applicable), Owner shall bear all costs of such inspections, tests or approvals.

4.14.3 If Architect or Owner Representative determines that any Work requires special inspection, testing or approval that this Section 4.14 hereof does not include, Owner Representative will, upon written authorization from Owner, instruct Construction Manager to order such special inspection, testing or approval, and Construction Manager shall give notice as provided in Section 4.14.2 hereof. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, Construction Manager shall bear all costs thereof, including compensation for Architect's and Owner Representative's additional services made necessary by such failure; otherwise Owner shall bear such costs, and an appropriate Change Order shall be issued.

4.14.4 Required certificates of inspection, testing or approval shall be secured by Construction Manager and Construction Manager shall promptly deliver them to Owner Representative and Architect.

4.14.5 If Architect or Owner Representative wishes to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

4.15 Cutting and Patching of Work. Construction Manager shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. Construction Manager shall not damage or endanger any portion of the Work, the existing improvements, or the work of Owner or any Separate Contractors by cutting, patching or otherwise altering any work, or by excavation. Construction Manager shall not cut or otherwise alter the work of Owner or any Separate Contractor except with the written consent of Owner and of such Separate Contractor. Construction Manager shall not unreasonably withhold from Owner or any Separate Contractor consent to cutting or otherwise altering the Work.

4.16 Cleaning Up; Recycling. Construction Manager shall keep the Site and surrounding areas, including streets, sidewalks and access ways, free from accumulation of waste materials, rubbish or debris caused by Construction Manager's operations. Construction Manager shall leave the Work neat and broom clean. Construction Manager shall clean up after its operation by removing rubbish, including old and surplus Materials. Construction Manager

shall use commercially reasonable efforts to prevent dust. Construction Manager shall establish and enforce a recycling program in accordance with the ordinances of the City of San Francisco.

4.17 Project Close-Out.

4.17.1 At the completion of the Work, Construction Manager shall deliver to Architect and Owner a reproducible set of As-Built Drawings of the Work. Such As-Built Drawings shall also be provided in an electronic format as agreed to by Owner and Construction Manager. The As-Built Drawings shall note all material deviations between the Work and the Drawings and Specifications, including those deviations resulting from Change Orders.

4.17.2 At the completion of the Work, Construction Manager shall deliver to Owner five (5) printed sets and an electronic PDF of all maintenance and operating manuals, all approved Submittals, warranties, guarantees, training manuals and records required by the Contract Documents to be provided by Construction Manager.

4.17.3 Construction Manager shall coordinate, schedule and observe the checkout of utilities, operational systems and equipment for readiness by each of Subcontractors and shall assist in their initial start-up, personnel training and testing as required by the Contract Documents and the Commissioning Plan. Construction Manager shall secure from the entities required to provide such documents and transmit to Owner required warranties, guarantees, affidavits, releases, bonds, waivers and other documentation required by the Contract Documents; such documents shall be bound and indexed by Construction Manager prior to submission to Owner. Construction Manager shall collect and deliver to Owner all codes, manuals, As-Built Drawings and operating and maintenance books as required by the Contract Documents.

4.17.4 If any defect in the Work performed by any Subcontractor appears within the applicable warranty period specified in the Contract Documents for such Subcontractor, then Construction Manager shall inspect the affected portions of the Work to determine the scope of the defect and to identify Subcontractor(s) that are responsible. Construction Manager shall then promptly notify Owner of the results of such inspection and, at Owner's direction, shall take such action as may be required to enforce such Subcontractor's warranty obligations as set forth in the Contract Documents.

4.17.5 At the completion of the Work or upon reasonable request of Owner, Construction Manager shall remove from and about the Site (or discrete portions thereof) and surrounding areas Construction Manager's tools, construction Equipment, machinery, surplus Materials, waste materials and rubbish. Without limiting those clean-up duties set forth in the Contract Documents, Construction Manager acknowledges and agrees that Construction Manager's final clean-up responsibilities shall include (a) removing stains, spots, marks, dirt and dust; (b) removing unintended paint, spots and smears from all surfaces; and (c) leaving the Work clean of dirt, smattering of paint, plaster, concrete, mortar, fingerprints and foreign matter. At the completion of the Work, Construction Manager shall replace and repair any and all glass damaged or broken during the course of construction, and shall remove all labels and wash and polish both sides of such replaced glass.

ARTICLE 5
SUBCONTRACTORS

5.1 Awards of Subcontracts and Other Contracts For Portions of the Work.

5.1.1 Subcontracts shall be awarded pursuant to the procedures set forth in the Contract Documents. Construction Manager shall make no substitution for any Subcontractor, person or entity previously selected without the prior consent of Owner Representative to the proposed substitution, which consent shall not be unreasonably withheld.

5.1.2 No Subcontract shall be awarded on the basis of cost plus a fee or time and materials without the prior written consent of Owner. Construction Manager will cause each Subcontract to contain each of the following:

5.1.2.1 an agreement that Owner is a third-party beneficiary of the Subcontract, entitled to enforce any rights thereunder for their respective benefits, and that, subject to the terms of the applicable Subcontract, Owner shall have the same rights and remedies vis-a-vis such Subcontractors that Construction Manager shall have, including, without limitation, the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by Owner resulting from any breach of such Subcontract by Subcontractor, any breach of representations and warranties, if any, implied or expressed, arising out of such agreements and any error, omission or negligence of such Subcontractor in the performance of any of its obligations under such Subcontract;

5.1.2.2 a provision that Owner may, at reasonable times, contact Subcontractor, after notice to Construction Manager, to discuss, or obtain a written report of, Subcontractor's services, with Construction Manager entitled to be present during any such discussions; provided that in no event, prior to any assignment of the Subcontract to Owner, shall Subcontractor take instructions directly from Owner;

5.1.2.3 a requirement that Subcontractor promptly disclose to Owner and Construction Manager any defect, omission, error or deficiency in the Contract Documents or the Work about which it has knowledge;

5.1.2.4 a provision that permits Construction Manager's rights and duties under the Subcontract to be assigned, at the same price, to Owner or its designee after termination of the Agreement upon written notice thereof given by Owner to both Construction Manager and Subcontractor;

5.1.2.5 a provision requiring Subcontractor to maintain insurance in accordance with the Subcontract;

5.1.2.6 a provision that such Subcontract shall be terminable for default or convenience upon ten (10) days' prior written notice by Construction Manager, or, if the Subcontract has been assigned to Owner, by Owner or its designee;

5.1.2.7 a provision that neither Construction Manager nor such Subcontractor shall have the right to require arbitration of any disputes in those cases where Owner (or its assignee) is a party;

5.1.2.8 a provision that Subcontractor shall promptly notify Owner (with a copy to Construction Manager) of any default of Construction Manager under the Subcontract, whether as to payment or otherwise;

5.1.2.9 a provision that Subcontractor comply with and pass down to Sub-subcontractors the requirements of the General Conditions;

5.1.2.10 a provision that Subcontractor shall comply with all Applicable Laws, including prompt payment and governmental requirements to the extent that are applicable to the Subcontractor's portion of the Work;

5.1.2.11 provisions that Subcontractor shall (a) maintain all files, records, accounts of expenditures for Subcontractor's portion of the Work to the standards set forth in Section 9.1.2 hereof, and (b) separately allocate and account for the Arena/Plaza Work and the Garage Work;

5.1.2.12 as the parties may agree for selected subcontracts, a provision setting forth the basis of the Subcontract price, including a listing of the unit costs and extended prices relating to the subcontracted work and the labor rates for each of Subcontractor's personnel;

5.1.2.13 a provision that Subcontractors shall indemnify the Indemnitees for claims arising out of their portions of the Work to the same extent Construction Manager indemnifies the Indemnitees as set forth in Section 11.8 hereof with respect to such portions of the Work;

5.1.2.14 a provision that Subcontractors shall agree to the no damages for delay clause set forth in Section 12.8 hereof.

5.1.3 The form of the Subcontract and the terms and conditions thereof shall be Construction Manager's standard form of subcontract, a copy of which has been provided to Owner. Any material variations therefrom must be approved in writing and in advance by Owner, said approval not to be unreasonably withheld. Construction Manager shall supply Owner with copies of all executed Subcontracts no later than seven (7) days after the execution thereof.

5.1.4 Pursuant to the Agreement, Construction Manager has conditionally assigned to Owner all the rights, title and interest of Construction Manager in, to and under any and all Subcontracts. The assignment is exercisable by Owner, at its election, in the event that Owner has exercised its right to terminate the Contract in whole or in part or to take control of, or cause control to be taken of, the Work, or any portion thereof. Owner may reassign the Subcontracts to another contractor or any other person or entity, and such assignee may exercise Owner's rights in the Subcontracts. Each Subcontractor shall, upon written notice of Owner's exercise by Owner of its rights under the Contract Documents (or the portion thereof applicable

to the Materials or services being furnished by such Subcontractor), continue to perform all of such party's obligations, covenants and agreements under such Subcontract for the benefit of Owner.

5.1.5 Each Subcontract entered into by Construction Manager in connection with the Work shall contain the consent of each Subcontractor to the foregoing assignment and the agreement of each such Subcontractor that, upon written notice from Owner that it has assumed the Subcontract and exercised its rights under these General Conditions or portion thereof applicable to the Materials or services being furnished by such Subcontractor, such Subcontractor, as so requested by Owner, shall continue to perform all of such party's obligations, covenants and agreements under Subcontractor's Subcontract with Construction Manager for the benefit of Owner.

ARTICLE 6 WORK BY OWNER OR SEPARATE CONTRACTORS

6.1 Owner's Right to Perform Work and to Award Separate Contracts. Owner reserves the right to perform work related to the Project with Owner's own forces, and to award Separate Contracts in connection with other portions of the Project or other work on the Site under these or similar General Conditions of the Contract. When Separate Contracts are awarded for different portions of the Project or other work on the Site, the term "Construction Manager" in the Contract Documents in each case shall mean the Separate Contractor who executes each Separate Contract with Owner.

6.2 Mutual Responsibility.

6.2.1 Construction Manager shall coordinate and schedule, with Owner's prior written approval, the work of Owner's own forces and each Separate Contractor with the Work of Construction Manager and its Subcontractors. Construction Manager shall cooperate with Owner and all Separate Contractors, their subcontractors and any other entity involved in the performance of any separate services for the Project. In order to cause the Work and any separate services to be performed by Separate Contractors to be completed in an expeditious manner, Construction Manager shall ensure that such Separate Contractors have a reasonable opportunity to complete their services, including the introduction and storage of Separate Contractors' materials and for the execution of their services, as and when required to the same extent Construction Manager provides such opportunity to Construction Manager's Subcontractors. Construction Manager shall properly connect and coordinate the Work with the services of such Separate Contractors.

6.2.2 If any part of the Work depends upon the proper performance of work of any Separate Contractor, Construction Manager shall, prior to proceeding with that portion of the Work, inspect and measure the work of the Separate Contractor and promptly report to Owner and Architect any apparent discrepancy or defects in such other work except for latent or concealed defects. Construction Manager's failure to inspect and make such report shall constitute an acceptance of the Separate Contractor's work as fit and proper for the proper execution of the Work, except for latent, concealed defects.

6.2.3 Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.

6.2.4 If Construction Manager or any of its Subcontractors cause damage to the Work or the property of Owner, then Construction Manager shall promptly remedy such damage. If Construction Manager or any of its Subcontractors cause damage to the work or property of any Separate Contractor, then Construction Manager shall promptly attempt to settle any resulting dispute or claim with such Separate Contractor. If a Separate Contractor or its subcontractor shall assert any claim against Owner on account of any damage or loss alleged to have been sustained as a result of the fault or negligence of Construction Manager, any of its Subcontractors, or by anyone for whom Construction Manager is responsible, then Owner shall notify Construction Manager and Construction Manager shall indemnify Owner from and against any and all such claims, damages, losses and expenses, including attorneys' fees, arising from the assertion of any such claim.

6.3 Owner's Right to Clean Up. If a dispute arises between Owner, Construction Manager and Separate Contractors as to their responsibility for cleaning up as required by Section 4.16 hereof, then Owner may direct Construction Manager to clean up and charge the cost thereof to the contractors responsible therefor as Owner shall determine to be just.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Governing Law. The Contract shall be governed by the laws of the State of California without regard to its choice of law provisions that would cause the application of the laws of another jurisdiction. The exclusive venue and jurisdiction for the resolution of any dispute arising out of the Contract Documents shall be the County of San Francisco, California.

7.2 Severability. If any provision of the Agreement is held to be unenforceable, illegal or invalid, then no other provision shall be affected thereby, and the remainder of the Agreement shall be interpreted as if it did not contain the unenforceable, illegal or invalid provision.

7.3 Headings. The captions contained in the Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of the Agreement or the intent of any provision contained herein.

7.4 Exhibits. All Exhibits and Schedules referenced in the Agreement are hereby incorporated into the Agreement by such reference and are deemed to be an integral part of the Agreement.

7.5 Confidentiality.

7.5.1 Construction Manager acknowledges that certain valuable, confidential, and proprietary information of Owner and its Affiliates may come into Construction Manager's possession. Accordingly, Construction Manager shall hold in strictest confidence, and shall require its Subcontractors to hold in the strictest confidence, all information it obtains from or about Owner and its Affiliates and parent companies (whether obtained directly from the

such parties or through any agent, employee or consultant of a member of Owner), not to use such information other than for the performance of the Agreement, and to cause all of its employees and Subcontractors to whom such information is transmitted to be bound to the same obligation of confidentiality to which Construction Manager is bound. Construction Manager shall not communicate the information of Owner or its Affiliates in any form to any third party without Owner's prior written consent. In the event of any violation of this provision, Owner shall be entitled to preliminary and injunctive relief, without the necessity of showing irreparable harm, as well as to an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which such party may be entitled. The provisions of this Section 7.5 shall survive the termination of the Agreement.

7.5.2 Confidential information does not include any information that: (a) was at the time of disclosure, or thereafter became, part of the public domain through no act or omission of the recipient; (b) became available to the recipient from a third party who did not acquire such information under an obligation of confidentiality either directly or indirectly from the disclosing party; or (c) is, in the opinion of the recipient's outside legal counsel, required to be disclosed by law; provided, however, Owner shall be given prior written notification of recipient's intent to so disclose any such proprietary information.

7.6 Press Releases. Construction Manager shall not issue a press release, advertisement, publicity material or similar materials, or participate in a media interview concerning the Project without the prior consent in writing of Owner. Construction Manager shall, however, be permitted to reference its role in the Project in its marketing and promotional or professional materials.

7.7 Third Party Rights. Nothing contained herein shall be deemed to give any third party any claim or right of action against Owner or Construction Manager that does not otherwise exist without regard to the Agreement.

7.8 Successors and Assigns.

7.8.1 Owner and Construction Manager, respectively, bind themselves, their successors and assigns to the other party and to the successors and assigns of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents.

7.8.2 Construction Manager shall not assign or transfer any interest in the Contract Documents, other than as a collateral or conditional assignment to Construction Manager's surety or lender, without the prior written consent of Owner. Notwithstanding anything to the contrary in this Section 7.8.2, Construction Manager shall be permitted to subcontract portions of the Work as permitted herein.

7.8.3 The Contract Documents may be assigned by Owner without the prior written consent of Construction Manager, and Construction Manager agrees to execute any and all documents reasonably required by Owner to acknowledge and consent to such assignment as may be required by any such assignee; provided that, in the event of assignment to any Lender for the Project, such documents are consistent with the Contract Documents and do not materially alter Construction Manager's rights or obligations thereunder. If Owner

unconditionally assigns the Contract Documents to its Lender, the Lender shall, upon Construction Manager's request, assume Owner's obligations under the Contract Documents.

7.9 Written Notice. Notices required by the Contract Documents shall be in writing and shall be deemed to have been given when delivered if done so in accordance with the notice provisions of the Agreement.

7.10 Rights and Remedies. Except as otherwise expressly provided herein, all rights and remedies provided in the Contract Documents are in addition to all other rights and remedies available at law or in equity. No action or failure to act by Owner, Managing Design Architect, Architect, Owner Representative or Construction Manager shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. The invalidity, partial invalidity or unenforceability of any provision of the Contract Documents shall not impair or affect the validity, enforceability or effect of any other provision of the Contract Documents. If any provision of the Contract is held to be unenforceable, no other provision shall be affected thereby, and the remainder of the Contract shall be interpreted as if it did not contain the unenforceable provision.

7.11 Dispute Resolution. Any Claims brought under the Contract Documents shall be subject to the dispute resolution procedures set forth in **Exhibit G** attached hereto (the "ADR Procedures"). Failure of Construction Manager to comply with the provisions of the ADR Procedures shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and shall constitute a waiver by such party of any Claim with respect to which it fails to comply with the provisions of the ADR Procedures in any material respect.

7.12 Lender Requirements. Construction Manager and any Subcontractors agree to comply with all reasonable Lender requirements that are consistent with the Contract Documents and do not materially alter the rights and obligations of Construction Manager and Subcontractor.

ARTICLE 8 TIME

8.1 Progress and Completion. Time is of the essence of the Agreement. Construction Manager shall cause the Work to meet the milestone dates and the dates for Substantial Completion and Final Completion set forth in the Master Project Schedule, as said dates are to be adjusted pursuant to the terms of the Contract Documents. Dates established and shown in Master Project Schedule shall not be altered except by a Change Order or Construction Change Directive. Construction Manager shall begin the Work on the date of commencement as defined in the Construction Schedule. Construction Manager shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2 Acceleration. If, in the reasonable judgment of Owner, Construction Manager shall (a) fail, refuse or neglect to supply a sufficient number of workers or to deliver the Materials with such promptness as to prevent the delay in the progress of the Work; (b) fail in any respect to commence and diligently prosecute the Work and proceed to the point to which

Construction Manager shall proceed in accordance with the Construction Schedule in order to achieve Substantial Completion in accordance with the Construction Schedule; (c) fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as herein specified in accordance with the Construction Schedule; or (d) fail in the performance of any of the material covenants of the Contract Documents, then Owner shall have the right to direct Construction Manager to accelerate the Work to comply with the Construction Schedule, including providing additional labor or expediting deliveries of Materials, performing overtime, additional shifts or re sequencing the Work without adjustment to the GMP. Owner shall, after having provided Construction Manager written notice and a reasonable opportunity to cure, and without waiving any other rights or remedies, have the right to withhold progress payments to the extent reasonably necessary to protect Owner's interests and supplement Construction Manager's forces with Separate Contractors and/or to seek other redress for Construction Manager's default.

ARTICLE 9
PAYMENTS AND COMPLETION

9.1 Contract Sum/Audit Rights.

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments thereto, is the total amount payable by Owner to Construction Manager for the performance of the Work under the Contract Documents.

9.1.2 Construction Manager shall cause, at no cost to Owner, all files, records and accounts of expenditures for Materials, Equipment, employees and Subcontracts and the like and other costs of rendering services or performing Work, including accounting records, receipts, vouchers and other documentation relating to the rendering of services or performance of Work (collectively, "Records") hereunder to be made available in the County of San Francisco, California. Such records shall be kept on the basis of generally-accepted accounting principles and in accordance with the Contract Documents. Construction Manager will furnish Owner with statements of such expenditures, together with complete documentary back-up therefor, on a monthly basis or more frequently upon Owner's reasonable request.

9.1.3 Construction Manager shall give Owner access, at no cost to Owner, to all Records upon request at any time from the Effective Date of the Agreement until the expiration of a period of six (6) years after Final Completion or such earlier date on which a final audit is completed by Owner. Until the expiration of six (6) years after Final Completion, or such earlier date on which a final audit is completed by Owner, Construction Manager will make available electronically in the County of San Francisco, California upon the written request of Owner copies of any Records and other data of Construction Manager that are necessary to certify and audit the nature and extent of Costs of the Work incurred in connection with the Project. The cost of the audit shall be borne by Owner, except that Construction Manager shall pay such costs if the audit reveals an overcharge of greater than .50% of the GMP. If any audit or review by Owner, discloses that the actual Cost of the Work according to the accounting is less than the Cost of the Work submitted by Construction Manager, then Construction Manager shall pay to Owner the difference. If the parties disagree as to the final accounting, then either party shall be entitled to proceed in accordance with the dispute resolution procedures of

Section 7.11 hereof. Construction Manager shall cause each Subcontractor to maintain pricing information on Subcontracts awarded on a fixed, lump sum basis to the extent such information or other documentation is required by the terms of the Subcontract. Nothing herein shall be construed as requiring or permitting a modification to the fixed, lump price contained in such Subcontracts.

9.2 Schedule of Values. Before the first Application for Payment, Construction Manager shall submit to Owner Representative a Schedule of Values allocated to the various portions of the Work, prepared in the form required by the Agreement and the Specifications. This Schedule of Values, unless objected to by Owner Representative or the applicable Architect, shall be used only as a basis for Construction Manager's Applications for Payment. Once approved, Construction Manager may not change the Schedule of Values unless a change thereto is agreed to by Owner. The Schedule of Values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single line item. Construction Manager will provide a listing of the Work items and the code costing items to be shown on Construction Manager's Schedule of Values, which listing shall meet the approval and shall be subject to revision by Owner Representative.

9.3 Allocation between Arena/Plaza Work and Garage Work. In accordance with the terms of the Contract Documents, Construction Manager shall at all times separately allocate and account for the Arena/Plaza Work and the Garage Work. Owner shall have the right to review the Records of Construction Manager to confirm whether the Contract Sum has been properly accounted for and separately allocated between the Arena/Plaza Work and the Garage Work. All Applications for Payment shall clearly delineate between payment requested for Arena/Plaza Work and the Garage Work.

9.4 Applications for Payment.

9.4.1 For each payment period established in the Agreement, Construction Manager shall submit to Owner Representative, in triplicate, the itemized Application for Payment, which shall include the Progress Report and such supporting documentation as required by the Specifications and the Agreement.

9.4.2 Architect will review all Applications for Payment by Construction Manager, including final payment. Architect will then make recommendations to Owner for certification for payment.

9.4.3 Based on Architect's observations an evaluation of the Application for Payment, Architect will recommend the amount owing to Construction Manager and will issue a Certificate for Payment in accordance with this Article 9.

9.4.4 Unless otherwise provided in the Contract Documents, payments will be made on account of Materials not incorporated in the Work but delivered and suitably stored at the Site and, if approved in advance by Owner, payments may similarly be made for Materials suitably stored at some other location agreed upon in writing. Payments for Materials stored on or off the Site shall be conditioned upon submission by Construction Manager of bills of sale or such other procedures satisfactory to Owner to establish Owner's title to such Materials or

otherwise protect Owner's interest, including applicable insurance and transportation to the Site for those Materials stored off the Site.

9.4.5 At the request of Owner from time to time, Construction Manager shall provide a written statement for the benefit of Owner, Owner Representative, Managing Design Architect, Architect, and the Lenders setting forth the total cost of all Work necessary to accomplish Final Completion of all of the Work, such statement to contain sufficient information so that Owner, Owner Representative, Managing Design Architect, Architect, and the Lenders can determine whether or not the Work can be completed for the remaining unpaid portion of the GMP. No such statement shall relieve Construction Manager of its obligations to complete the Work within the GMP and the Contract Time. Payments may be withheld by Owner until Construction Manager is able to furnish such a statement certifying that the Work can be completed for the remaining unpaid portion of the Contract Sum.

9.5 Certificates For Payment.

9.5.1 Architect will, within ten (10) days after the receipt of an Application for Payment, review the Application for Payment and either (a) issue a Certificate for Payment to Owner for distribution to Construction Manager for such amounts as Architect determines are properly due, or (b) notify Owner in writing of the reasons for withholding a Certificate for Payment. Such notification will be forwarded to Construction Manager by Owner.

9.5.2 The issuance of a Certificate for Payment will constitute a representation by Architect to Owner that, based on Architect's observations at the Site as provided in Section 2.3.3 hereof and the data comprising the Application for Payment, the Work has progressed to the point indicated; that, to the best of Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that Construction Manager is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, Architect shall not thereby be deemed to represent that Architect has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose Construction Manager has used the monies previously paid on account of the Contract Sum.

9.6 Progress Payments. After Architect has issued a Certificate for Payment and no Governmental Authorities have raised any objections to the Work due to Construction Manager's fault or neglect, Owner shall make payment in the manner and within the time provided in the Agreement. No certification of a progress payment, any progress payment, or any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.7 Payments to Subcontractors.

9.7.1 Construction Manager shall pay each of its Subcontractors within ten (10) days after Construction Manager's receipt of payment, or such shorter period of time if required by law. Construction Manager shall require each of its Subcontractors to pay their Sub-subcontractors and Suppliers within ten (10) days after that Subcontractor receives its payment, or such shorter period of time if required by law.

9.7.2 Nothing herein shall prohibit Construction Manager or a Subcontractor from disputing, pursuant to the terms of the relevant Subcontract, all or any portion of a payment alleged to be due to another party if Construction Manager or such Subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute within five (5) days after Construction Manager's or such Subcontractor's receipt of payment for the same. Construction Manager and each Subcontractor shall pay all undisputed amounts due within the time limits imposed by this Section 9.7.

9.7.3 The prompt payment requirements hereunder shall in no way create any contractual relationship or obligation between Owner, and any Subcontractor, Sub-subcontractor, Supplier, or any third party, or create any Owner liability for Construction Manager's failure to make timely payments hereunder. However, Construction Manager's failure to comply with the prompt payment requirements shall constitute a material breach of its contractual obligations pursuant to the Agreement. As a result of such breach, Owner may, without waiving any other available remedy it may have against Construction Manager, issue joint checks.

9.7.4 Owner, Architect and Owner Representative shall have no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law. Upon any default by Construction Manager under the Contract Documents, Owner may, at its sole option, make payments due under any Application for Payment directly to Subcontractors whose work is covered by such Application for Payment.

9.8 Owner's Right to Withhold Payment.

9.8.1 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make payment to Construction Manager, to the extent reasonably necessary to protect Owner, if any one or more of the following conditions exists:

9.8.1.1 Construction Manager is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents.

9.8.1.2 Any part of such payment is attributable to services or Work that is defective or is not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to services or Work that is rendered or performed in accordance with the Contract Documents and is not defective.

9.8.1.3 Construction Manager has failed to make timely payments due and owing to Subcontractors or others or for Material or labor used in the rendering of services or performance of Work for which Owner has made payment.

9.8.1.4 Owner has received notice of a pending claim filed by a Subcontractor against the Project, and Owner can demonstrate that there is a reasonable likelihood that such claim will require Owner to incur costs, provided such claims are not attributable to the fault of Owner.

9.8.1.5 reasonable evidence that the Work cannot be completed for the unpaid balance of the applicable GMP, and the unpaid balance would not be adequate to cover actual or Liquidated Damages (as defined in the Agreement) for the anticipated delay.

9.8.1.6 damage to the property of others attributable to Construction Manager or the Work.

9.8.1.7 failure to carry out the Work in accordance with the Contract Documents.

9.8.1.8 submission by Construction Manager of an incomplete Application of Payment.

9.8.1.9 failure to adhere to the Construction Schedule, including more than two failures to submit monthly updates to the Construction Schedule as required.

9.8.2 If Owner, in its reasonable discretion, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, then no additional payments will be due hereunder unless and until Construction Manager, at no cost to Owner, causes a sufficient portion of the Work to be performed so that the portion of the GMP then remaining unpaid is, in Owner's reasonable judgment, sufficient to complete the Work in accordance with the Contract Documents. In connection with any claim of Owner under this Section 9.8, Owner shall provide Construction Manager with the basis for Owner's withholding.

9.9 Failure of Payment. If Owner does not pay Construction Manager within thirty (30) days after the date established in the Contract Documents any amount certified by Architect or awarded by court proceeding, then Construction Manager may, upon seven (7) additional days' written notice to Owner, stop the Work until payment of the amount owing has been received. In such event, the GMP and the Contract Time shall be increased by the amount of Construction Manager's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Section 12.2 hereof.

9.10 Substantial Completion.

9.10.1 When Construction Manager considers the Work or a designated portion thereof substantially complete, Construction Manager shall prepare for Architect an initial comprehensive list of incomplete or unsatisfactory items and a schedule for their completion in a form satisfactory to Owner and Architect. Each item on the list shall be clearly described so that a person not familiar with the Project can understand the corrective Work involved. Each item shall be properly located with interior rooms indicated by name and number, and walls by direction (north, south, east or west). Exterior items shall be listed by orientation consistent with the building elevations or other recognizable landmarks. A separate list of general Project and systems items shall be included. Failure to include an item on such list does not alter the responsibility of Construction Manager to complete all Work in accordance with the Contract Documents. Architect shall, as necessary, supplement this list and the list, as supplemented, shall be the Punch List.

9.10.2 After Architect certifies the date of Substantial Completion of the Work, Construction Manager shall complete all items of incomplete Work and perform any corrective Work as required by the Punch List and the Certificate of Substantial Completion pursuant to a schedule agreed to by Owner, Architect and Construction Manager, but in no event later than sixty (60) days after Construction Manager's receipt of the Punch List. Construction Manager shall develop, in conjunction with Owner and Architect, a schedule setting forth anticipated dates for inspections of the Work or portions thereof (as the case may be) by Owner and Architect in order to determine Substantial Completion and Final Completion of the Work or designated portions thereof.

9.10.3 It is anticipated that Architect and (as requested by Owner) Managing Design Architect, shall make an initial visit and one re-inspection for each area of the Work designated on the schedule developed by Architect, Construction Manager and Owner. If, after making such re-inspections, Architect or (as requested by Owner) Managing Design Architect determines, after consultation with Owner, that the Work or such portion thereof is not substantially complete or finally complete (as the case may be) or that previously scheduled Punch List work has not been completed, then Construction Manager shall pay (without reimbursement from Owner) for any costs and expenses incurred in connection with such additional inspections, including compensating Architect and (as requested by Owner) Managing Design Architect for additional services rendered in connection with the performance of such additional inspections, to the extent Architect and (as requested by Owner) Managing Design Architect expended more time for such inspections than initially budgeted.

9.10.4 Upon Substantial Completion of the Work or designated portion thereof, and upon application by Construction Manager and certification by Architect, Owner shall make payment reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. Owner shall not release retainage to Construction Manager to the extent that any such release will result in Owner holding total retainage that is less than 150% of the amount that Architect determines to be necessary to complete and correct items on the Punch List.

9.10.5 When Architect determines, on the basis of inspections, that the Project, or designated portions thereof, is substantially complete, Architect will then prepare a Certificate of Substantial Completion of the Project that shall establish the Date of Substantial Completion of the Project and fix the time within which Construction Manager shall complete any uncompleted items on the Certificate of Substantial Completion.

9.10.6 Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Project or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof.

9.11 Final Completion and Final Payment.

9.11.1 Following Architect's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and Construction Manager's completion of the Work, Construction Manager shall forward to Architect a written notice that the Work is ready for final inspection and acceptance and a final Application for Payment. Upon receipt, Architect will promptly inspect the Work. When Architect finds the Work acceptable under the Contract Documents, Architect will issue a Certificate for Payment which will approve the final payment due Construction Manager. This approval will constitute a representation that, to the best of Architect's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due Construction Manager, and noted in said Certificate, is due and payable. Architect's approval of said Certificate for Payment will constitute a further representation that the conditions precedent to Construction Manager's being entitled to final payment as set forth in Section 9.11.2 hereof have been fulfilled.

9.11.2 Final payment (including retainage) shall not be due until Final Completion of the Work and after Construction Manager has furnished to Owner: (a) an affidavit stating that, to Construction Manager's best knowledge, information and belief, payrolls, bills for Materials and Equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (c) a written statement that Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (d) all warranties and guaranties required by the Contract Documents; (e) one reproducible copy of the As-Built Drawings and the other Submittals required by the Contract Documents; (f) consent of surety, if any, to final payment; (g) all Project closeout documents required by the Specifications; and (h) if required by Owner, other reasonable data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Work, to the extent and in such form as may be reasonably designated by Owner. If any such lien remains unsatisfied after all payments are made, Construction Manager shall refund to Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.11.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of Construction Manager or by the issuance of Change Orders affecting Final Completion, Owner shall, upon application by Construction Manager and certification by Architect and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Construction Manager to Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payments, except that it shall not constitute a waiver of claims.

9.11.4 Acceptance of final payment shall constitute a waiver of Claims by Construction Manager, a Subcontractor or a vendor except those previously made in writing and identified by Construction Manager as unsettled at the time of the final Application for Payment.

9.11.5 All provisions of the Agreement, including those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Project.

9.12 Warranty of Title.

9.12.1 Construction Manager warrants and guarantees that title to all Work (including all Materials) covered by an Application for Payment, regardless whether then incorporated in the Project, will pass to Owner upon receipt of payment free and clear of all liens, claims, security interests or encumbrances.

9.12.2 All Work for which Construction Manager receives payment from Owner pursuant to an Application for Payment shall thereupon become the property of Owner. This provision shall not be construed as relieving Construction Manager from the sole responsibility for all Work for which payment has been made, or any obligation to restore any damaged Work that may exist, or as a waiver of the right of Owner to require the fulfillment of all the terms of the Contract Documents. Until Substantial Completion or such earlier date as Owner may take occupancy, all Work and Materials are deemed to be in the care and custody of Construction Manager and with Construction Manager bearing the risk of loss with respect thereto except to the extent insured pursuant to Article 11 hereof. The provisions of this Section 9.12 regarding ownership of the Work upon payment shall not constitute an acceptance of the Work, for which payment is made, except as and when provided in the Contract Documents.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Hazardous Materials.

10.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Construction Manager is not responsible for any pre-existing Hazardous Materials encountered at the Site. If any reasonably suspected Hazardous Materials are

encountered on the Site by Construction Manager, Construction Manager shall, upon recognizing the condition, have the right to immediately stop work in the affected area and report the condition to Owner and Architect in writing. Owner shall defend and indemnify Construction Manager from and against claims and liabilities to the extent arising out of the presence of pre-existing Hazardous Materials encountered at the Site, but only to the extent that such condition has not been identified in the Contract Documents as the responsibility of Construction Manager with specificity as to location, quantity and concentration, and Construction Manager bears no responsibility for the disturbance or release of such Hazardous Materials.

10.1.2 Construction Manager shall not use, in connection with the Work, any Hazardous Materials in such manner as would violate any Applicable Laws. The foregoing shall not be deemed to prohibit Construction Manager from using in the Work any item specified by name in the Construction Documents unless Construction Manager knows them to be in violation of any Applicable Laws.

10.1.3 Upon receiving notice of the presence of a suspected Hazardous Material, Owner shall take the necessary measures required to ensure that the Hazardous Material is removed or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (a) ascertain whether a Hazardous Material has actually been encountered, and, if so, (b) prescribe the remedial measures that Owner must take either to remove the Hazardous Material or render the Hazardous Material harmless. Unless otherwise required by the Contract Documents, Owner shall furnish in writing to Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. Construction Manager and Architect will promptly reply to Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by Owner. If either Construction Manager or Architect has a reasonable objection to a person or entity proposed by Owner, Owner shall propose another to whom Construction Manager and Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume only upon written agreement of Owner and Construction Manager, and if Construction Manager requires, only after Owner's expert provides Construction Manager with written certification that (a) the Hazardous Material has been removed or rendered harmless and (b) all necessary approvals have been obtained from Governmental Authorities. The time requirements, including the Construction Schedule and the Scheduled Substantial Completion Date, shall be extended appropriately and the Contract Sum shall be increased in the amount of Construction Manager's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished with a Change Order that Owner shall provide.

10.1.4 Owner shall not be responsible for Hazardous Materials brought to the Site by Construction Manager, unless such Hazardous Materials were required by the Contract Documents. To the fullest extent permitted by law, Construction Manager shall indemnify, defend and hold harmless Owner from and against all claims, losses, damages, liabilities and expenses, including attorneys' and other professionals' fees, judgments, fines, penalties, and expenses, arising out of or resulting from those Hazardous Materials introduced to the Site by Construction Manager, its Subcontractors, or anyone for whose acts they may be liable. The foregoing indemnity shall not apply to Hazardous Materials introduced to the Site by

Construction Manager, its Subcontractors, or anyone for whose acts they may be liable, if such Hazardous Materials were required by the Contract Documents and if Construction Manager complied with all Applicable Laws relating to the handling of such Hazardous Materials once on Site.

10.2 Safety Precautions and Programs.

10.2.1 Construction Manager shall prepare, for Owner's review and approval, a safety plan for the Project and monitor the establishment and execution of effective safety practices known to the industry, as applicable to Work, and the compliance with the approved safety plan all applicable regulatory and advisory agency construction safety standards. Subject to the terms of Section 10.2.8 hereof, Construction Manager has overall responsibility for Work safety and shall implement the safety and fire prevention program on the Work developed by Construction Manager as part of the Construction Plan and shall require all Subcontractors to adhere to such program.

10.2.2 To the extent it arises out of the performance of the Work, Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss from the Work to:

10.2.2.1 all employees on the Work and all other persons who may be affected thereby;

10.2.2.2 all the Work, whether in storage on or off the Site, under the care, custody or control of Construction Manager or any of Construction Manager's Subcontractors or Sub-subcontractors;

10.2.2.3 other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;

10.2.2.4 the work of Owner or Separate Contractors; and

10.2.2.5 Construction Manager shall give all notices and comply with all Applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 Construction Manager shall provide sufficient security personnel for protection of the Work. Construction Manager shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other Hazardous Materials or Equipment is necessary for the execution of the Work, Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. No explosives shall be used without the prior written consent of Owner

Representative. Construction Manager shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.2.5 Construction Manager shall promptly remedy all damage or loss (other than damage or loss insured under property insurance required by the Contract Documents) to any property referred to in Sections 10.2.2.2 and 10.2.2.3 hereof caused in whole or in part by Construction Manager, any Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which Construction Manager is responsible under Sections 10.2.2.2 and 10.2.2.3 hereof, except damage or loss attributable to the acts or omissions of Owner, Managing Design Architect, Architect, Owner Representative or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of Construction Manager. The foregoing obligations of Construction Manager are in addition to Construction Manager's obligations under Section 4.17 hereof.

10.2.6 Construction Manager shall designate a responsible and qualified member of Construction Manager's organization at the Site whose duty shall be the management of Construction Manager's safety program. This person shall be Construction Manager's Safety Engineer unless otherwise designated by Construction Manager in writing to Owner and Owner Representative.

10.2.7 Construction Manager shall report in writing to Owner all accidents arising out of or in connection with the Work that cause death, personal injury or property damage, giving full details and statements of witnesses. Construction Manager shall submit its report to Owner Representative within ten (10) days after the occurrence. In addition, if death or serious personal injuries or serious property damage are caused, the accident shall be reported immediately by telephone or messenger to Owner Representative.

10.2.8 Construction Manager shall review the safety programs of each of its Subcontractors and make appropriate recommendations regarding their implementation. The performance of such services by Construction Manager shall not relieve any Subcontractor of its contractual responsibility for the safety of persons and property, and for any compliance with all Applicable Laws. Construction Manager's responsibility for review, monitoring and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractor's safety programs; notwithstanding Construction Manager's safety obligations to Owner, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of others' work in areas designated to be controlled by such Subcontractors.

10.3 Emergencies. In any emergency affecting the safety of persons or property, Construction Manager shall act, at Construction Manager's discretion, to prevent threatened damage, injury or loss and shall promptly notify Owner Representative. Any additional compensation or extension of time claimed by Construction Manager on account of emergency work shall be determined as provided in Article 12 hereof for changes in the Work.

ARTICLE 11
INSURANCE; BONDS; INDEMNIFICATION

11.1 Construction Manager's Insurance Requirements. Construction Manager shall purchase and maintain the following insurance policies (the "Insurance Policies"):

11.1.1 Professional Liability Insurance. Professional liability insurance for Claims that arise out of any professional services of Construction Manager and its Subcontractors working on the Project shall be as set forth on **Exhibit F**.

11.1.2 Workers' Compensation. Workers' compensation insurance meeting the statutory requirements of the State of California and employers' liability insurance in limits not less than those set forth in **Exhibit F**.

11.1.3 General Liability. Commercial general liability insurance coverage for third party bodily injury or property damage claims (a) arising out of services performed by Construction Manager prior to the start of construction for a combined single limit for bodily injury and property damage of not less than \$5,000,000 each occurrence, \$10,000,000 annual aggregate, (b) arising out of construction services performed on the Site after the start of construction for a combined single limit for bodily injury and property damage of not less than the limits set forth on **Exhibit F**, and (c) arising out of construction services performed on the Site after the date of Substantial Completion (for example, punch list or warranty work) for a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence/annual aggregate. The completed operations coverage under the commercial general liability insurance relating to construction services performed on the Site shall continue for a period of not less than ten (10) years after Substantial Completion. All parties identified as Additional Insureds on **Exhibit F** shall be endorsed as additional insureds with respect to this coverage. The foregoing policy limits may be achieved by any combination of primary and excess policies so long as the overall minimum limits are procured.

11.1.4 Business Automobile Liability Insurance. Business automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with the Project in an amount not less than the limits set forth on **Exhibit F**. All parties identified as Additional Insureds on **Exhibit F** shall be endorsed as additional insureds with respect to this coverage.

11.1.5 Pollution Liability Insurance. Pollution liability insurance in an amount not less than the limits set forth on **Exhibit F**. All parties identified as Additional Insureds on **Exhibit F** shall be endorsed as additional insureds with respect to this coverage.

11.1.6 Subcontractor Default Insurance. Construction Manager may obtain a Subcontractor default insurance program in lieu of payment and performance bonds to insure against default by any Subcontractor pursuant to terms and conditions acceptable to Owner. Prior to the execution and delivery of the GMP Amendment, Construction Manager shall provide to Owner a description of the Subcontractor default insurance program coverages and limits of liability proposed. Subcontractor default insurance program terms and conditions shall be subject to the prior review and approval of Owner, which approval shall not be unreasonably

withheld. The Subcontractor default insurance program, once approved, shall be charged at the rates set forth in the Agreement.

11.2 Owner Review. Construction Manager shall provide to Owner a copy of all Insurance Policies required by this Article 11 for Owner's review, comment and approval. Neither approval of nor failure to disapprove insurance policies furnished by Construction Manager shall relieve Construction Manager or its Subcontractors from responsibility to provide insurance as required by the Agreement.

11.3 Not a Limitation of Liability. Anything to the contrary in the Contract Documents notwithstanding, the liabilities of Construction Manager shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by Construction Manager shall relieve Construction Manager or any other person providing service to the Project to provide insurance as required by this Article 11, or, as the case may be, the Agreement.

11.4 Builder's Risk Insurance.

11.4.1 Owner shall purchase and maintain builder's risk (or inland marine) insurance for direct physical loss or damage resulting from an insured peril to the building, structures and other improvements comprising all or part of the Project, including materials and equipment that are intended for incorporation into the Project, whether located at the Site, in storage, or in transit. This policy shall be maintained until the standard casualty policy for the completed Project is in place. The policy shall include (a) coverage for physical loss or damage from fire and other perils as are included under an "all risk" or "special form" policy; (b) such endorsements as are commercially available and typically procured for construction projects of a scope and size similar to the Project, including coverage for flood, windstorm, wind, wind-driven rain, earth movement or subsidence, vandalism, malicious mischief, theft, collapse, false work, temporary buildings, debris removal, boiler and machinery insurance, glass breakage, theft, mold, and terrorism; (c) cover all of the Materials stored off site, and also portions of the Materials in transit, subject to customary sub-limits; and (d) a waiver of subrogation against Construction Manager, its Subcontractors and any other subcontractors of Construction Manager (of any tier). Policy limits shall be equal to the replacement cost of the Project, subject to sub-limits commercially and reasonably available in the California insurance market. Construction Manager and its Subcontractors shall be named as additional insureds on the policy as their interests may appear. Construction Manager and its Subcontractors shall be responsible, without reimbursement from Owner, for any deductible under the builder's risk policy up to \$25,000 per claim. Notwithstanding the foregoing, however, Construction Manager and its Subcontractors shall be responsible for the full per claim deductible under the builder's risk policy in each instance if the loss is caused by the negligence of Construction Manager, its Subcontractor, Sub-subcontractor or others for whose acts Construction Manager may be liable. Owner shall deliver to Construction Manager evidence that such Builder's Risk coverage is in place prior to the commencement of any Work at the Project Site.

11.4.2 Prior to the commencement of construction (but no later than a date to be agreed to by the parties prior to the execution and delivery of the first GMP Amendment), Construction Manager shall provide a firm quote for providing a builder's risk policy based upon

the coverages and limits of liability set forth in Section 11.4.1, and shall deliver a copy of such quote and the policy form to Owner. Owner shall, in its discretion, select the builder's risk program that it deems to be in its best interests. If Owner selects the Construction Manager's builder's risk program, then such program shall be described in detail in the first GMP Amendment.

11.5 General Insurance Provisions. Each party shall provide to the other party written notice of any material changes to the Insurance Policies (in the case of Construction Manager) or Builders Risk insurance (in the case of Owner) within thirty (30) days prior to the date the change becomes effective, if practicable, but in no instance later than the date such changes become effective. Both the Insurance Policies and the Builders Risk insurance shall be obtained from financially sound insurance companies rated not less than A-;VII by A.M. Best & Company and authorized to do business in the State of California. The Insurance Policies and certificates of insurance shall comply with the requirements set forth in **Exhibit F**.

11.6 Wrap-Up Program. Owner and Construction Manager shall jointly investigate the use of a "wrap-up" insurance program (the "Wrap-Up Program") to provide coverages for general liability insurance and workers' compensation (including employers' liability insurance) for the Project with limits of liability consistent with those set forth in **Exhibit F**. Prior to commencement of construction, but no later than a date to be agreed to by the parties prior to the execution and delivery of the first GMP Amendment, Construction Manager shall provide a firm quote for the cost of a Wrap-Up Program based upon the coverages and limits of liability set forth in **Exhibit F**, and shall deliver a copy of such quote and the policy form to Owner. Any quoted rate for the Wrap-Up Program shall include the cost and expense of the necessary Construction Manager's safety administrative and staffing to administer the safety program for the Project, including on-site safety management. Owner may, in its discretion, elect to accept the Wrap-Up Program. If accepted, the Wrap-up Program shall be described in detail in the GMP Amendment.

11.6.1 Should Owner elect to secure the Wrap-Up Program, Construction Manager agrees that it will perform the Work necessary to support and comply with the Wrap-Up Program, including, but not limited to, compliance with the safety requirements of the program and adhering to the administrative paperwork associated with the program, as managed by the program administrator. Construction Manager further agrees that there will be no increase in the GMP to account for the Work necessary to support and comply with the Wrap-Up Program.

11.7 Performance Bond and Labor and Material Payment Bond. Construction Manager shall provide a surety performance and payment bond as set forth in the Agreement.

11.8 Indemnification.

11.8.1 General. In consideration of entering into the Agreement, Construction Manager shall indemnify, defend and hold harmless the Indemnitees from all liabilities, damages, losses, costs, and expenses (including, but not limited to, reasonable attorneys' and other professionals' fees) provided that such liability, damage, loss, cost, and expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible

property (other than to the Work itself) but only to the extent caused by (a) negligent acts or omissions of the Construction Manager, a Subcontractor, a Supplier or any other person or entity for whom Construction Manager is legally liable, or (b) Construction Manager's default under or breach of the Contract Documents. The foregoing is in addition to any other indemnifications contained in the Agreement.

11.8.2 Environmental. Except to the extent set forth in Section 10.1 herein, Construction Manager shall hold harmless, indemnify and defend the Indemnitees from and against environmental liability, including any and all claims, suits, demands, judgments, losses, bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including court costs, reasonable expert witness, attorneys' and other professionals' fees) to the extent resulting from Construction Manager's or any Subcontractor's actions or omissions that are a violation of any environmental permit, health permit, law, ordinance, rule, or regulation, or that leads to an environmental claim or citation or to damages due to Construction Manager's or any Subcontractor's acts or omissions.

11.8.3 Liens. Conditional upon Construction Manager receiving all payments owed it for the Work in accordance with the terms of the Contract Documents and to the extent not prohibited by law, Construction Manager shall further indemnify, defend and hold harmless the Indemnitees, from and against any and all claims, damages, losses and expenses (including, but not limited to, attorneys' fees and costs for defending any action) arising out of or resulting from: (a) mechanic's and materialmen's liens and any other construction liens of any kind whatsoever asserted against the Project or any part thereof, arising out of the Work performed hereunder except for any such liens properly filed by Construction Manager because of payments owed but not paid to Construction Manager in accordance with the terms of the Contract Documents; and (b) any penalties or fines levied or assessed for violations of Applicable Laws by Construction Manager or its Subcontractors with respect to their performance of the Work.

11.8.4 If any Claims are brought or actions are filed against any of the Indemnitees with respect to the indemnity contained herein, then Construction Manager shall, at the request of Owner, defend against any such claims or actions regardless of whether such Claims or actions are rightfully or wrongfully brought or filed with counsel reasonably agreeable to Construction Manager. Such attorneys shall appear and defend such Claims or actions at Construction Manager's expense. The Indemnitees, at their respective sole option, shall have the right to participate in the direction of the defense and shall have sole approval of any compromise or settlement of any Claims or actions against the Indemnitees, which approval shall not be unreasonably withheld.

11.8.5 In any and all claims against any of the Indemnitees by any employee of Construction Manager, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 11.8 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Manager or any

Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.8.6 The foregoing provisions shall in no way be deemed released, waived, or modified in any respect by reason of any insurance or bond provided by Construction Manager pursuant to the Contract Documents. If a Subcontractor, Sub-subcontractor or Supplier files a mechanics' lien against Owner's property, Construction Manager shall cause such lien to be formally released, bonded against or satisfied within seven (7) days, provided that Owner paid Construction Manager all undisputed amounts.

11.8.7 If any party is requested but refuses to honor its indemnity obligations hereunder, then the party refusing to honor such request shall, in addition to other obligations, pay the cost of bringing such action to enforce indemnity obligations, including attorneys' and other professionals' fees and costs for prosecuting any action, to the party requesting indemnity.

11.8.8 Unless otherwise approved by Owner, Construction Manager shall require that in each Subcontract, the Subcontractor shall be required to indemnify Construction Manager and the Indemnitees in the same manner and to the same extent that Construction Manager indemnifies the Indemnitees under the Agreement, with respect to and to the extent of that Subcontractor's portion of the Work.

ARTICLE 12 CHANGES IN THE WORK AND CLAIMS

12.1 Construction Change Directives.

12.1.1 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. If the Construction Change Directive provides for an adjustment to the applicable GMP, the adjustment shall be based on one of the methods provided for Change Orders. When Owner and Construction Manager agree with the adjustments in the applicable GMP and Contract Time, agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

12.1.2 Upon receipt of a Construction Change Directive, Construction Manager shall promptly proceed with the change in the Work involved and, within seven (7) days after receipt of the Construction Change Directive, advise Owner of Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the applicable GMP or Contract Time. A Construction Change Directive signed by Construction Manager indicates the agreement of Construction Manager therewith, including adjustment in GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

12.1.3 If Construction Manager does not respond within such seven (7)-day period, or disagrees with the method for adjustment in the applicable GMP, then method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change. In such case, Construction Manager shall keep and present, in such form as Owner may prescribe, an itemized accounting together with

appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 12.1.3 shall be limited to the following: (a) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; (b) costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; (c) rental costs of machinery and equipment, exclusive of hand tools, whether rented from Construction Manager or others; (d) costs of premiums for all bonds and insurance, permit fees, and applicable sales, use or similar taxes related to the Work; and (e) additional costs, if any, of Construction Manager's supervision and field office personnel directly attributable to the change.

12.2 Change Orders. All Change Orders shall be executed in writing by Owner and Construction Manager, shall be in the form attached hereto as **Exhibit A**, and shall contain full particulars of the changes, any adjustments to the GMP, any dates for Substantial Completion set forth in Master Project Schedule and any other modification to the Contract. Except as otherwise provided in Section 12.11 hereof, no changes to the scope of Work, any dates for Substantial Completion set forth in the Master Project Schedule, or the GMP shall be made except in accordance with a duly issued Change Order authorizing such changes or Construction Change Directives executed by Owner.

12.3 Changes Directed by Owner.

12.3.1 Owner may direct a change that would alter, add to or deduct from the scope of Work, by submitting to Construction Manager a written request setting forth in reasonable detail the nature of the requested change. If Construction Manager determines in good faith that such change directed by Owner will (a) increase or decrease Construction Manager's cost of performing the Work, (b) adversely affect Construction Manager's ability to meet any dates for Substantial Completion set forth in the Master Project Schedule, or (c) adversely affect Construction Manager's ability to comply with the warranties provided in the Contract Documents, then Construction Manager shall furnish Owner with the information specified in Section 12.11 hereof with respect to such changed Work. If Owner then elects to proceed with the changed Work, then it shall issue a Change Order to Construction Manager authorizing such modification as shall have been agreed to by Owner and Construction Manager.

12.3.2 The cost or credit to Owner resulting from a change in the Work shall be determined in accordance with the **Exhibit B**.

12.3.3 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to Owner or Construction Manager, the applicable unit prices shall be equitably adjusted.

12.3.4 Construction Manager and all Subcontractors affected by a Change Order shall maintain itemized accounts showing all charges and credits for additions to, deletions from, or other changes in the Work ordered by Owner which shall at all times be open to inspection by Owner, Owner Representative, Managing Design Architect, and Architect.

12.3.5 No claim for impact costs resulting from the performance of a Change Order shall be permitted subsequent to the time that the change is authorized by Owner.

12.4 Changes Other than Owner-Directed Changes. Construction Manager shall give timely written notice to Owner of any Claim for extension of time or any Claim for additional compensation, which notice shall, to the extent practicable, specify the length of delay in any dates for Substantial Completion and, as applicable, the additional compensation claimed, and shall reasonably substantiate the same to the reasonable satisfaction of Owner. Such notice must be issued promptly but in no event later than within ten (10) business days following actual knowledge of the event giving rise to the Claim by Construction Manager's project manager or any of Construction Manager's project superintendents. If it is impracticable to specify the length of such delay or amount of the Claim at the time the notice referred to in the preceding sentence is delivered, then Construction Manager shall provide Owner with periodic supplemental notices during the period over which the event continues. Such supplemental notices shall keep Owner informed of any change, development, progress or other relevant information concerning the event of which Construction Manager is aware. It is a condition precedent to the consideration or prosecution of any Claim that the foregoing procedures be strictly adhered to in each instance, and if Construction Manager fails to comply, Construction Manager shall be deemed to have waived such Claim to the extent such failure prejudiced Owner.

12.5 Concealed or Unknown Conditions. If conditions are encountered at the Site that are: (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than ten (10) business days after first observance of the conditions. Owner will promptly investigate such conditions and, if they differ materially and cause an increase in the cost of, or time required for, performance of any part of the Work, Construction Manager will be entitled to equitable adjustment in the Contract Sum or Construction Schedule (and other time requirements), or both. If Owner reasonably determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and no change is justified, then Owner shall so notify Construction Manager in writing, stating the reasons. Claims in opposition to such determination must be made within ten (10) business days after Construction Manager's receipt of Owner's written notice of its decision. If Owner and Construction Manager cannot agree on an adjustment in the Contract Sum or Construction Schedule (and other time requirements), then the parties shall proceed as set forth in Section 7.11 hereof.

12.6 Claims for Time Extension or Additional Compensation.

12.6.1 If the performance by Construction Manager of any obligation under the Contract Documents is delayed because of events of Force Majeure, then the time for the performance thereof (including the dates of Substantial Completion) shall be extended as provided in the Contract Documents, provided that in each instance the notice provisions and other conditions and requirements of this Article 12 are satisfied, including, but not limited to,

furnishing written notice to Owner promptly but in no event later than within ten (10) business days following actual knowledge of the event giving rise to the Claim by Construction Manager's project manager or any of Construction Manager's project superintendents. Notwithstanding the foregoing, no extension of time shall be granted for delays on account of, or resulting from, weather conditions (except for the severe, adverse weather conditions as set forth below), nor shall Construction Manager be granted any time extension due to Construction Manager's financial inability to perform. No extension of time shall be granted to Construction Manager unless the delay affects the critical path of the Project and then only to the extent that the delay affects the critical path. Any time extension shall be limited to the period of time that the delay actually affects the critical path of the Construction Schedule. For concurrent delays, (i.e., a delay for which the Construction Manager is entitled to a time extension occurs during the same period of time as a delay for which Construction Manager is not entitled to a time extension), Construction Manager shall be entitled to a time extension without adjustment to the GMP. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction; provided, however, that the Construction Schedule prepared by Construction Manager shall assume a certain number of days of delay due to adverse weather conditions, which number shall be agreed to by the Parties and established in the GMP Amendment; accordingly, there shall be no extension of time for delays caused by adverse weather so long as the number of days of delay due to adverse weather conditions is less than the number assumed in the Construction Schedule.

12.6.2 The timely presentation of Claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of the Contract Documents. Construction Manager shall be deemed to have waived any Claim that has not been presented Claim in accordance with the requirements of this Section 12.6.

12.6.3 If Construction Manager suffers injury or damage to person or property because of any act or omission of Owner or of any of its employees, agents or others for whose acts Owner is legally liable, then Construction Manager shall deliver to Owner a written Notice of a potential Claim as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such Claim, but no later than ten (10) days after Construction Manager has knowledge of the injury or damage at issue.

12.6.4 Unless the matter has been resolved by the parties, Construction Manager shall provide a written certified Claim to Owner within thirty (30) days after Construction Manager has knowledge of the injury or damage at issue. A certified Claim shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that: (a) the Claim is made in good faith; (b) the Claim's supporting data are accurate and complete to the best of the person's knowledge and belief based on available information; (c) the amount of the Claim accurately reflects the amount that the claimant believes is due from Owner; and (d) the certifying person is duly authorized by the claimant to certify the Claim. To the extent then known by Construction Manager, each and every Claim shall state:

12.6.4.1 The date of the event or occurrence giving rise to the Claim. In the case of a Claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.

12.6.4.2 The exact nature of the Claim, including sufficient detail to identify the basis for the Claim, including by way of example only, such detail as drawing numbers, specification sections, job site location, affected trades, Contract clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the Claim.

12.6.4.3 Whether additional monies are part of the Claim. If known, the dollar value associated with the Claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the Claim amount.

12.6.4.4 The dollar value associated with the Claim, along with all supporting documentation, shall be broken down into direct and indirect costs. The direct costs shall be calculated as set forth in this Article 12 in the same manner as other changes in the Work.

12.6.4.5 Any Claim for additional compensation that also involves a request for an extension of time shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the Claim. Scheduling references shall include a month-by-month time impact analysis ("TIA") using the approved monthly progress schedules and demonstrating the effect of the delay or change on the most recently approved overall Construction Schedule. The TIA shall demonstrate the time impact of each change or delay based on the date of the change or start of delay on Construction Manager's current construction schedule. Each TIA shall include how Construction Manager proposes to incorporate the changes or delays into its construction schedule.

12.6.5 Subject to the other terms of the Contract Documents, Owner shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any certified Claim. Within thirty (30) days after a Claim has been received, the Claim shall either be recognized or, if the Claim is not recognized within thirty (30) days, it shall be deemed denied and the parties shall proceed in accordance with the dispute resolution procedures of Section 7.11.

12.6.6 Failure of Construction Manager to make a specific reservation of rights regarding any disputed amounts in the body of the Change Order that contains the payment shall be construed as a waiver, abandonment, or relinquishment of all Claims for additional compensation resulting from the Claims that are the subject matter of such Change Order; provided, however, once Construction Manager has properly reserved rights to any Claim, no further reservations of rights shall be required until the final payment under the Contract Documents. At such time, Construction Manager shall specify all Claims that have been denied and all Claims for which rights have been reserved in accordance with this Section 12.6.6. Failure to so specify any particular Claim at final payment shall be construed as a waiver, abandonment, or relinquishment of such Claim. No reservation of rights will be

effective to preserve any Claims that are not fully documented and submitted in accordance with requirements of these Contract Documents. No payments shall be made to Construction Manager by Owner for loss of anticipated profits from any deleted Work.

12.6.7 Construction Manager shall not cease or stop work on account of any dispute regarding any Change Order Work, any denied Claim or any recognized Claim upon which an agreement as to the final amount or time extension has not been reached. In such instance, the matter shall be referred to dispute resolution as provided in Section 7.11 hereof and Construction Manager and Owner shall continue performance of their respective obligations under the Contract Documents.

12.6.8 Subject to the other terms of the Contract Documents, with regard to any and all Claims for additional compensation resulting from delays to the Work, Construction Manager assumes all risk for the following items, none of which shall be the subject of any Claim and none of which shall be compensated for except as they may have been included in the compensation for indirect costs: (a) home office expenses or any direct costs incurred allocated from the headquarters of Construction Manager; (b) loss of anticipated profits on this or any other project; (c) loss of bonding capacity or bonding capability; (c) losses due to other projects not bid upon; (e) loss of business opportunities; or (f) loss of productivity on any other project.

12.6.9 All claimed items of additional compensation shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and similar supporting documentation.

12.7 Owner Review of Request. If Owner accepts Construction Manager's finding as to an event of delay, then Owner shall issue a Change Order adjusting any dates for Substantial Completion set forth in Construction Schedule (and other time requirements) by extending the time for performance of Construction Manager's obligations under the Contract Documents for a period equal to the delay in completion of the Work. If Owner does not accept Construction Manager's findings, then the propriety of a Change Order for such event may be submitted to dispute resolution as provided in the Contract Documents.

12.8 No Damage for Delay. Construction Manager's and Subcontractors' exclusive remedy for delays or disruptions in the performance of the Work caused by events beyond Construction Manager's or a Subcontractor's (as applicable) control, including Owner delays claimed to be caused by Owner or attributable to Owner, and including claims based on breach of contract or negligence, shall be an extension of the date for Substantial Completion. Notwithstanding the foregoing, however, if Construction Manager is delayed by a Force Majeure event or an Owner-caused delay, then Owner shall, in Owner's sole discretion, either (a) pay Construction Manager the actual costs to accelerate the Work in accordance with Section 8.2 or (b) grant an extension of time in accordance with Section 12.6. If the delay for which an extension of time was granted was caused by Owner, then Construction Manager shall be entitled to reimbursement for its extended actual, documented Staff Costs or Staff Support Expenses (as such terms are defined in the Agreement), but there shall be not increase in Construction Manager's Fee. For avoidance of doubt, no additional compensation shall be paid for time extensions granted due to delays caused by Force Majeure events. The foregoing constitutes Construction Manager's and Subcontractors' sole and exclusive remedy for delays or disruptions

in the progress of the Work, and Construction Manager and Subcontractors shall have no other remedies for claim for increase in the contract price, damages, losses or additional compensation resulting from such delays.

12.9 Mitigation of Event. Construction Manager shall use reasonable efforts to remove, relieve or minimize the effect of any delay, whether caused by any event of Force Majeure or other causes.

12.10 Performance of Changed Work. If Owner and Construction Manager are unable to agree on the adjustment to the GMP applicable to a Change Order, then Owner may nonetheless issue a Construction Change Directive for such changed Work and Construction Manager shall proceed to perform such changed Work so long as Construction Manager is paid on a time and materials basis in accordance with the pricing set forth in **Exhibit B** until such agreement can be reached. If Owner and Construction Manager cannot ultimately reach an agreement, then either party may refer the issue to dispute resolution as provided in Section 7.11 hereof.

12.11 Price and Schedule Adjustments for Change Order Work. The price of any Work ordered by a Change Order or Construction Change Directive shall be calculated on the basis set forth in **Exhibit B** unless otherwise agreed by Owner and Construction Manager. Construction Manager shall, as soon as reasonably practical following a request therefore, furnish Owner with detailed estimates, quotations or costs to be used in determining the amount of any proposed adjustment to the GMP. Each Change Order incorporating the agreed GMP adjustment shall be accompanied by a modified payment schedule reflecting such adjustment and each Change Order incorporating the agreed extension of any dates for Substantial Completion set forth in the Master Project Schedule shall be accompanied by a modified Construction Schedule reflecting such adjustment.

12.12 Constructive Acceleration. Notwithstanding anything in the Contract Documents to the contrary, if Construction Manager is entitled to an extension of time pursuant to the Contract Documents, but Owner nevertheless requires Construction Manager to perform without a change in any dates for Substantial Completion set forth in the Master Project Schedule, with the result that Construction Manager is required to accelerate its performance of the Work, then the GMP shall be adjusted in accordance with this Article 12 to the extent of any increase in the reasonable costs (including amounts owed to Subcontractors) incurred by Construction Manager as a result of such constructive or directed acceleration, plus a profit and overhead as set forth in **Exhibit B**. In no event shall Construction Manager or any of its Subcontractors be entitled to any other compensation or recovery of any damages in connection with constructive or directed acceleration, including consequential damages, lost opportunity costs or similar remuneration. Construction Manager shall accelerate its Work in a reasonably cost efficient manner.

12.13 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to Owner or Construction Manager, the applicable unit prices shall be equitably adjusted.

12.14 Accounting. Construction Manager and all Subcontractors affected by a Change Order being charged on the basis of costs incurred shall maintain itemized accounts showing all relevant charges and credits for additions to, deletions from, or other changes in the Work ordered by Owner which shall at all times be open to inspection by Owner, Owner Representative, Architect and (as requested by Owner) Managing Design Architect.

12.15 Minor Changes in the Work. Owner Representative may order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time or other time requirements and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Construction Manager. Construction Manager shall carry out such written orders promptly.

12.16 Changes in GMP. Notwithstanding anything herein to the contrary, the Construction Cost Limitation set forth in the Agreement shall not be deemed to limit Construction Manager's right to an adjustment in the GMP under to the Contract Documents.

ARTICLE 13 UNCOVERING AND CORRECTION OF WORK

13.1 Uncovering of Work. If any portion of the Work should be covered contrary to the written request of Owner, Managing Design Architect or Architect, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and shall be replaced at Construction Manager's expense. If any other portion of the Work has been covered that Owner, Managing Design Architect or Architect have not specifically requested in writing to observe prior to its being covered, either of them may request to see such Work and it shall be uncovered by Construction Manager. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work be found not in accordance with the Contract Documents, Construction Manager shall pay such costs unless it be found that this condition was caused by Owner or a Separate Contractor as provided in Article 6, in which event Owner shall be responsible for the payment of such costs.

13.2 Correction of Work.

13.2.1 If Owner does not require Defective Work to be removed or corrected by Construction Manager, then an equitable deduction from the GMP shall be made by agreement between Construction Manager and Owner. Owner may withhold such sums as are just and reasonable from amounts, if any, due Construction Manager hereunder, until the amount of any such deduction is agreed upon by Owner and Construction Manager. All such deductions from the Contract Sum shall be evidenced by a Change Order.

13.2.2 If Construction Manager does not fully perform its obligations under Section 4.6 hereof within a reasonable time following written notice by Owner to Construction Manager, then Owner may perform or cause such obligations to be performed at the cost and expense of Construction Manager and (a) either the GMP shall be decreased by the amount of such costs and expenses, or (b) if the GMP has already been exceeded by Construction Manager, or would be exceeded as a result of such costs and expenses, then the portion of such costs and

expenses exceeding the GMP shall be deducted from amounts to be paid by Owner to Construction Manager or shall be indebtedness of Construction Manager to Owner, payable on demand.

13.2.3 Nothing contained in this Article 13 or Section 4.6 hereof shall be construed to establish a period of limitation with respect to any other warranty obligation under the Contract Documents. The establishment of the one (1) year time period after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of Construction Manager to correct the Work, and has no relationships to the time within which obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish Construction Manager's liability with respect to its obligations other than specifically to correct the Work. The period of corrections shall not be extended by corrective work.

13.2.4 The expiration of any guarantee or any obligation of Construction Manager to correct Work shall not relieve Construction Manager of the obligation to correct any latent defect in the Work or deficiencies that are not readily ascertained, including defective Materials and workmanship, defects attributable to Substitutions for specified Materials, and substandard performance of any of the Work otherwise not in compliance with the Contract Documents. Following the correction or replacement of any of the Work, Construction Manager shall correct any defects or deficiencies in the replaced Materials and workmanship which are found within one (1) year after the date of correction or replacement.

13.2.5 During the first three (3) months after Substantial Completion, and during the first five (5) events scheduled at the Arena/Plaza after Substantial Completion, Construction Manager shall have appropriate personnel "on call" to deal with major systems as agreed to by Construction Manager and Owner as part of the Commissioning Plan. If any problems with the Work arise during such times, then all such personnel shall remain "on call" for an additional month and for the next five (5) subsequent events until all issues are resolved.

13.2.6 All warranties arising from this Article 13 and from other provisions of the Contract Documents shall run directly to Owner. All warranties and guaranties of manufacturers or Suppliers shall be fully assignable to Owner, or their respective designees, and shall be assigned to Owner upon Substantial Completion of the Work. The warranties provided in this Article 13 shall be in addition to and not in limitation of any other warranty or remedy arising by law or by the Contract Documents. Construction Manager shall assist Owner in enforcement of long term warranties or guaranties from manufacturers or Suppliers.

13.2.7 On or about the date that is ten (10) months after the date of Substantial Completion, Construction Manager shall, together with Architect and (as requested by Owner) Managing Design Architect and/or Owner Representative, attend a final inspection of the Work to assure that it comports with all warranties and guaranties. Construction Manager shall promptly correct any deficiencies noted during such inspection.

13.3 Acceptance of Defective or Nonconforming Work. If Owner prefers to accept defective or nonconforming Work, Owner may do so instead of requiring its removal and

correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14
TERMINATION OF THE CONTRACT

14.1 Suspension or Termination by Construction Manager. If Owner fails to pay within forty-five (45) days after due any undisputed amounts that are due and owing to Construction Manager under the Agreement, then Construction Manager may, upon ten (10) days' prior written notice to Owner, during which time Owner fails to make such payment, terminate the Agreement and recover from Owner payment for all Work executed and the portion of the Contract Sum earned prior to the date of termination (based on the percentage of Work completed as such date) and all Cost of the Work actually incurred by Construction Manager as a result of such termination, including reasonable documented termination expenses, such as cancellation fees or other costs actually incurred. The foregoing payment shall be the exclusive recovery to Construction Manager and Construction Manager hereby waives any other right of recovery for damages by reason of termination, including anticipated profits or consequential damages.

14.2 Owner's Right to Perform and Termination by Owner.

14.2.1 If Construction Manager fails to properly and timely perform any if its obligations under the Agreement, Owner may, after fourteen (14) days' prior written notice, during which period Construction Manager fails to commence, and thereafter diligently pursue, performance of such obligations, without prejudice to and cumulative of any other remedy Owner may have, make good such deficiencies. No action taken hereunder by Owner shall be deemed a termination of the Agreement or relieve Construction Manager from any consequences or liabilities arising from such actions or omissions. All costs and expenses incurred by Owner in correcting such deficiencies shall become indebtedness of Construction Manager to Owner payable upon demand and may be offset against the Contract Sum.

14.2.2 If Construction Manager is adjudged to be bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it fails to supply enough properly skilled workmen or proper Materials, or if it fails to make proper payment to Subcontractors or for Materials or labor, or fails to comply with Applicable Laws, or if it otherwise breaches the Agreement, then Owner may, without prejudice to any right or remedy and after giving Construction Manager fourteen (14) days' prior written notice, during which period Construction Manager fails to commence to cure the violation, terminate the Agreement and take possession of the Site and of all Materials, Equipment, tools and machinery thereon owned by Construction Manager and may finish the Work by whatever reasonable method it may deem expedient. In such case, Construction Manager shall not be entitled to receive any further payment until the Work is finished nor shall it be relieved from its obligations under the Contract Documents.

14.2.3 If Owner completes the Work and the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including Owner's additional costs, compensation

for Managing Design Architect's and Architect's additional services, and all losses, damages, costs and expenses not expressly waived under the Agreement, including attorney's and other professionals' fees, sustained or incurred by reason of Construction Manager's failure to complete the Work, then an amount shall be paid to Construction Manager only to the extent as will compensate it for the Work Construction Manager actually performed. If such cost to Owner to complete the Work exceeds such unpaid balance of the Contract Sum, then Construction Manager shall pay the difference to Owner upon demand. This obligation for payment shall survive the termination of the Agreement.

14.2.4 Upon determination by a court of competent jurisdiction or an arbitration panel, as the case may be, that termination of Construction Manager pursuant to Sections 14.2.2 or 14.2.3 hereof was wrongful, such termination shall be deemed converted to a termination for convenience pursuant to Section 14.4 hereof and Construction Manager's remedy shall be limited to the recovery of only those payments permitted for termination for convenience as set forth in Section 14.4 hereof.

14.3 Suspension by Owner for Convenience. Owner may, without cause, order Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine. Any claim for adjustment in the Contract Sum caused by suspension, delay or interruption under this Section 14.3 shall be made pursuant to Section 12.2 hereof. No adjustment shall be made to the extent: (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Construction Manager is responsible; or (b) that an equitable adjustment is made or denied under another provision of the Contract Documents. Scheduled cessations in the progress of the Work shown in the Master Project Schedule shall not be construed as suspensions of the Work.

14.4 Termination by Owner for Convenience. In addition to any other rights Owner may have at law or under the Agreement with respect to cancellation or termination, Owner may terminate, without cause, the Agreement in whole or, from time to time, in part, if Owner determines that a termination is appropriate for its convenience. Owner shall terminate by delivering to Construction Manager a notice of termination for convenience specifying the extent and the effective date of termination, which effective date shall be at least fourteen (14) days from the date of delivery of the notice. Owner shall, upon Construction Manager executing such confirmatory assignments as Owner shall request, accept and assume all of Construction Manager's obligations under all Subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that Construction Manager has incurred in good faith in connection with the Work. Construction Manager shall be paid for all Work completed to the date of such termination, together with the portion of the Contract Sum earned to the date of termination (based upon the percentage of Work completed as of such date) and reasonable, documented demobilization costs. Construction Manager shall not be entitled to consequential damages, lost profits, anticipated profits or unallocated overhead on any Work not performed or on Materials not furnished.

EXHIBITS

Exhibit A	Change Order Form
Exhibit B	Change Order Pricing
Exhibit C	Master Project Schedule
Exhibit D	Description of Site
Exhibit E	Project Description
Exhibit F	Insurance Requirements
Exhibit G	Dispute Resolution Procedures



EXHIBIT A

Change Order Form

CHANGE ORDER

[Note: Change Order must specify whether it relates to the Arena/Plaza Work or Garage Work.]

PROJECT: Golden State Warriors _____ Work CHANGE ORDER NO.: _____

WORK: _____ DATE: _____

TO: _____ CONTRACT NO.: _____

CONTRACT DATE: _____

You are hereby authorized to make the following changes in this Contract:

The original Contract Sum was.....\$

Net change by previously authorized Change Orders.....\$

The GMP prior to this Change Order was\$

The GMP will be (increased) (decreased) (unchanged) by this Change Order
in the amount of.....\$

The new GMP, including this Change Order, will be.....\$

The time for completion of the Project will be (increased) (decreased) (unchanged) by _____
() days.

The date of Substantial Completion as of the date of this Change Order is _____.

Payment for this change shall fully compensate Construction Manager for all costs directly or indirectly related to this work and for any effect upon other work under the Contract Documents except as may be otherwise expressly noted herein. Unless otherwise expressly provided for herein, all impact costs resulting from the performance of this Change Order are included herein and no other impact cost resulting from the performance of this Change Order shall be permitted. No extension of time for the performance of this Change Order work or any other work under the Contract Documents shall be allowed as a result

of this Change Order, except as otherwise specifically provided above. All other terms and conditions of the Agreement between Owner and Construction Manager remain unchanged.

OWNER:

CONSTRUCTION MANAGER:

GSW ARENA LLC

MORTENSON | CLARK, A JOINT VENTURE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED BY (AS NECESSARY):

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B

Change Order Pricing

1. The increase or decrease in the GMP shall be based on the incremental increase or decrease in the actual and direct costs of the Construction Manager and shall be determined in one of the following ways and, unless otherwise approved or directed by Owner, in the precedence of the order listed:

a. by an accepted unit price proposed in the applicable GMP Amendment and incorporated in the Contract Documents;

b. by a lump sum cost acceptable to Owner, based on Construction Manager's detailed, itemized estimate of the costs, with allowance for Construction Manager's profit and overhead, as provided for under Item 3 below;

c. by mutually agreeable unit prices for the Work, based on Construction Manager's estimated costs, with allowance for Construction Manager's profit and overhead, computed in a similar manner as provided for in Section 3 below; or

d. on the actual Cost of the Work (as defined in the Agreement), as determined by payroll records and invoices, plus allowances for overhead and profit, all as provided for in Items 3 through 10 below.

2. For unit prices, Construction Manager shall submit an itemized list of quantities with the applicable unit cost and extended price for each, in such form and detail as required by Owner.

3. To the extent the Change Order or Construction Change Directive requires additional personnel of Construction Manager or additional general conditions expense, then such personnel shall be provided at the hourly rates set forth in the Agreement and the additional general conditions expense shall be reimbursed as a Cost of the Work. The amount that will be allowed for overhead, profit, fee or other markup shall be as follows, expressed as a percentage of the actual basic cost of the change:

		Construction Manager's Fee*
To Construction Manager for Work performed with its own forces [excluding, however, Self-Performed Work, which is governed by Section 5.2 of the Agreement]		██████████
To Construction Manager for Work performed by other than its own forces		██████████

	Overhead	Profit
To Subcontractor for Work performed with its own forces	10%	5%
To Subcontractor for Work performed by other than its own forces	5%	5%

4. Except as set forth in the Agreement, the percentages allowed for Subcontractor's overhead or under Section 3 above shall be deemed to include all of the following costs of the Subcontractor in performing the Change Order Work:

- (a) Field and office supervision and administration, including the field superintendent;
- (b) General insurance, except that listed as the labor burden;
- (c) Use of existing small tools;
- (d) Shop burden;
- (e) Estimating and administrative costs;
- (f) Indirect costs related to the Work, including impact costs resulting from the performance of cumulative Change Orders, unless such impact can be clearly defined, then they shall be considered Cost of Work; and
- (g) Any other costs resulting from the change not expressly enumerated as a Cost of the Work, including general requirements that are directly attributable to the change shall be considered Cost of the Work (*e.g.*, protection, clean-up, reproduction and safety).

5. Not more than three (3) mark-ups (*i.e.*, Construction Manager, Subcontractor and one lower tier Subcontractor) for a particular Cost of Work shall be permitted.

6. Material costs shall be at the actual costs to Construction Manager or Subcontractor. Upon request, Construction Manager (or Subcontractor) shall submit evidence to substantiate the costs. Materials shall be quoted at trade discount prices, if realized, with quantity discounts also applied, if realized. In any proposal with Material credits, the credit shall be based on the actual contract cost for the Material (including trade and quantity discounts, if realized) less any charge actually incurred for handling or returning a material that has been delivered.

7. Except for changes based on unit prices included in the Agreement, cost changes shall be computed by determining the actual Cost of the Work to which the overhead/profit may be added and then adding any applicable sales tax on Materials.

8. For changes involving both extra and credit amounts, the overhead and profit shall be applied only to the net difference where the extra exceeds the credit.

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9. For changes resulting in a decrease in the GMP, there shall be a corresponding decrease in Construction Manager's Fee, subject to the Fee Collar described in Section 9.4.3 of the Agreement.

10. On changes where the value or extent of Work cannot be agreed upon, Owner may authorize Work to proceed on an agreed upon cost plus basis, not to exceed a pre-determined maximum amount. In such cases, the basic costs and mark up for overhead/profit will be in accordance with this Exhibit; provided, however, Construction Manager shall not be required to continue to perform any such change Work if the not-to-exceed maximum amount is reached. In such event, however, Construction Manager shall notify Owner well in advance if it appears, in Construction Manager's reasonable judgment, that the not-to-exceed maximum amount will be reached.

11. Unless otherwise noted, prices, if any, proposed in the GMP Amendment are not subject to further profit or overhead adjustments, nor are they subject to the conditions of Items 2 through 10 above. The GMP will be adjusted by the direct extension of the number of units and the unit cost price.

EXHIBIT C

Master Project Schedule

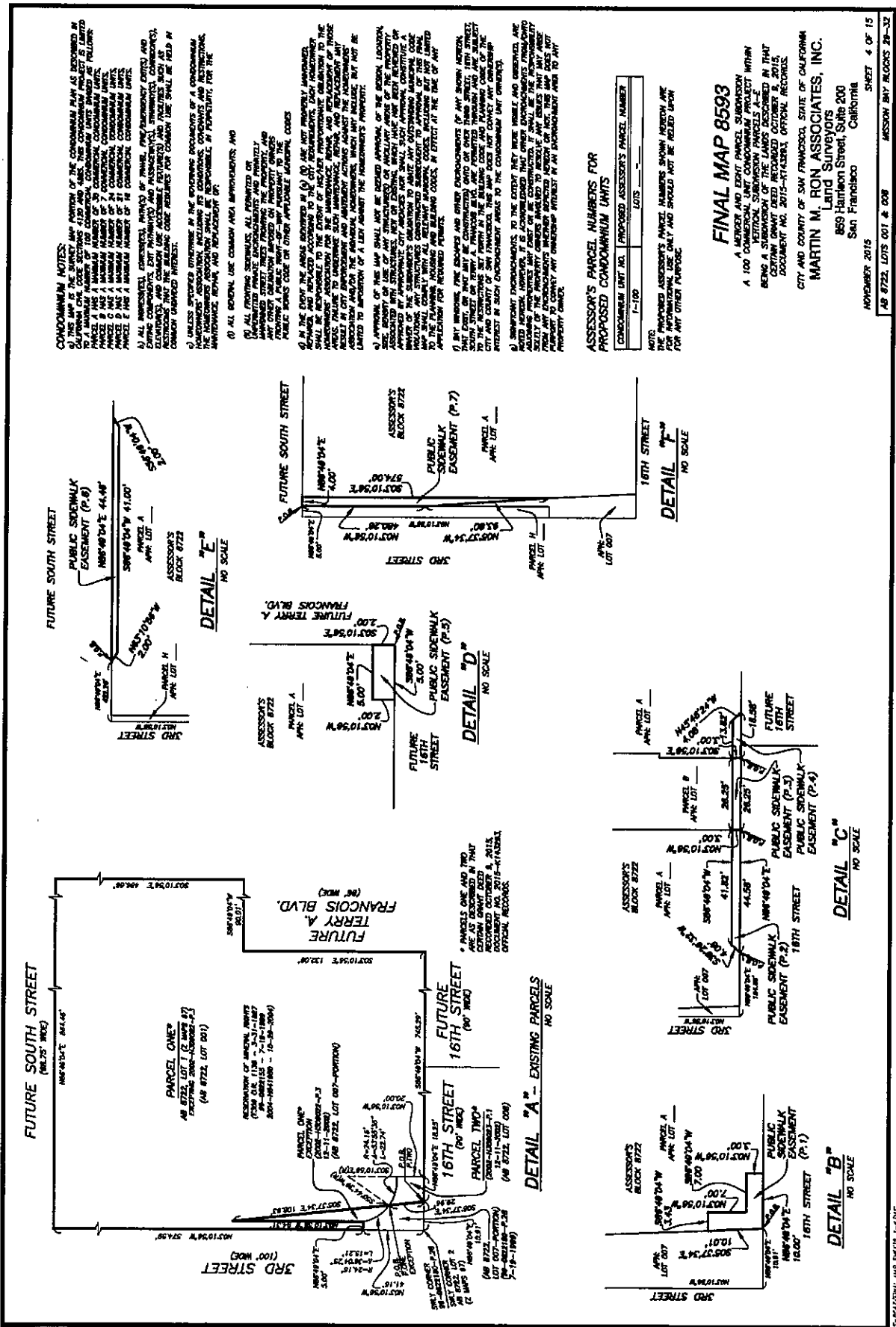
The Master Project Schedule shall be that certain Exhibit C- Master Project Schedule, dated as of November 29, 2015, Run Date December 4, 2015, 4 pages, attached hereto.

EXHIBIT D

Description of Site

- A. The Project Site for the Arena/Plaza/Garage Work is comprised of the land delineated and identified as Parcels A, B and E on the Final Map No. 8593, prepared by Martin M. Ron Associates, Inc., dated November 2015, the relevant pages of which are attached hereto.

- B. The Project Site for the Office/ Retail work is comprised of the land delineated and identified as Parcels C and D on the Final Map No. 8593, prepared by Martin M. Ron Associates, Inc., dated November 2015, the relevant pages of which are attached hereto.



CONDOMINIUM NOTES:

1) THIS MAP IS THE SURVEY AND PORTION OF THE CONDOMINIUM PLAN AS DESCRIBED IN CALIFORNIA CIVIL CODE SECTIONS 4130 AND 4132. THE CONDOMINIUM PROJECT IS LIMITED TO THE PARCELS SHOWN ON THIS MAP.

2) PARCEL ONE HAS A NUMBER OF 10 CONDOMINIUM UNITS. PARCEL TWO HAS A NUMBER OF 7 CONDOMINIUM UNITS. PARCEL THREE HAS A NUMBER OF 14 CONDOMINIUM UNITS.

3) ALL UNITS SHALL BE CONVEYED BY TRUST, AND THE TRUSTEE SHALL BE HELD IN TRUST FOR THE BENEFIT OF THE UNIT OWNERS.

4) UNLESS SPECIFICALLY STATED IN THE RECORDING DOCUMENTS OF A CONDOMINIUM UNIT, THE UNIT OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE, REPAIR, AND REPLACEMENT OF THE UNIT AND ITS INTERIORS.

5) ALL EXISTING UTILITIES, ALL PERMITTED OR APPROVED STREET TRENDS, AND ALL OTHER UTILITIES SHOWN ON THIS MAP SHALL REMAIN IN PLACE AND SHALL BE MAINTAINED IN ACCORDANCE WITH THE PUBLIC WORKS CODE OR OTHER APPLICABLE MUNICIPAL CODES.

6) IN THE EVENT THE AREA SHOWN HEREON IS (A) THE PROPERTY OF ANOTHER PARTY, OR (B) IS SUBJECT TO AN EASEMENT, OR (C) IS SUBJECT TO A PUBLIC RIGHT-OF-WAY, THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR OBTAINING THE NECESSARY PERMISSIONS FROM THE APPLICABLE AGENCIES FOR THE USE AND ENJOYMENT OF THE PROPERTY.

7) THE CITY ENGINEER HAS REVIEWED THIS MAP AND HAS DETERMINED THAT THE PROPOSED IMPROVEMENTS ARE IN ACCORDANCE WITH THE PUBLIC WORKS CODE AND OTHER APPLICABLE MUNICIPAL CODES.

8) APPROVAL OF THIS MAP SHALL NOT BE DEEMED APPROVAL OF THE DESIGN, LOCATION, OR CONSTRUCTION OF THE IMPROVEMENTS SHOWN HEREON, NOR SHALL IT BE DEEMED APPROVAL OF THE DESIGN, LOCATION, OR CONSTRUCTION OF ANY OTHER IMPROVEMENTS THAT MAY BE REQUIRED FOR THE PROPOSED IMPROVEMENTS.

9) BY MAKING THIS MAP, THE ENGINEER AND OTHER PROFESSIONALS HAVE NOT GUARANTEED THAT THE IMPROVEMENTS WILL BE CONSTRUCTED OR MAINTAINED, NOR HAVE THEY GUARANTEED THAT THE IMPROVEMENTS WILL BE USED FOR THE PURPOSES INTENDED BY THE CITY AND COUNTY OF SAN FRANCISCO.

10) THE CITY ENGINEER HAS REVIEWED THIS MAP AND HAS DETERMINED THAT THE PROPOSED IMPROVEMENTS ARE IN ACCORDANCE WITH THE PUBLIC WORKS CODE AND OTHER APPLICABLE MUNICIPAL CODES.

ASSESSOR'S PARCEL NUMBERS FOR PROPOSED CONDOMINIUM UNITS

CONDOMINIUM UNIT NO.	PROPOSED ASSESSOR'S PARCEL NUMBER
1-100	LOTS

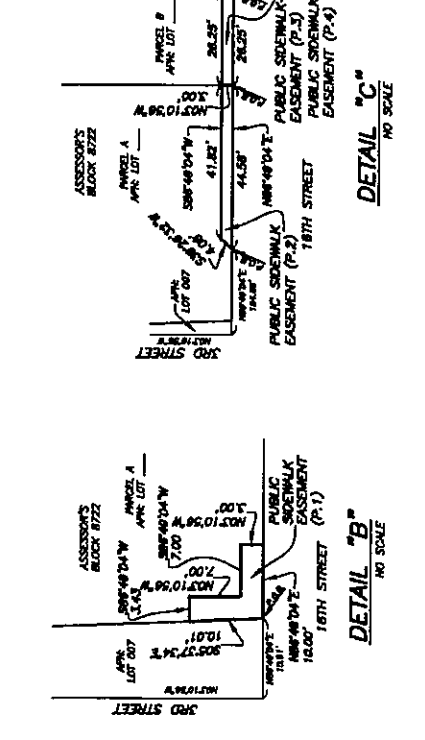
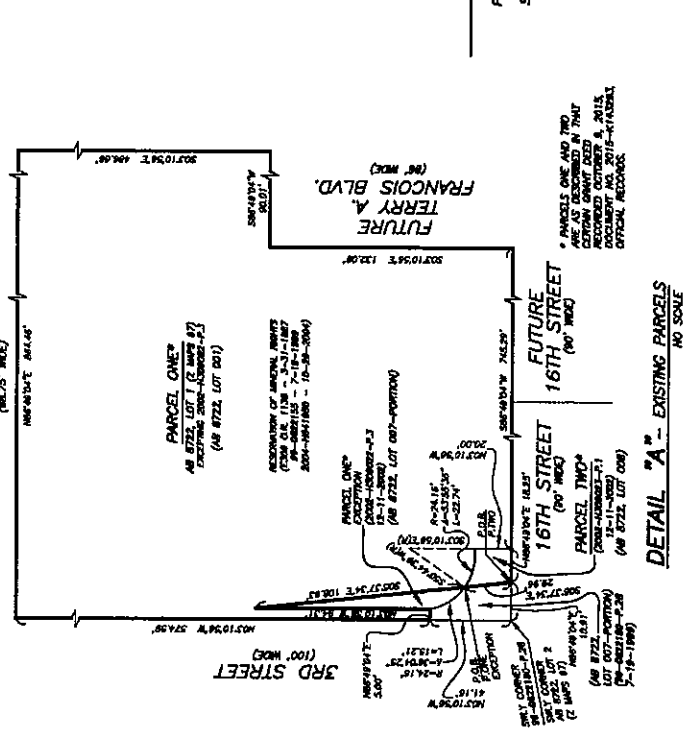
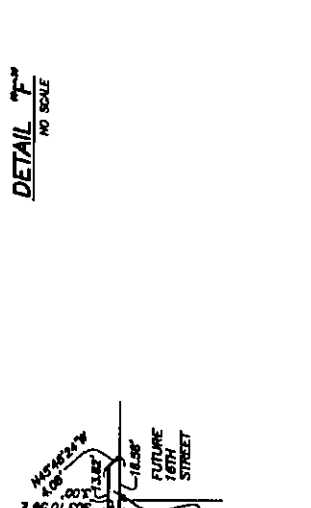
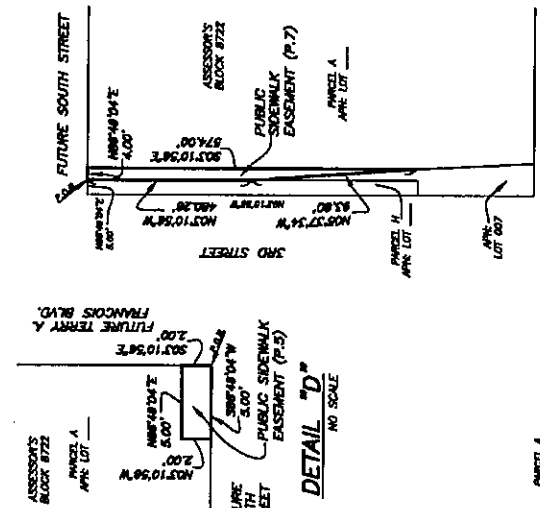
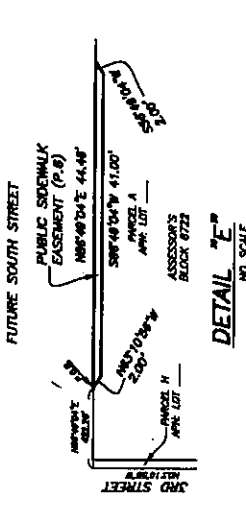
NOTE: PROPOSED ASSESSOR'S PARCEL NUMBERS SHOWN HEREON ARE FOR INFORMATIONAL USE ONLY AND SHOULD NOT BE RELED BACK FOR ANY OTHER PURPOSE.

FINAL MAP 8593

A MEMBER AND EIGHT PARCEL SUBMISSION
 A 100 CONDOMINIUM UNIT CONDOMINIUM PROJECT WITHIN
 BEING A SUBDIVISION OF THE LANDS DESCRIBED IN THAT
 CERTAIN GRANT DEED RECORDED OCTOBER 8, 2015,
 DOCUMENT NO. 2015-474383, OFFICIAL RECORDS,
 CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

MARTIN M. RON ASSOCIATES, INC.
 Land Surveyors
 859 Harrison Street, Suite 200
 San Francisco, California

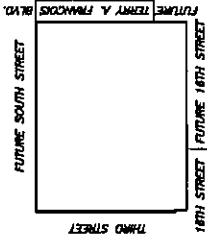
NOVEMBER 2015
 AS 8722, LOTS 001 & 002
 SHEET 4 OF 15
 MISSON BAY BLOCKS 28-32





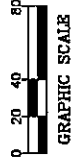
LEGEND
 L.E. LOWER ELEVATION BREAK LINE
 U.L. UPPER ELEVATION BREAK LINE
 P.L. PARCEL LINE

KEY MAP



SEE SHEET 15 FOR SECTIONS

LEVEL A (BELOW LEVEL 8100)
 U.L. = 76.0' BELOW LOWER LEVEL 2 FLOOR SLAB
 L.E. = CENTER OF THE EARTH

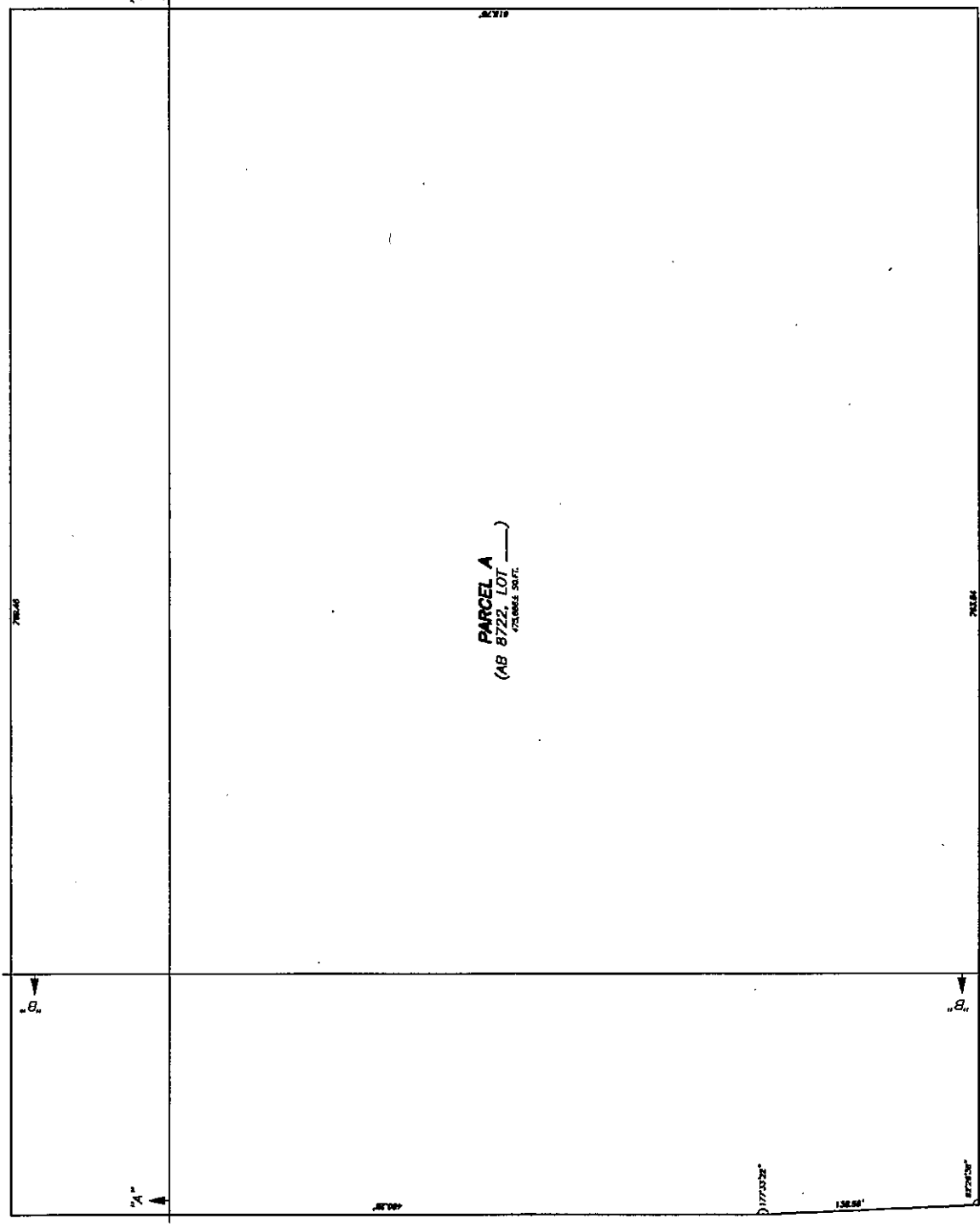


FINAL MAP 8593

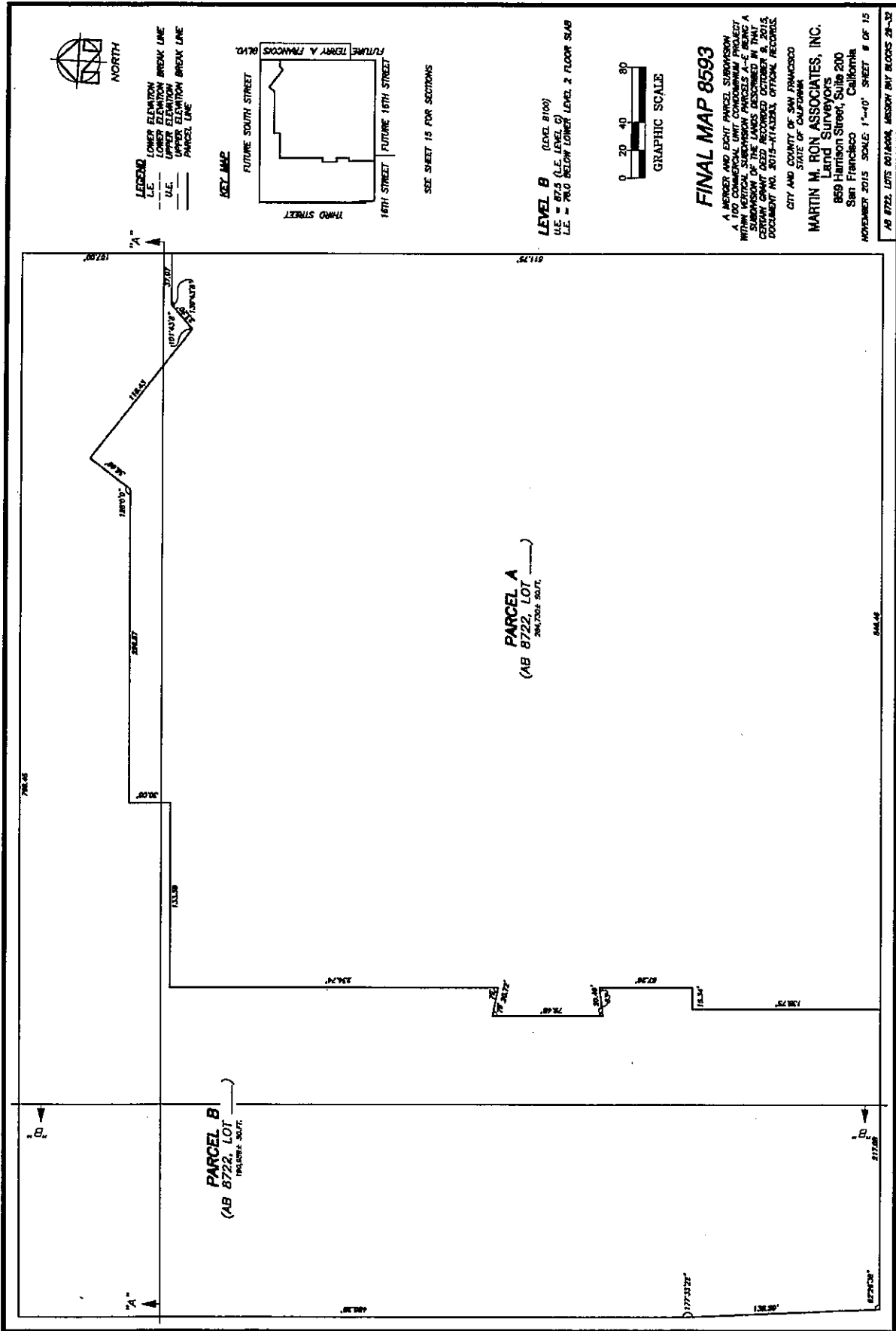
A MEMBER AND LIGHT FINISH SUBMISSION
 A 100 COMMERCIAL UNIT CONDOMINIUM PROJECT
 WITHIN VERTICAL SUBDIVISION PARCELS A-E BEING A
 SUBDIVISION OF THE LANDS DESCRIBED IN THE
 COMMERCIAL UNIT CONDOMINIUM PROJECT
 DOCUMENT NO. 2015-KT43282X, OFFICIAL RECORDS

CITY AND COUNTY OF SAN FRANCISCO
 STATE OF CALIFORNIA
MARTIN M. RON ASSOCIATES, INC.
 Land Surveyors
 859 Harrison Street, Suite 200
 San Francisco, California

NOVEMBER 2015 SCALE: 1"=40' SHEET 5 OF 15
 AB 8722, LOTS 021A006, MISSON BAY BLOCKS 28-32



9

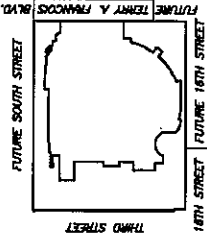


9



LEGEND
 L.E. LOWER ELEVATION
 U.E. UPPER ELEVATION
 L.E. LOWER ELEVATION BREAK LINE
 U.E. UPPER ELEVATION BREAK LINE
 PARCEL LINE

KEY MAP



SEE SHEET 15 FOR SECTIONS

LEVEL C (LEVEL 000)
 U.E. = L.E. LEVEL 0
 L.E. = 87.5 BELOW LOWER LEVEL 1 FLOOR SLAB

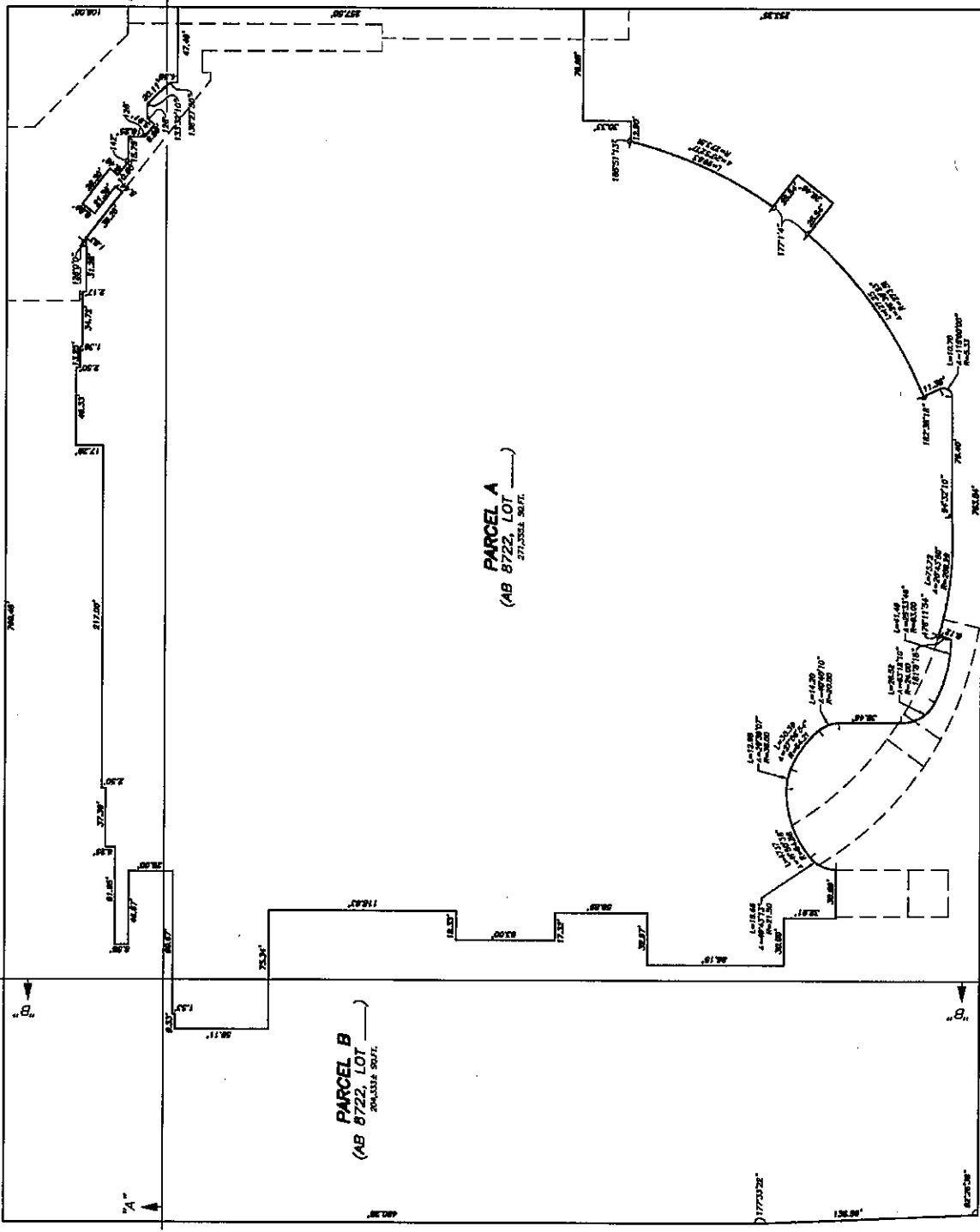


FINAL MAP 8593

A MERGER AND SPLIT PARCEL SUBDIVISION OF THE PARCELS SHOWN ON MAP 8592 WITHIN CERTAIN SUBDIVISION PARCELS AS PER A SUBDIVISION OF THE LANDS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED OCTOBER 8, 2015, DOCUMENT NO. 2015-474333, OFFICIAL RECORDS, CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

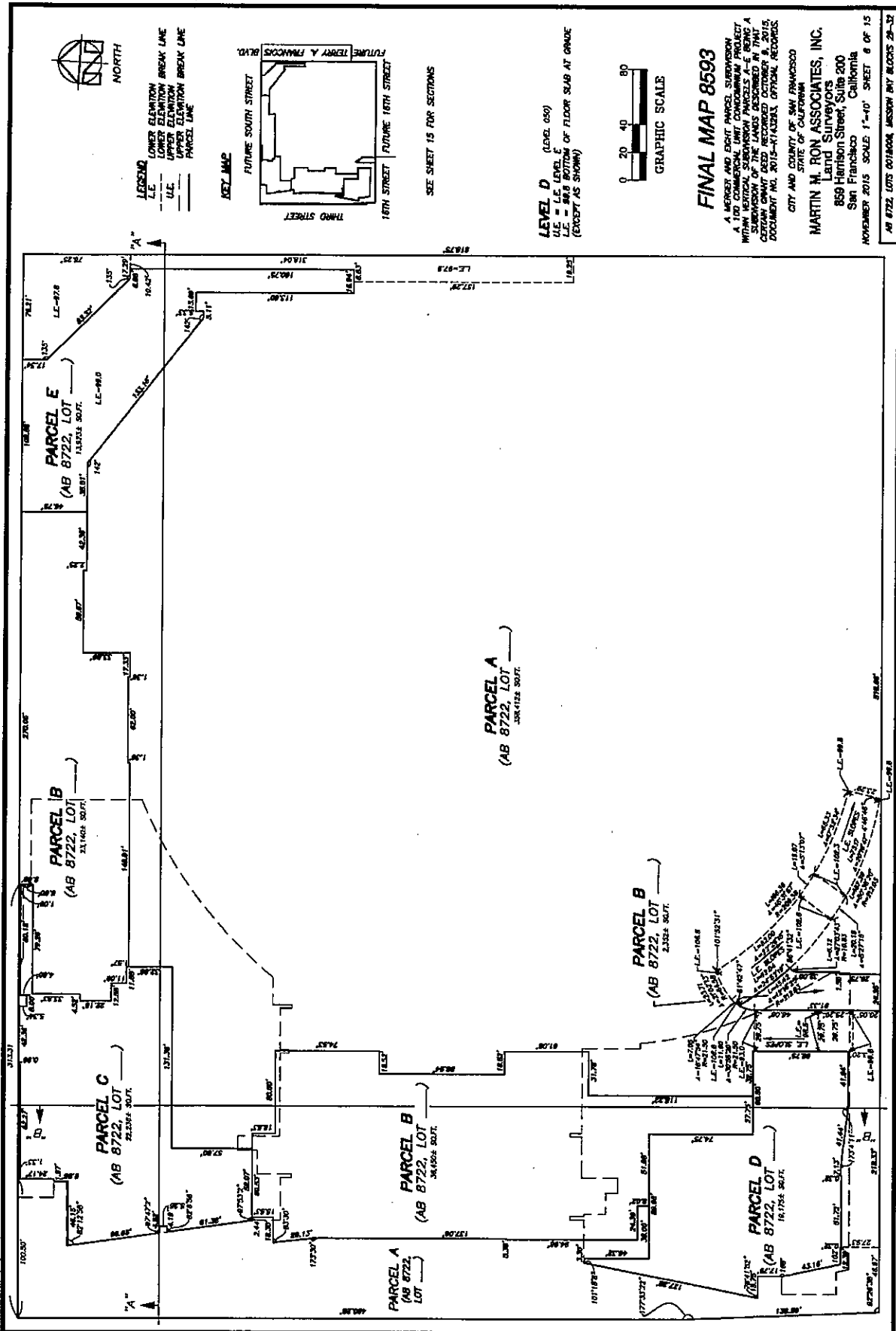
MARTIN M. RON ASSOCIATES, INC.
 Land Surveyors
 859 Harrison Street, Suite 200
 San Francisco, California

NOVEMBER 2015 SCALE: 1"=40' SHEET 7 OF 15
 AB 8722, LOTS 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

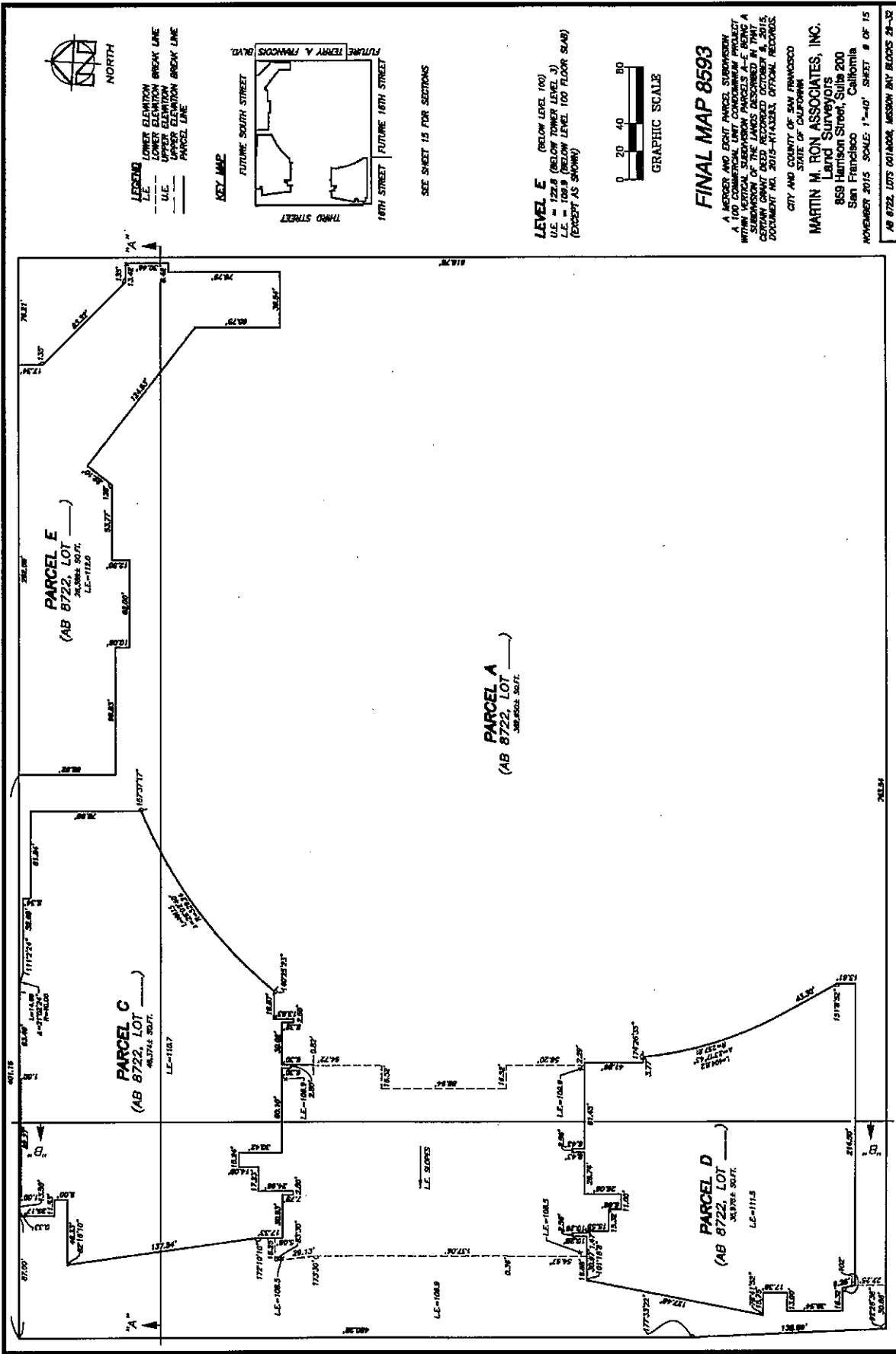


5-8657 1/16 11/2015/03/08

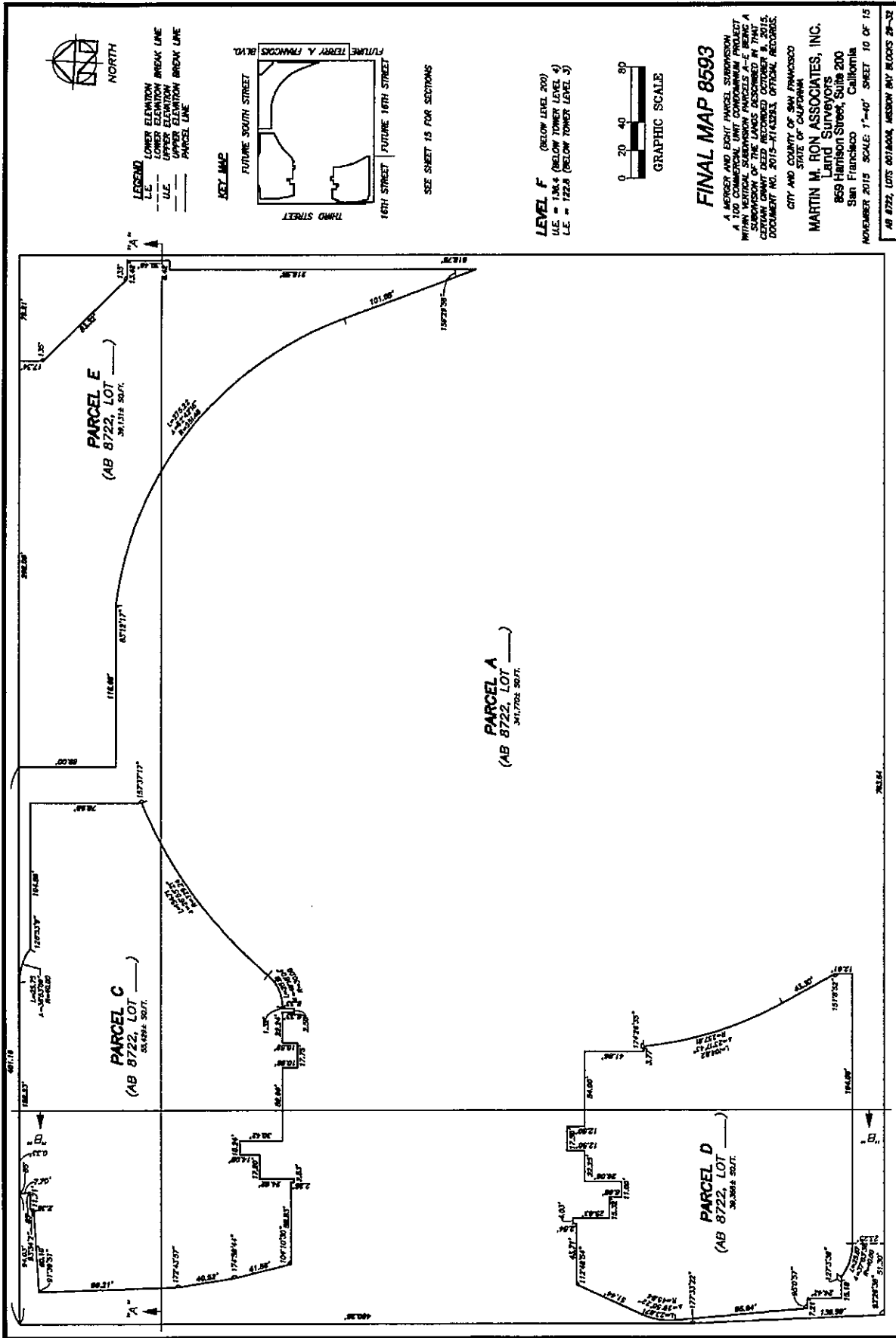




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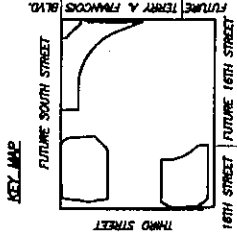
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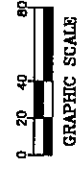


LEGEND
 LOWER ELEVATION
 UPPER ELEVATION
 U.E. = 1875 (TOWER LEVEL 3)
 U.E. = 1876 (TOWER LEVEL 3)
 U.E. = 1877 (TOWER LEVEL 3)
 U.E. = 1878 (TOWER LEVEL 3)
 U.E. = 1879 (TOWER LEVEL 3)
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 U.E. = 1993 (TOWER LEVEL 3)
 U.E. = 1994 (TOWER LEVEL 3)
 U.E. = 1995 (TOWER LEVEL 3)
 U.E. = 1996 (TOWER LEVEL 3)
 U.E. = 1997 (TOWER LEVEL 3)
 U.E. = 1998 (TOWER LEVEL 3)
 U.E. = 1999 (TOWER LEVEL 3)
 U.E. = 2000 (TOWER LEVEL 3)



SEE SHEET 15 FOR SECTIONS

LEVEL H (TOWER LEVEL 3)
 U.E. = 1885 (TOWER LEVEL 3) (LEVEL 100 FLOOR SLAB)
 U.E. = 1876 (TOWER LEVEL 3)



FINAL MAP 8593

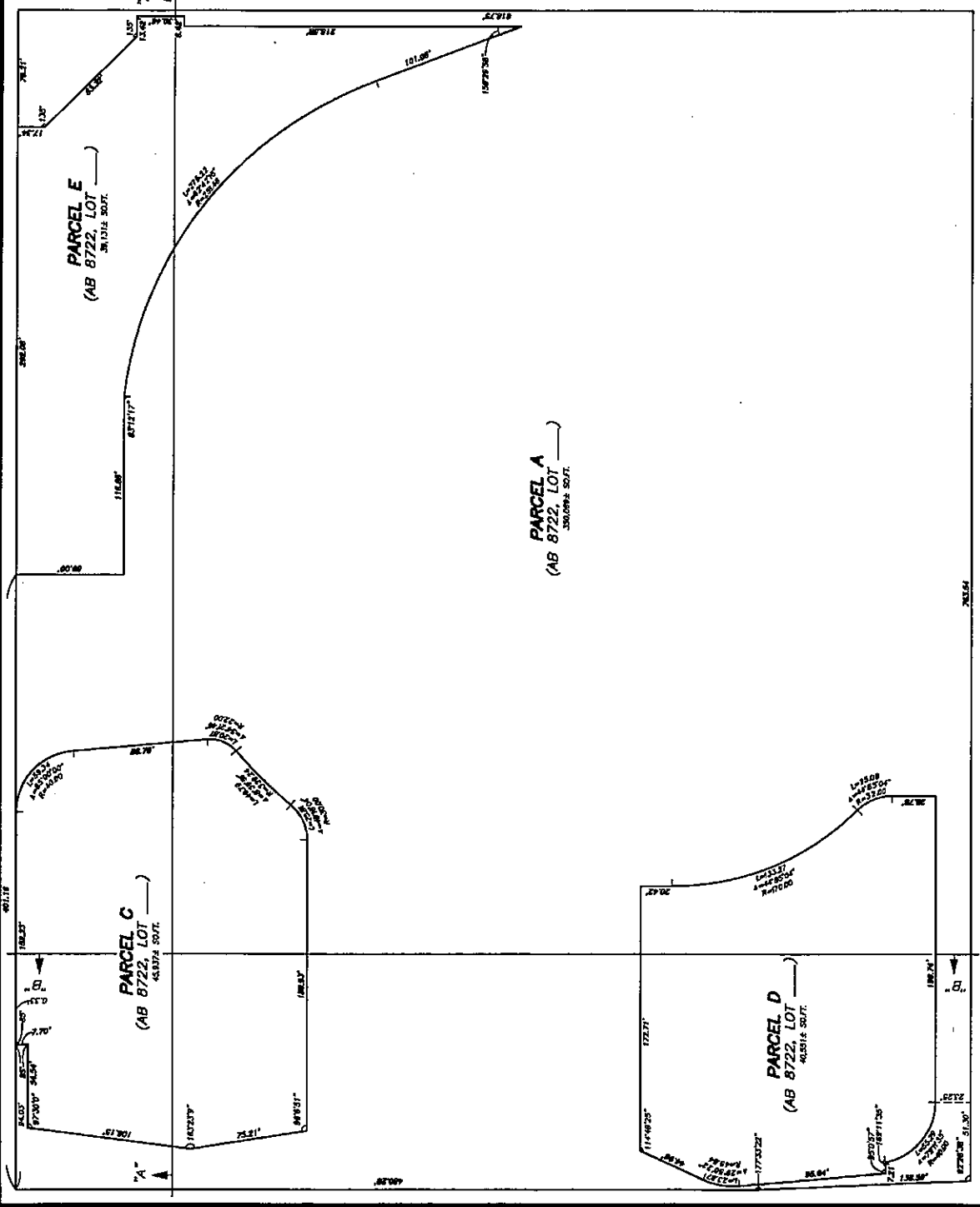
A LICENSED AND CERT. ENGINEER SURVEYOR
 A 100' COMMERCIAL UNIT CONDOMINIUM SUBDIVISION
 WITHIN VERTICAL SUBDIVISION PARCELS A-E BEING A
 SUBDIVISION OF THE LANDS DESCRIBED IN THAT
 CERTAIN GRANT DEED RECORDED OCTOBER 8, 2015,
 DOCUMENT NO. 2015-1142623, OFFICIAL RECORDS.

CITY AND COUNTY OF SAN FRANCISCO
 STATE OF CALIFORNIA

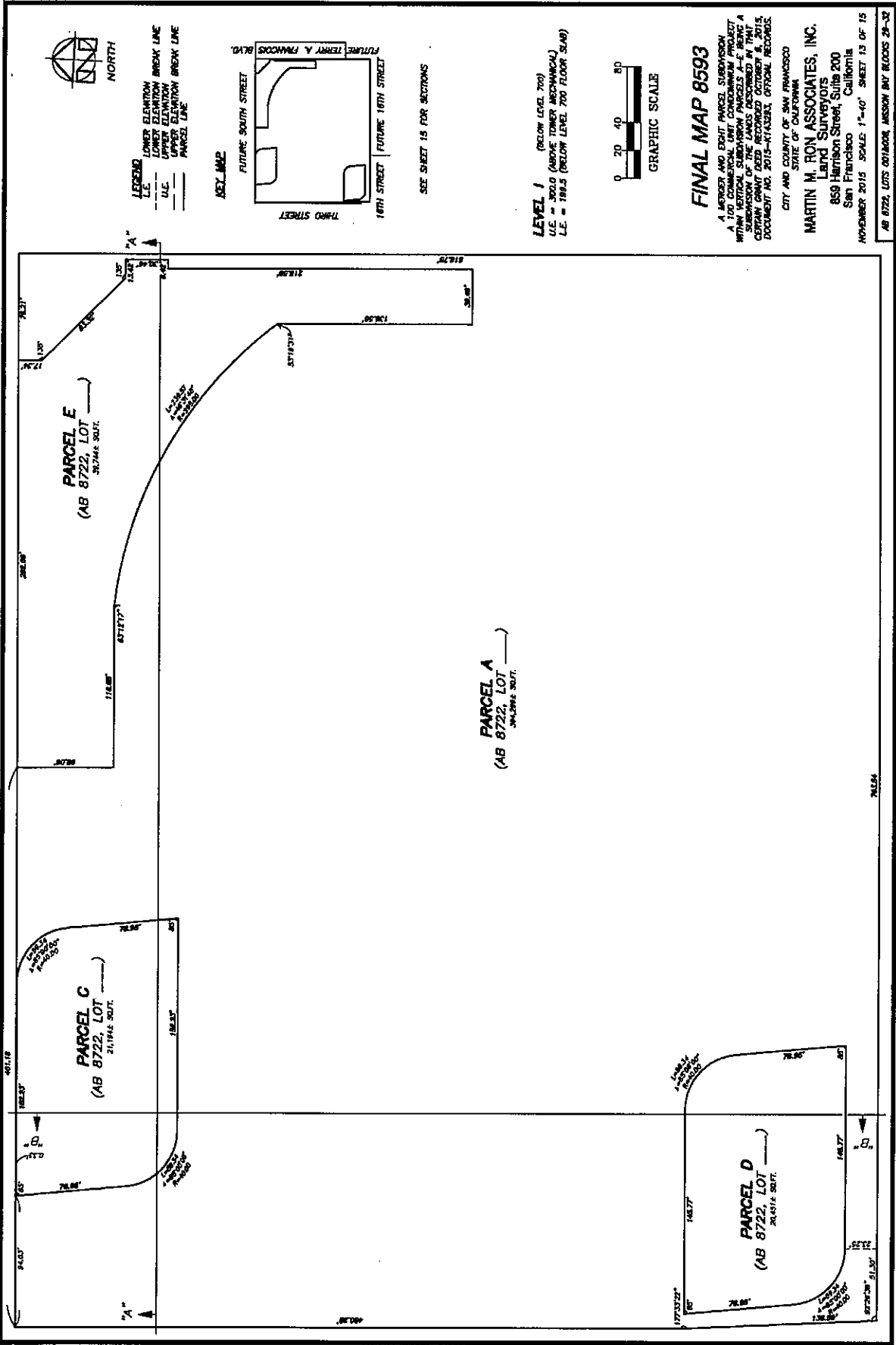
MARTIN M. RON ASSOCIATES, INC.
 Land Surveyors
 869 Harrison Street, Suite 200
 San Francisco, California

NOVEMBER 2015 SCALE: 1"=40' SHEET 12 OF 15

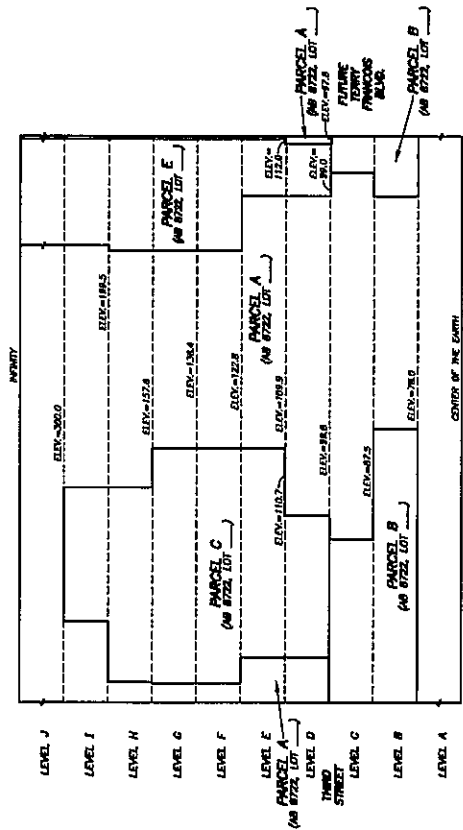
AB 8722, LOTS 001A00A, MISSISSIPPI BAY BLOCKS 29-32



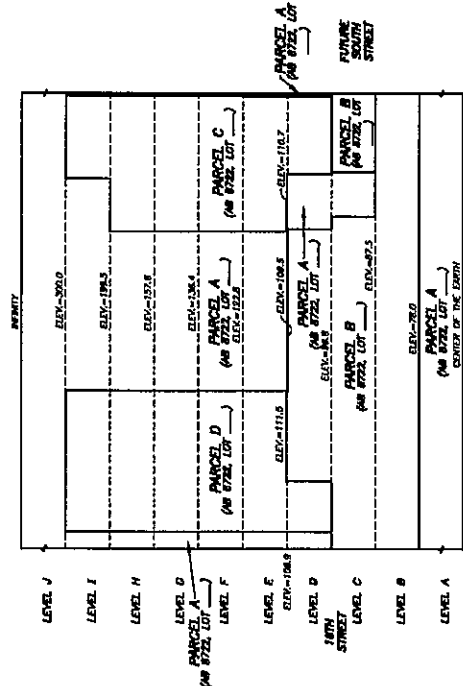
8



[Handwritten mark]



SECTION "A"- "A"



SECTION "B"- "B"

LEVEL	AREA SQUARE FOOTAGE				
	PARCEL A AB8722 LOT	PARCEL B AB8722 LOT	PARCEL C AB8722 LOT	PARCEL D AB8722 LOT	PARCEL E AB8722 LOT
A	475,648	0	0	0	0
B	284,720	190,956	0	0	0
C	271,325	204,333	0	0	0
D	358,412	61,941	21,256	15,175	13,922
E	325,955	0	48,374	35,975	28,398
F	341,775	0	55,427	39,358	39,131
G	341,215	0	54,699	40,151	39,131
H	350,069	0	45,817	40,151	39,131
I	392,259	0	21,194	20,651	39,274
J	415,944	0	0	0	39,274
TOTAL	3,618,531	457,281	247,865	156,061	239,125



FINAL MAP 8593

A MERGED AND SPLIT PARCEL SUBDIVISION
 A 100 COMMERCIAL UNIT CONDOMINIUM PROJECT
 WITHIN VERTICAL SUBDIVISION PARCELS A-E BEING A
 SUBDIVISION OF THE LANDS DESCRIBED IN THE
 CERTIFICATE OF MERGER AND SPLIT PARCEL MAP NO. 2015
 DOCUMENT NO. 2015-1143283, OFFICIAL RECORDS

CITY AND COUNTY OF SAN FRANCISCO
 STATE OF CALIFORNIA
MARTIN M. RON ASSOCIATES, INC.
 Land Surveyors
 858 Harrison Street, Suite 200
 San Francisco, California

NOVEMBER 2015 SCALE: 1"=100' SHEET 15 OF 15
 AB 8722 LOTS 001A00R, MISSON BAY BLOCKS 28-32

EXHIBIT E

Project Description

A. Arena/Plaza

The Arena will be a commercial condominium component within an event center building ("Event Center") that is a major component of a commercial mixed use development project (the "Project") that will consist of and contain a state-of-the-art multi-purpose event center in San Francisco that meets NBA requirements for sports facilities, can be used year-round for sporting events and entertainment and convention purposes with events ranging in capacity from approximately 3,000-18,500.

The proposed roughly circular-shaped Event Center building that includes the Arena component of the project will be located in the central-east portion of the mixed use development site, which includes mixed use areas that are not part of the Arena portion of the project. The Event Center building, which will include the Arena component and other retail and commercial components, including restaurant space, will be approximately 135 feet at its roof peak, and include multiple levels of varying elevations. The Arena shall include approximately 780,000 square feet.

The Arena portion of the Event Center building will be programmed with a capacity of 18,064 seat for basketball games, but could be reconfigured for concerts for a maximum capacity of approximately 18,800. The performance seating areas could also be re-configured in a cut-down theater configuration to create a smaller venue space.

Adjacent to the Arena component will be the Plaza Area: The Plaza shall include approximately 3.8 acres of open space, including a proposed Third Street Plaza (elevated at approximately 8 to 12 feet above Third Street) on the west side of the site between the event center and Third Street, and a proposed ground-level Southeast Plaza in the southeastern corner of the site. The Plaza will be governed by documentation providing for various easement rights and uses of the Plaza by various stakeholders within the Project. The Plaza Area will include kiosks and retail/commercial buildings and areas.

The Arena and Plaza Area consists of various office and retail elements and components in various separate buildings and structures. Retail uses will front South Street and Terry A. Francois Boulevard, and a 2-story, 38-foot high "gatehouse" building located mid-point along Third Street will provide retail uses and house elevators/escalators connecting to parking facilities on lower floors. A 3-story, 41-foot high "food hall" or "market hall" will be located at the corner of Terry A. Francois Boulevard and South Street. Retail space will be approximately 60,000 square feet. The Arena will also include approximately 25,000 square feet of office space for the Golden State Warriors.

B. Garage

The Garage will provide adequate parking and vehicular access, truck dock areas, and other infrastructure for the Project, that meet reasonable needs of the NBA and Project sponsors for the Event Center and the other portions of the Office/Retail project, serving the needs of visitors,

customers, occupants and employees of the Arena and the areas of the Office/Retail project, while encouraging the use of transit, bicycle, and other alternative modes of transportation. The parking and loading areas shall contain approximately 475,000 square feet, approximately 950 parking spaces below-grade and at-grade (concealed by Third Street Plaza) and 12 truck docks below-grade. The Garage will be governed by documentation providing for various easement rights and use rights of the Garage by various stakeholders within the Project.

C. Office/Retail

The Office/Retail project consists of commercial condominium elements, including office uses and retail and commercial uses, including restaurants and other venues to create a lively local and regional visitor-serving destination that is active year round, promotes visitor activity and interest during times when the event center is not in use, and provides amenities to visitors of the Event Center as well as the surrounding neighborhood..

Two office and retail buildings will be located on the west side of the Project Site. These buildings will each be 11 stories (160 feet tall at building rooftop); each office and retail building will consist of a podium ground level plus 5 podium levels (90 feet tall), with a 5-story (70-foot tall) tower (with smaller floorplate than the podium) above. These buildings may serve a variety of office and/or research and development uses, with retail uses on the lower floor(s).

The office space will be approximately 580,000 square feet and the retail space will be approximately 65,000 square feet.

EXHIBIT F

Insurance Requirements

CONTRACTOR-PROVIDED INSURANCE

Construction Manager and Subcontractors shall maintain the insurance coverages set forth below, except to the extent other limits are specified in Section 11.1.3 for commercial general liability coverage with respect to services performed prior to start of construction or with respect to services performed after Substantial Completion.

A. Limits

1. **Commercial General Liability**
\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate – Per Project Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury

2. **Business Automobile**
\$1,000,000 Combined Single Limit

3. **Workers' Compensation/Employers' Liability (Stop Gap)**
Statutory Workers' Compensation – Coverage A
\$1,000,000 Each Accident
\$1,000,000 Disease – Policy Limits
\$1,000,000 Disease – Each Employee

4. **Contractors Pollution Liability (to be procured by Construction Manager only)**
\$10,000,000 Each Occurrence and General Aggregate

5. **Employment-Related Practices Liability** (covering employment practices liability exposures, such as liability arising from discrimination, wrongful termination, sexual harassment, coercion, and other workplace torts)

\$5,000,000 Each Occurrence and General Aggregate

6. **Excess Umbrella Liability:**
 - a. For Construction Manager, \$75,000,000 Each Occurrence/Annual Aggregate
 - b. For Subcontractors where the subcontract sum is \$500,000 or less, \$1,000,000 Each Occurrence/Annual General Aggregate.

- c. For Subcontractors where the subcontract sum is over \$500,000, \$5,000,000 Each Occurrence/Annual General Aggregate.

8. **Professional Liability (to be provided by any Subcontractor providing professional services as part of its Work)**

- \$1,000,000 Each Claim
- \$5,000,000 Annual Aggregate

B. Other Requirements

1. **Commercial General and Excess Umbrella Liability Insurance.**

- (a) CGL insurance shall be written on ISO occurrence for CG 00 01 or its equivalent (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- (b) GSW Arena LLC, GSW Sports LLC, Golden State Warriors, LLC, GSW Real Estate LLC, David Carlock, an individual, Strada Investment Group, Machete Development LP (d.b.a Machete Group), including their respective subsidiaries, members, officers, managers, affiliated companies, successors and assigns; and the City and County of San Francisco, the Office of Community Investment and Infrastructure, and their supervisors, commissioners, officers, agents employees (collectively, the "Additional Insureds") shall be included as additional insureds under the CGL, excess umbrella liability, automobile liability, and contractors pollution liability coverages. The Additional Insured coverage under the CGL will be on ISO additional insured endorsements CG 20 10 (07 04) and CG 20 37 (07 04) or substitutes providing equivalent coverage for ongoing and completed operations. Such insurance afforded to the Additional Insureds shall apply as primary insurance with respect to any other insurance or self-insurance programs carried by the Additional Insureds. If any Additional Insured has other insurance that is applicable to the loss, then such other insurance shall be on an excess or contingent basis.
- (c) There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from collapse or underground property.
- (d) Owner shall have the right to approve the additional insured endorsement.



2. **Completed Operations Liability Insurance.** Construction Manager shall maintain the completed operations coverage for at least ten (10) years following Substantial Completion of the Work.
3. **Business Auto Insurance.**
 - (a) Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).
 - (b) Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
 - (c) The Additional Insureds shall be included as additional insureds under the Business Automobile liability policy using an additional insured endorsement that is approved by Owner.
4. **Professional Liability Insurance.** The professional liability insurance shall have the minimum limits set forth above, and shall be maintained throughout the duration of the Project and for a period of not less than ten (10) years after the date of Substantial Completion. Such insurance shall have a retroactive date no later than the date of the Agreement or the date when Construction Manager and its consultants (as applicable) first performed professional services for the Project, whichever date is earlier. With respect to any other of Construction Manager's Consultants engaged to provide design or engineering services to the Project, each of them shall be required to maintain separate professional liability insurance with such limits of liability as are customary for the scope and character of the design or engineering services to be performed.
5. **General/Certificates of Insurance.**
 - (a) All policies shall be written by insurance companies authorized to do business in the State of California having a financial size of VII or higher and a rating of not less than "A-" in the latest version of Best's Insurance Guide, published by A.M. Best & Company.
 - (b) Construction Manager agrees to deliver to Owner within seven (7) days of receipt any notice that coverage required hereunder will be suspended, voided, canceled, non-renewed, or reduced in scope or limits. In addition, Construction Manager agrees to use all commercially reasonable efforts to obtain from its insurers, when and if available in the industry, a certificate providing that such coverage shall not be suspended, voided, canceled, non-renewed, or reduced in scope or limits except after thirty (30) days'

prior written notice by certified mail, return receipt requested, has been given to Owner.

- (c) The deductible amounts or self-insured (contractor's self-insurance program must comply with statutory requirements) retentions shall be approved by Owner. Construction Manager shall be responsible for paying all deductibles and self-insured retentions. Owner shall not be responsible for any deductibles or self-insured retentions.
- (d) Prior to the commencement of the Work, Construction Manager and Subcontractors shall file with Owner valid Certificates of Insurance evidencing that the above required insurance has been obtained and copies of endorsements showing additional insured status for the entities referred to in Section B(1)(b) above. The Certificates of Insurance shall: (i) be in a form and substance satisfactory to Owner, (ii) affirmatively list the entities referred to in Section B(1)(b) above as being additional insureds to the CGL, excess umbrella liability, automobile liability and contractor's pollution liability policies required above, (iii) set forth the deductibles, self-insurance retentions and the limits and sub-limits for each such coverages; and (d) include a waiver of subrogation as required by Section B.6 below.
- (d) At Owner's request, Construction Manager shall deliver to Owner copies of the actual insurance policies and any endorsements or riders thereto. The endorsements or amendatory riders shall include cross-claim and severability of interests endorsements.

6. Waiver of Subrogation.

Construction Manager shall waive, and shall cause all Subcontractors to waive, all right of recovery against Owner, and agrees not to assign or transfer any right of subrogation to any of its insurance carriers or any other party. Construction Manager also agrees, and will cause all of its Subcontractors to agree, that they will obtain a waiver of subrogation endorsement (ISO Form CG 24 04 10 93 or its equivalent) from their insurance carriers with respect to Additional Insureds referred to in Section B(1)(b) above.



EXHIBIT G

Dispute Resolution Procedure

1. With respect to any Claim, prompt notice thereof shall be given in accordance with Section 12.6 of the General Conditions (as to claims by Construction Manager) and within fifteen (15) days of the event giving rise to the Claim as to claims by Owner, and a record thereof shall be made in the monthly Progress Report. At the next Project meeting following delivery of the notice of the Claim, Construction Manager and Owner shall reserve time at the end of such Project meeting to attempt to resolve such Claim at the field level through discussions between a member of Construction Manager's on-site project manager and Owner's project representative. If a Claim cannot be resolved through Construction Manager's project manager and the Owner Representative within fifteen (15) days after the initial attempt, then Construction Manager's Senior Representative (who is Steve Dell'Orto) and Owner's Senior Representative (who is Stephen Collins), upon the request of either Party, shall meet as soon as conveniently possible, but in no case later than fourteen (14) days after such a request is made, to attempt to resolve such Claim. Prior to any meetings between the Parties, the Parties shall exchange relevant information that will assist the Parties in resolving their Claim. If a Party intends to be accompanied at a meeting by an attorney, the other Party shall be given at least ten (10) days' notice of such intention and may also be accompanied by an attorney.
2. Unless the Parties otherwise agree, if a Claim has not been settled or resolved within fourteen (14) days after the initial meeting of Construction Manager's and Owner's Senior Representative, then either Party may notify the other Party of its intent to pursue the Claim further with a copy to Owner. Within fourteen (14) days after receipt or delivery (as the case may be) of such notice, Owner shall send written notice to Construction Manager with a copy to Owner, specifying whether any unresolved Claim shall be resolved by either (a) litigation in a court of competent jurisdiction or (b) arbitration, conducted through any nationally recognized arbitration provider, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then currently in effect. Upon such election, either Party may then commence litigation or arbitration proceedings, as the case may be. All arbitration proceedings shall be held in San Francisco, California. If Owner fails to send the above referenced written notice within the required fourteen (14)-day period or if Construction Manager fails to consent to arbitration within fourteen (14) days after receiving Owner's election to arbitration, then the Parties will be deemed to have elected to litigate the unresolved Claim.
3. A demand for arbitration shall be made within the time limits specified in the Contract Documents and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations; provided, however, notwithstanding anything in the Contract Documents to the contrary, if any Claim has not been resolved to the mutual agreement of the Parties within any applicable statute of limitation period, then either Party may commence litigation on such Claim prior to the expiration of such period in order to preserve its rights.

4. Any arbitration arising out of or relating to the Contract Documents may include, by consolidation or joinder or in any other manner, other Persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. Consent to arbitration involving an additional Person shall not constitute consent to arbitration of a Claim not described therein or with a Person not named or described therein. The agreement to arbitrate contained herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award of the arbitrators may be entered as a judgment in any court of competent jurisdiction. Nothing in this Section shall result in Owner being a party to such arbitration without its written consent.

5. Notwithstanding any the existence of any dispute between Owner and Construction Manager, each Party shall continue to perform as required under the Contract Documents, and Owner shall continue to pay Construction Manager as provided in the Contract Documents, including the undisputed amount associated with any such dispute.