

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: May 20, 2013**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending Contract No. 08-04-CMGC-000, authorizing Webcor/Obayashi Joint Venture (the "CM/GC") to award a Purchase Order to Bradken, Inc. ("Bradken") for the Cast Nodes to be supplied to TG07.1R: Structural Steel Superstructure Package, thereby increasing authorized Direct Costs by \$17,085,547.20 (including sales tax) and increasing the authorized Construction Services Fixed Fee by \$1,401,014.87, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, Paragraph 5.01.B.

BACKGROUND:

On March 7, 2013, one bid was received for the TG07.1 Structural Steel Superstructure trade package from Skanska USA Civil West ("Skanska"). The bid exceeded the engineer's estimate by \$115 million. On March 25, the TJPA Board authorized the CM/GC and TJPA staff to enter into negotiations with Skanska to determine a fair and reasonable price for the trade subcontract. Negotiations were informative but ultimately Skanska did not provide a fair and reasonable price and the bid was rejected on April 3.

On April 29, the trade package for erection of structural steel was re-issued as TG07.1R, with three parts: East, Central, and West, representing sections of the Transit Center building (the "Project"). Bidders may opt to bid on one, two, or all three parts, and the TJPA and the CM/GC expect to see increased competition through the repackaging. Bids are due on June 20, 2013.

The steel elements that make up the basket-like design intersect at several complex, heavily stressed, architecturally exposed node connections. There are 304 of these cast nodes required for the steel superstructure. Purchase of the cast nodes was originally included in the TG07.1 Structural Steel Superstructure bid package. Under the original bid package, the cast nodes would have been purchased from a foundry by the successful steel bidder. During the process of repackaging the structural steel for rebid, it became clear that there are a number of benefits to the Project by having the CM/GC purchase the cast nodes directly from the foundry:

- Production of the cast nodes is on the critical path of the schedule. Early procurement of the cast nodes will partially mitigate the delays caused by rebidding of the structural steel. The estimated time savings is at least 7-8 weeks.
- Bradken is the only foundry in the country that indicated it is willing and able to produce all of the nodes for the Project; however, Bradken was not aware of that at the time of the bid in response to the original TG07.1 bid package. Bradken bid the project to Skanska assuming other foundries would compete for the work. Bradken's price to Skanska was below the Engineer's Estimate and Bradken will honor the same price if it receives a purchase order from the CM/GC. If purchase of the nodes were to remain in TG07.1R,

Bradken would rebid knowing that it is not competing with other foundries and the total cost to the steel bidders could potentially increase.

- The steel bidders would add mark-up for overhead, profit and contingencies to the cast nodes. By purchasing the nodes directly, the TJPA avoids this mark-up.
- Bradken is committing to firm delivery dates for the cast nodes based on receipt of a purchase order by June 1, 2013. It has planned its foundry production schedules to accommodate the Project. If the nodes were purchased by the successful TG07.1R bidder(s), Bradken would not receive a purchase order until July or August. Its time frame for production and delivery of the cast nodes could increase depending on its production schedules at that time.
- There could be as many as three separate steel contractors on the Project. By purchasing the cast nodes directly, the TJPA and the CM/GC can maintain better control over production and quality control of the cast nodes.

Justification for Award to a Sole Source Bidder

The CM/GC performed extensive research on the cast nodes prior to the steel bid. Additionally, Cast Connex, the TJPA's cast node consultant, provided a list of prequalified foundries:

- Bradken
- Maynard
- Falk
- Bay Cast
- Sivyer
- Harrison
- Pacific
- Sawbrook
- Spokane

Bradken, Maynard and Falk were determined to be the only foundries in the United States capable of producing all of the cast nodes required for the Project. However only Bradken was willing and able to produce the cast nodes required for the Project to meet the schedule. Only Bradken submitted a bid for the nodes to Skanska. The CM/GC has since contacted the other foundries and learned that they are not interested in bidding because their current workloads made it impossible to meet the delivery schedule. Thus, competition can be determined inadequate and the circumstances for a sole source award apply. The CM/GC has conducted a cost analysis, as required by Federal Transit Administration and TJPA procurement requirements in the case of a sole source procurement. Below is a comparison of Bradken's price to the Engineer's Estimate and the CM/GC's estimate.

Bradken Purchase Order	\$17,085,547
Davis Langdon Estimate	\$21,000,000
Skanska Bid	\$22,800,000
Webcor/Obayashi Estimate	\$27,911,308

The procurement of the cast nodes will be funded with land sales proceeds from Parcel T.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize an amendment to Contract No. 08-04-CMGC-000, authorizing the CM/GC to execute a Purchase Order to Bradken, Inc. for the Cast Nodes to be supplied to TG07.1R: Structural Steel Superstructure Package, thereby increasing authorized Direct Costs by \$17,085,547.20 (including sales tax) and increasing the authorized Construction Services Fixed Fee by \$1,401,014.87, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, Paragraph 5.01.B.

ENCLOSURES:

1. Resolution
2. Amendment No. 26 to Agreement, including Bradken, Inc. Purchase Order at Exhibit 1

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On March 12, 2009, the Transbay Joint Powers Authority (“TJPA”) awarded a contract to Webcor/Obayashi Joint Venture as Construction Manager/General Contractor (the “CM/GC”) for the Transbay Transit Center Building and Related Structures (“Contract No. 08-04-CMGC-000” or the “Contract”). Under the Contract, the CM/GC must competitively procure Trade Subcontractors. The Contract provides for the incorporation of Trade Packages by amendment to: (a) authorize award of a Trade Work subcontract; (b) authorize the associated increase in allowable Direct Costs under the Contract; and (c) authorize the CM/GC to charge a Construction Services Fixed Fee invoiced at a rate of 8.2% of Direct Costs (Contract, Section 00 05 20, ¶5.01); and

WHEREAS, On March 7, 2013, one bid was received for TG07.1 Structural Steel Superstructure from Skanska USA Civil West (“Skanska”); the bid was over the engineer’s estimate and negotiations with Skanska to arrive at a fair and reasonable price were unsuccessful, resulting in repackaging and reissuing the structural steel superstructure trade package (TG07.1R); and

WHEREAS, The production and form casting of structural steel nodes required for erection of the structural steel superstructure is on the critical path of the project schedule, and only available from one foundry, Bradken, Inc. (“Bradken”), justifying a sole source award; and

WHEREAS, TJPA and the CM/GC have negotiated a purchase order with Bradken to supply all cast nodes for the structural steel superstructure for the trade package TG07.1R directly to the CM/GC, with Bradken honoring the price that it had bid to Skanska; and

WHEREAS, Funds for this contract are available from land sales proceeds; and

WHEREAS, The time allowed for completion of the work under the Purchase Order is 658 calendar days after issuance of the Notice to Proceed; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the CM/GC to execute a Purchase Order for the procurement of the cast nodes to be supplied to the successful bidder(s) on TG07.1R with Bradken as the responsible foundry submitting a total cost in the amount of \$15,710,848 plus \$1,374,699.20 sales tax (\$17,085,547.20); and be it

FURTHER RESOLVED, That upon award of the Cast Node Purchase Order to Bradken , the Cast Node Purchase Order shall be deemed part of the Contract Documents under Contract No. 08-04-CMGC-000; and be it

FURTHER RESOLVED, An amendment to Contract No. 08-04-CMGC-000 is authorized to modify and incorporate the authorized amount of the Cast Node Purchase Order awarded to Bradken

for the Cast Nodes to be supplied to TG07.1R: Structural Steel Superstructure Package, thereby increasing authorized Direct Costs by \$17,085,547.20 (including sales tax) and increasing the authorized Construction Services Fixed Fee by \$1,401,014.87, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, Paragraph 5.01B.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 20, 2013.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 26
BETWEEN TRANSBAY JOINT POWERS AUTHORITY
AND
WEBCOR/OBAYASHI JOINT VENTURE

THIS AMENDMENT No. 26 to Contract No. 08-04-CMGC-000 (the "Contract") dated March 17, 2009, is entered into as of the ___ day of May, 2013, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and WEBCOR/OBAYASHI JOINT VENTURE (the "CM/GC"). By this Amendment No. 26, the TJPA and the CM/GC hereby modify the Contract, only to the extent expressly provided in this Amendment No. 26 ("Amendment"). All other terms and conditions of the Contract shall remain in full force and effect.

Recitals

A. On March 12, 2009, the TJPA Board of Directors awarded the Contract to the CM/GC to perform pre-construction and construction services for the Transbay Transit Center Building and Related Structures Project (the "Project").

B. As detailed in the Contract, the CM/GC is required to procure Construction Services necessary for the performance of the Work, at which time the TJPA shall adjust the value of the Contract Sum to reflect the amount of the Direct Costs of the Work plus the proportionate CM/GC's Construction Services Fixed Fee, all in accordance with Section 00 05 02, Paragraph 5.01.B. of the Contract.

C. The TJPA and the CM/GC have determined Bradken, Inc. ("Bradken") to be the sole responsible source from which to procure the cast nodes to be used in connection with the structural steel work under TG07.1R.

D. Based on the TJPA and CM/GC's determination, the CM/GC negotiated a Long Form Purchase Order ("Purchase Order") with Bradken for \$15,710,848, a copy of which is attached hereto as Exhibit 1.

E. In accordance with Section 00 05 20, paragraph 2.07 of the Contract, W/O has performed an appropriate cost analysis to determine the reasonableness of the cost reflected in the Purchase Order.

Terms and Conditions

By this Amendment No. 26, the TJPA authorizes, under and in accordance with Section 00 05 20, paragraph 5.01.B. of the Contract, an increase in the CM/GC scope of work and the value of the Contract Sum by \$18,486,561.87 (Purchase Order Direct Costs of \$15,710,848, plus

sales tax of \$1,374,699.20, plus the CM/GC Construction Services Fixed Fee, calculated at 8.2% of Direct Costs (including sales tax) of \$1,401,014.87), and the TJPA authorizes W/O to enter into an agreement under the Purchase Order with Bradken to procure the cast nodes.

Further, the TJPA and W/O agree that notwithstanding any other provision of the Contract Documents, W/O's total obligations and liabilities to the TJPA with respect to the procurement of the cast nodes from Bradken under the Purchase Order shall not exceed the obligations and liabilities of Bradken to W/O under the Purchase Order. This limitation of W/O's obligations and/or liabilities includes, but is not limited to, the following:

- (i) any liquidated damages arising out of Bradken's failure to perform its work as required under the Purchase Order shall be limited to the liquidated damages set forth in paragraph 6 of the Purchase Order;
- (ii) any changes, including additions or deductions in the quantities ordered, as requested by the TJPA, are subject to the Bradken's approval which shall not be unreasonably withheld;
- (iii) upon any termination for convenience of the Purchase Order by W/O caused by the TJPA, or any suspension of this Purchase Order by W/O caused by the TJPA, the TJPA shall be required to compensate Bradken for any and all amounts due Bradken;
- (iv) Progress payments and final payment by the TJPA to W/O for payments related to materials procured pursuant to the Purchase Order shall be consistent with the terms of the Purchase Order. This shall include payment in full (no retention) by the TJPA to W/O within twenty-five (25) days of W/O's submission of Bradken's monthly invoice with all supporting documentation as required under the Purchase Order;
- (v) W/O's warranty obligations with respect to the materials procured pursuant to the Purchase Order shall be limited to the warranty obligations set forth in Paragraph 9 of the Purchase Order;
- (vi) W/O's indemnity obligations with respect to any claims arising out of the negligence of Bradken or Bradken's breach of the the Purchase Order shall be limited to the indemnity obligations set forth in Paragraph 12 of the Purchase Order; and
- (vii) In no event shall W/O's total aggregate liability under this Amendment and the Contract relating to materials procured pursuant to the Purchase Order exceed the amount that W/O is entitled to recover from Bradken in connection with said alleged liability.

To the extent W/O is unable to recover any damages due to the default of Bradken under the Purchase Order, the TJPA and W/O agree that such damages shall be covered under the Construction Contingency set for in Section 6.01 of the Contract.

In the event of any conflict between the Purchase Order and any other Contract Document regarding the supply of the materials as set forth in the Bradken Purchase Order, the Purchase Order shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 26 on the first day mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan
Executive Director


Approved as to Form
TJPA Legal Counsel

By: _____

WEBCOR/OBAYASHI JOINT VENTURE



Authorized Signature



Printed Name



Title

LONG FORM PURCHASE ORDER

Order No.:

Buyer's Project No.:

Name of Project: Transbay Transit Center

Trade:

This AGREEMENT is made and entered into this ___ day of May 2013 by and between Webcor/Obayashi, a Joint Venture ("Buyer") and Bradken, Inc. ("Seller"). Buyer has entered into a contract with Transbay Joint Powers Authority ("Owner") for the construction of Transbay Transit Center Building and Related Structures("Project") located at San Francisco, California which contract, together with all addenda, supplements, amendments, changes or additions thereto is called the "Prime Contract".

Buyer and Seller agree as follows:

- 1. MATERIAL TO BE PROVIDED:** Seller shall furnish the material described below ("Materials") at the price or prices set forth opposite each item within the times set forth in the delivery schedule attached hereto as Attachment "1" (the "Delivery Schedule").

Description	Estimated Quantity	Unit Price	Extension	Cost Code	Delivery Date
Cast Nodes	304 Castings	See Attachments	\$17,085,547.20		See Attachment 1

Ship To:		Via:		Mark:	
Deliver F.O.B.		With Freight Allowed to:			
Terms:	Net 30 days and no retention held.				
Email Invoices to:	ap@webcor.com and jlautt@webcor.com				

- 2. COMPLETE AGREEMENT.** This purchase order (also referred to as this "Agreement") is defined to mean and include this Long Form Purchase Order, Exhibits "A" (*Plans and Specifications*), and "B" (*Lien Releases*) attached hereto, and the Delivery Schedule attached hereto as Attachment "1" and the Payment Schedule attached hereto as Attachment "2". Seller's acceptance is limited to the terms and conditions contained in this Agreement. Seller's written acknowledgment of this Agreement shall constitute an acceptance of the terms of this Agreement by Seller. Buyer is to be bound only by the terms and conditions of this Agreement notwithstanding any proposals, terms or conditions additional to or different from those accompanying Seller's performance or acknowledgment.

- 3. CHANGES AND RIGHT TO TERMINATE.** Changes will be binding only if in writing and signed by the Buyer and Seller.

(a) Buyer, for its convenience, may, by written change order, request any change, including, without limitation, additions or deductions in quantities ordered, changes in the specifications or drawings, changes in the time of delivery, or termination and Seller shall comply with any such change if Seller agrees to the change in writing, such agreement not to be unreasonably withheld. Buyer may terminate or suspend at its convenience all or any portion of this order not shipped as of the date of termination or suspension of the order. In the event of any change that is agreed to by the parties, there shall be an equitable price adjustment that is agreed to by the parties.

In the event of a termination for convenience by Buyer which Buyer may exercise in its sole discretion, Buyer shall pay Seller for all Materials that are shipped prior to the termination and a pro-rated portion for work in progress based upon the percent complete at the time of termination plus (a) all reasonable costs arising from this purchase order prior to the date of termination, and (b) all reasonable costs arising due to the termination. Seller will not be entitled to any lost fee or profit on the terminated portion of this order. In the event of a suspension by Buyer, Buyer shall reimburse Seller for all reasonable costs incurred by Seller as of a result of such delay (including costs of reactivation), (ii) the delivery time shall be equitably adjusted, and (iii) milestone payments (if applicable) will be adjusted to keep Seller whole for verifiable costs incurred up to the date of delay or suspension. If Seller is delayed by such a suspension for more than 90 days, or such longer period of time as deemed reasonable by Seller in its sole discretion, Seller may elect to terminate this Agreement, such termination to be at Seller's sole discretion. Seller will be entitled to the payments provided in this paragraph as if the Buyer had terminated the Agreement for convenience. No change or termination shall relieve Buyer or Seller of any of their obligations as to any material shipped prior to Seller's receipt of the change termination or suspension order. Any claim for adjustment by Seller hereunder must be asserted in writing within ten (10) business days from the date the change or termination is ordered.

(b) If the Owner shall order the Buyer to change, adjust, substitute, add to, delete from, suspend, or terminate the work included in this purchase order, Seller shall comply with Owner's order if Seller agrees with such order in writing, such agreement not to be unreasonably withheld, and the price or time of performance hereunder shall be equitably adjusted as agreed to by Seller, Buyer, and Owner.

(c) In the event of a termination for default due to Seller's breach of this Agreement and failure to commence and diligently pursue a cure within five (5) business days after receiving written notice thereof, Buyer may, in addition to all other rights and remedies available under this Agreement, purchase substitute items or services elsewhere and hold Seller liable for any and all reasonable excess costs incurred, including attorneys' fees and experts' and consultants' fees actually incurred, in purchasing such substitute materials.

4. PAYMENT. The price herein specified shall, unless otherwise expressly stated within the terms of this Agreement, exclude all taxes and duties of any kind levied by federal, state, municipal, or other governmental authorities, which either party is required to pay with respect to the production, sale, use or shipment of the Materials covered by this Agreement or packing, loading, unloading and shipping but the price shall include all charges for loading the Materials onto Buyer's trucks at Seller's manufacturing facility. If transportation costs are designated as part of the cost to Buyer, only actual transportation costs shall be included. Damage to goods not packed to insure proper protection shall be charged to Seller.

Seller's invoice shall set forth the work performed that is subject to payment under such invoice, any items delivered to the project site or alternative site designated by Buyer, the date of delivery of such items, and the unit price and total price of the items invoiced. Buyer shall pay Seller within 30 days after Buyer's receipt of invoice, provided Seller has included with its invoice documentation evidencing the work performed that is the subject of such invoice, in the form attached hereto as Attachment "2". Invoices shall be submitted monthly in accordance with the payment requirements attached hereto as Attachment "3".

5. RISK OF LOSS. Notwithstanding the terms of shipment, the risk of loss and title to the Materials shall pass to Buyer when the Materials are loaded onto Buyer's trucks at Seller's manufacturing facility.

6. DELIVERY. Time is of the essence of this Agreement and Seller shall deliver the Materials within the delivery schedule set forth as Attachment "1" to this Agreement, as may be amended from time to time in writing. In the event Seller fails to deliver the Materials within the delivery schedule set forth as Attachment "1" hereto for reasons for which Seller is responsible, Seller will pay to Buyer liquidated damages (as a genuine pre-estimate of loss and not as a penalty) of 2% per week of the price of the delayed portion of the Materials up to a maximum of 5% of the price of the delayed portions of the Materials. Liquidated damages will apply only if delay in shipment is due to reasons attributable to Seller. Seller shall not be responsible for delays resulting from events of Force Majeure or the acts or omissions of Buyer or the Owner or their agents, employees or independent contractors, or any other reasons outside of Seller's reasonable control. Any delays, changes in design, or changes to the job scope prior to the shipment date may require appropriate adjustments to the delivery schedule. In such event, liquidated damages allowed hereunder shall be based upon such new delivery schedule that has been agreed to by the parties. There shall be a 1 week grace period after the agreed delivery date before liquidated damages will be assessed. Buyer shall not impose liquidated damages if Seller substantially meets delivery and delivery is complete except for minor items which have no adverse impact on the installation schedule of the Materials. Furthermore, Buyer shall not impose liquidated damages unless the Buyer suffers demonstrable financial loss, in the form of liquidated damages, as the result of the Seller's delayed delivery. In no event shall Seller's cumulative liability for liquidated damages exceed 10% of the total price of this purchase order. Notwithstanding anything to the contrary herein, payment of liquidated damages shall be Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for delay in delivery.

7. DEFAULTS. Except as otherwise provided in this Agreement, if Seller fails to perform any of its obligations hereunder and fails to commence and diligently pursue a cure within five (5) business days after receiving written notice thereof, Buyer shall be entitled to all remedies provided by law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, which prevents Seller from performing in accordance with this Agreement, Buyer may, in addition to any other rights or remedies it may have hereunder or at law, terminate the purchase order upon written notice to Seller and such termination shall be deemed a termination for default. Buyer's failure to notify Seller of a rejection of nonconforming Materials or to specify with particularity any defect in nonconforming Materials after rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach of warranty as provided in Section 9 (Warranties) below provided Seller is informed of the warranty claim during the Warranty Period.

8. INSPECTION. Buyer shall have the right to inspect and test the Materials at Seller's plant any time prior to shipment and to conduct additional inspections at any time after arrival at the job site. The making or failure to make any inspection of, or payment for or acceptance of, the Materials shall not impair Buyer's right to later pursue any remedies for breach of warranty under Section 9 (Warranties) below. Seller shall be liable for all reshipment and return costs on nonconforming Materials. Seller shall repair or replace returned Materials at Seller's option. A failure by Buyer to reject the Materials in writing within 30 days after the Materials are loaded onto Buyer's trucks at Seller's manufacturing facility shall constitute an unqualified acceptance of such Materials by Buyer and a waiver by Buyer of all claims with respect thereto except for the warranty claims outlined in Section 9 (Warranties) below.

9. WARRANTIES. Seller warrants to Buyer that it has fully and carefully reviewed the provisions, specifications, drawings, samples or other descriptions contained in this Agreement. Seller warrants to Buyer of the Materials that the same shall be free from all defects in material and workmanship, shall be of the quality specified, and shall conform to the provisions, specifications, performance standards, drawings, samples or other descriptions contained in this Agreement. Seller guarantees Buyer that the Materials rendered shall be free of any and all defects in workmanship and materials which may develop during the Warranty Period. The Materials are ordered by Buyer in reliance on each and all of the warranties and guarantees specified herein. The foregoing warranties will last for the following period (the "Warranty

Period"): one (1) year from Substantial Completion of the entire Project as defined in the Prime Contract or five (5) years from date that the Materials are available for shipment from Seller's manufacturing facility, whichever occurs first. If during the Warranty Period any Materials supplied by Seller do not to meet the warranties set forth above, Seller will repair the Materials or supply identical or substantially similar replacement Materials, at Seller's sole discretion. Any replacement Materials will be warranted for the unexpired portion of the Warranty Period applicable to the particular Materials. In the event of a valid warranty claim, Seller will be responsible for freight costs for transporting the Materials to and from Seller's designated facility. Seller will not be responsible, however, for the costs of removal, installation, re-installation or making of access of any Materials or items, where such removal, installation, re-installation or making of access is required to repair or replace any defective Materials. Seller's warranties will be voided if the Materials have not been stored, installed, maintained or operated in accordance with accepted industry practice or any specific instructions provided by Seller. ALL WARRANTIES OR REPRESENTATIONS NOT SPECIFICALLY INCLUDED IN THIS AGREEMENT, INCLUDING THOSE WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHETHER EXPRESSED, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING, USAGE OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY GOODS/MATERIALS, ARE EXPRESSLY EXCLUDED. BUYER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE MATERIALS DURING THE WARRANTY PERIOD, AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE AMOUNT PAID BY BUYER TO SELLER UNDER THE CONTRACT FOR THE DEFECTIVE MATERIALS SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.

10. INFRINGEMENT. Buyer shall defend, indemnify, and hold harmless Seller, its affiliates, and each of Seller's and Seller's affiliates' officers, directors, members, managers, employees, contractors, agents, successors and assigns from and against any and all claims, demands, suits, actions, proceedings, losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees and court costs) arising from or related to a claim that the Materials (and/or any use, manufacture, production, and/or sale thereof) infringe or misappropriate any patent, copyright, trade secret, or any other intellectual property right of any third party.

11. COMPLIANCE. Seller's performance shall in all ways strictly conform with all applicable laws, regulations, safety orders, labor agreements and working conditions to which it is subject, including, but not limited to, all State, Federal and local non-discrimination in employment provisions, and by Buyer's own internal safety program (provided that such safety program has been provided to Seller in writing prior to execution of this Agreement). Seller shall execute and deliver all documents as may be required to effect or evidence compliance with such laws.

12. INDEMNITY. To the maximum extent permitted by law, Seller shall indemnify, defend and save harmless Buyer, including its officers, agents, employees, affiliates, parents and subsidiaries, and each of them (collectively, "Indemnitees"), of and from any and all third party claims, demands, allegations, causes of action, and any damages, costs, expenses, actual attorney's fees, losses or liability directly resulting therefrom, in law or in equity, of every kind and nature whatsoever ("Claims") to the extent such third party claims, demands, allegations, and/or causes of action are caused by the negligence of Seller provided that Buyer provides to Seller prompt written notice of the Claim (but in no event more than 30 days after obtaining knowledge thereof). The indemnity set forth in this paragraph shall not be limited by the insurance requirements set forth in Paragraph 15. Seller shall have the right to control the defense and settlement of any Claim provided that Seller shall obtain Buyer's prior written consent, such consent not to be unreasonably withheld, for any settlement that admits liability on behalf of

Buyer or that imposes any obligations upon Buyer that Buyer does not received indemnification for under this Section 12. In no event shall the Buyer settle any Claim without the Seller's prior written approval. Buyer shall give to Seller such assistance as Seller shall reasonably require in respect of the conduct of the defense of any Claim.

13. ASSIGNMENTS, SETOFF. Any delegation, subletting or assignment by operation of law or otherwise, of all or any portion of the obligations to be performed by either party without the prior written consent of the other party shall be void. In the event of any transfer, hypothecation or assignment by Seller, without Buyer's consent, of the right to receive all or any part of any payments due or to become due hereunder, Buyer may, at any time thereafter withhold any or all moneys or payments due or to become due hereunder until final payment is due and all conditions precedent to such payment are satisfied. Buyer may, at its option, setoff any amounts otherwise due from Buyer to Seller under this purchase order against any delinquent amounts or liabilities which are due to Buyer or its commonly controlled affiliates from Seller.

Buyer may assign any warranty rights granted hereunder to Owner upon written notice to Seller. Owner's rights under such assigned warranties shall be subject to all limitations, restrictions, waivers, disclaimers, and limitations of liability set forth in this Agreement.

14. APPLICABLE LAW - DEFINITIONS. The definitions of terms used, interpretation of this Agreement and the rights of all parties hereunder, shall be construed under and governed by the laws of the State of California.

15. INSURANCE AND CLAIMS. If Seller or its employees or agents come onto Buyer's premises or project in connection with this purchase order, Seller agrees to carry (i) Comprehensive General Liability Insurance covering personal injuries (including death) in the amount of \$1,000,000 per occurrence, and (ii) automobile liability insurance covering bodily injuries (including death) in the amount of \$1,000,000 per person, and \$1,000,000 per occurrence, property damage in the amount of \$1,000,000 per occurrence, and products liability in the amount of \$1,000,000. Seller further agrees to provide and maintain Workers' Compensation Insurance in conformity with the laws of the state in which such premises or project is located and Employer's Liability Insurance in the amount of \$1,000,000 per occurrence. If requested by Buyer, Seller shall submit written proof of such insurance in the form of certificates of insurance to Buyer prior to entrance on Buyer's premises or project. Notwithstanding anything to the contrary in this Agreement, Seller shall NOT be required to provide any waiver of subrogation or name any third party (including without limitation Buyer) as additional insured under any of Seller's insurance policies.

16. Intentionally Deleted.

17. DISPUTES. Buyer may, at its sole option, elect to arbitrate any dispute arising out of or related to this purchase order or the breach thereof, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The existence of a dispute between Buyer and Seller, not involving a material default by Buyer in performance of a condition precedent to Seller's performance, shall not relieve Seller of its obligation to perform under this Agreement. In the event either party becomes involved in litigation or arbitration arising out of this Agreement, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee awarded shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith. Disputes not arbitrated pursuant to this provision shall be litigated.

18. LIMITATION OF LIABILITY. (a) IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF SELLER BE IN EXCESS OF THE TOTAL PAYMENTS RECEIVED BY SELLER UNDER THIS ENTIRE AGREEMENT, INCLUDING CHANGES THERETO, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. EXCEPT FOR BUYER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF BUYER BE IN EXCESS OF THE TOTAL PAYMENTS RECEIVED BY SELLER UNDER THIS ENTIRE AGREEMENT, INCLUDING CHANGES THERETO, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. (b) NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES OR OTHER ECONOMIC LOSSES, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE BY OPERATION OF LAW OR OTHERWISE. (c) THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

19. ENTIRE AGREEMENT; AMENDMENT; WAIVERS. This Agreement shall supersede all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this Agreement. Neither party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and signed by both parties. No waiver by either party of any breach of any terms, conditions or obligations under this Agreement shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.

20. INDEPENDENT CONTRACTORS. Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under this Agreement or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under this Agreement or otherwise at law.

21. NO THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

22. SEVERABILITY. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of its other provisions and the remaining provisions shall remain in full force and effect.

23. FORCE MAJEURE & DELAYS. Seller shall not be liable for delay in or prevention of its performance due to causes beyond its reasonable control, including but not limited to acts of God or the public enemy, fires, floods, strikes or other labour disputes, acts of sovereign governments, terrorism, war or other similar occurrences. Seller shall use reasonable efforts to notify Buyer in writing within ten (10) days of the beginning of any such cause. Delays caused by increases or escalation in labor or materials costs shall are not a Force Majeure event.

We accept Purchaser's Order:

This Purchase Order is hereby

approved: SELLER:

BUYER:

COMPANY

WEBCOR BUILDERS

By: _____ By :

Name:

Name: Title:

Title:

Address1:

Address2:

Phone: ()

748-7800

Contractor's License #: _____

1751 Harbor Bay Parkway, Suite 200

Alameda, CA 94502

Phone: (510) 748-1900 Fax: (510)

Contractor's License # 899242 A, B, C-8

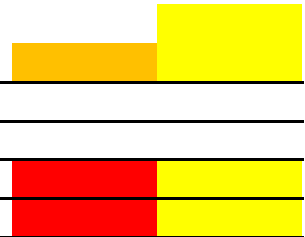
			Week	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	
Quantity	1st Article Geometry	Weight	Quantity	28-Dec-13	4-Jan-14	11-Jan-14	18-Jan-14	25-Jan-14	1-Feb-14	8-Feb-14	15-Feb-14	22-Feb-14	1-Mar-14	8-Mar-14	15-Mar-14	22-Mar-14	29-Mar-14	5-Apr-14	
3	Type 1	23,900	1																
		23,900	1																
		23,900	1																
3	Type 2	23,900	1																
		23,900	1																
		23,900	1																
2	Type 3	23,300	1	date															
		23,300	1																
2	Type 4	21,700	1	date															
		21,700	1																
6	Type 5	21,500	1																
		21,500	1																
		21,500	1																
		21,500	1																
		21,500	1																
		21,500	1																
6	Type 6	21,700	1																
		21,700	1																
		21,700	1																
		21,700	1																
		21,700	1																
		21,700	1																
1	Type 7	21,800	1																
1	Type 8	21,700	1																
4	Type 10	29,000	1																
		29,000	1																
		29,000	1																
		29,000	1																
1	Type 11	29,700	1																
1	Type 12	29,700	1																
1	Type 14	46,300	1																
1	Type 17	46,300	1																
1	Type 19	40,000	1	Model need date															
1	Type 16	40,000	1	Model need date															
1	Type 15	19,600	1																

Shop Dwg

			Week	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	
Quantity	1st Article Geometry	Weight	Quantity	15-Nov-14	22-Nov-14	29-Nov-14	6-Dec-14	13-Dec-14	20-Dec-14	27-Dec-14	3-Jan-15	10-Jan-15	17-Jan-15	24-Jan-15	31-Jan-15	7-Feb-15	14-Feb-15	21-Feb-15	28-Feb-15	
3	Type 1	23,900	1																	
		23,900	1																	
		23,900	1																	
3	Type 2	23,900	1																	
		23,900	1																	
		23,900	1																	
2	Type 3	23,300	1																	
		23,300	1																	
2	Type 4	21,700	1																	
		21,700	1																	
6	Type 5	21,500	1																	
		21,500	1																	
		21,500	1																	
		21,500	1																	
		21,500	1																	
		21,500	1																	
6	Type 6	21,700	1																	
		21,700	1																	
		21,700	1																	
		21,700	1																	
		21,700	1																	
		21,700	1																	
1	Type 7	21,800	1																	
1	Type 8	21,700	1																	
4	Type 10	29,000	1																	
		29,000	1																	
		29,000	1																	
		29,000	1																	
1	Type 11	29,700	1																	
1	Type 12	29,700	1																	
1	Type 14	46,300	1																	
1	Type 17	46,300	1																	
1	Type 19	40,000	1																	
1	Type 16	40,000	1																	
1	Type 15	19,600	1																	



Quantity	1st Article Geometry	Weight	Week		
			93	94	
			Quantity	7-Mar-15	14-Mar-15
3	Type 1	23,900	1		
		23,900	1		
		23,900	1		
3	Type 2	23,900	1		
		23,900	1		
		23,900	1		
2	Type 3	23,300	1		
		23,300	1		
2	Type 4	21,700	1		
		21,700	1		
6	Type 5	21,500	1		
		21,500	1		
		21,500	1		
		21,500	1		
		21,500	1		
		21,500	1		
6	Type 6	21,700	1		
		21,700	1		
		21,700	1		
		21,700	1		
		21,700	1		
		21,700	1		
1	Type 7	21,800	1		
1	Type 8	21,700	1		
4	Type 10	29,000	1		
		29,000	1		
		29,000	1		
		29,000	1		
1	Type 11	29,700	1		
1	Type 12	29,700	1		
1	Type 14	46,300	1		
1	Type 17	46,300	1		
1	Type 19	40,000	1		
1	Type 16	40,000	1		
1	Type 15	19,600	1		



			Week	88	89	90	91	92	93	94
Quantity	1st Article Geometry	Weight	Quantity	31-Jan-15	7-Feb-15	14-Feb-15	21-Feb-15	28-Feb-15	7-Mar-15	14-Mar-15
11	Type 21A	19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
2	Type 22A	18,900	1							
		18,900	1							
4	Type 23A	19,900	1							
		19,900	1							
		19,900	1							
		19,900	1							
3	Type 24A	18,900	1							
		18,900	1							
		18,900	1							
3	Type 25A	19,900	1							
		19,900	1							
		19,900	1							
2	Type 26A	22,800	1							
		22,800	1							
2	Type 27A	19,000	1							
		19,000	1							
1	Type 29A	18,700	1							
1	Type 30A	20,400	1							
1	Type 31A	20,800	1							
1	Type 34A	17,700	1							
11	Type 21B	19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
		19,800	1							
2	Type 22B	18,900	1							
		18,900	1							
4	Type 23B	19,900	1							
		19,900	1							
		19,900	1							
		19,900	1							
3	Type 24B	18,900	1							
		18,900	1							
		18,900	1							
3	Type 25B	19,900	1							
		19,900	1							
		19,900	1							
2	Type 26B	22,800	1							
		22,800	1							
2	Type 27B	19,000	1							
		19,000	1							
1	Type 29B	18,600	1							
1	Type 30B	20,400	1							
1	Type 31B	21,800	1							
1	Type 34B	17,700	1							
1	Type 32A	20,600	1							
1	Type 33A	20,500	1							
1	Type 32B	20,200	1							
1	Type 33B	10,800	1							
2	Type 36	9,500	1							
		9,500	1							
4	Type 37	9,500	1							
		9,500	1							
		9,500	1							
		9,500	1							
1	Type 35A	10,500	1							
1	Type 35B	10,500	1							
1	Type 38	10,400	1							
Weight		1,387,000	75							

			05/14/2013																
			Week	Delivery Date Needed				Pattern	Casting		FAI		Machining & Upgrade						
Quantity	1st Article Geometry	Weight	Quantity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
				1-Jun-13	8-Jun-13	15-Jun-13	22-Jun-13	29-Jun-13	6-Jul-13	13-Jul-13	20-Jul-13	27-Jul-13	3-Aug-13	10-Aug-13	17-Aug-13	24-Aug-13	31-Aug-13	7-Sep-13	
63	Type 71	5,400	16		Model need date														
		5,400	15																
		5,400	8																
		5,400	8																
		5,400	10																
		5,400	6																
75	Type 72	4,400	16		Model need date														
		4,400	17																
		4,400	12																
		4,400	8																
		4,400	8																
		4,400	14																

Weight	670,200	138
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277,200	63
330,000	75

			Week	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Quantity	1st Article Geometry	Weight	Quantity	14-Sep-13	21-Sep-13	28-Sep-13	5-Oct-13	12-Oct-13	19-Oct-13	26-Oct-13	2-Nov-13	9-Nov-13	16-Nov-13	23-Nov-13	30-Nov-13	7-Dec-13	14-Dec-13	21-Dec-13
63	Type 71	5,400	16	Machining														
		5,400	15															
		5,400	8															
		5,400	8															
		5,400	10															
		5,400	6															
75	Type 72	4,400	16	Machining														
		4,400	17															
		4,400	12															
		4,400	8															
		4,400	8															
		4,400	14															

Weight	670,200	138
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277,200	63
330,000	75

			Week	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
Quantity	1st Article Geometry	Weight	Quantity	28-Dec-13	4-Jan-14	11-Jan-14	18-Jan-14	25-Jan-14	1-Feb-14	8-Feb-14	15-Feb-14	22-Feb-14	1-Mar-14	8-Mar-14	15-Mar-14	22-Mar-14	29-Mar-14	5-Apr-14
63	Type 71	5,400	16															
		5,400	15															
		5,400	8															
		5,400	8															
		5,400	10															
		5,400	6															
75	Type 72	4,400	16															
		4,400	17															
		4,400	12															
		4,400	8															
		4,400	8															
		4,400	14															

Weight	670,200	138
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277,200	63
330,000	75

			Week	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
Quantity	1st Article Geometry	Weight	Quantity	12-Apr-14	19-Apr-14	26-Apr-14	3-May-14	10-May-14	17-May-14	24-May-14	31-May-14	7-Jun-14	14-Jun-14	21-Jun-14	28-Jun-14	5-Jul-14	12-Jul-14	19-Jul-14
63	Type 71	5,400	16															
		5,400	15															
		5,400	8															
		5,400	8															
		5,400	10															
		5,400	6															
75	Type 72	4,400	16															
		4,400	17															
		4,400	12															
		4,400	8															
		4,400	8															
		4,400	14															
Weight		670,200	138															

277,200	63
330,000	75

			Week	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	
Quantity	1st Article Geometry	Weight	Quantity	26-Jul-14	2-Aug-14	9-Aug-14	16-Aug-14	23-Aug-14	30-Aug-14	6-Sep-14	13-Sep-14	20-Sep-14	27-Sep-14	4-Oct-14	11-Oct-14	18-Oct-14	25-Oct-14	1-Nov-14	
63	Type 71	5,400	16																
		5,400	15																
		5,400	8																
		5,400	8																
		5,400	10																
		5,400	6																
		5,400	6																
75	Type 72	4,400	16																
		4,400	17																
		4,400	12																
		4,400	8																
		4,400	8																
		4,400	14																
Weight		670,200	138																

277,200	63
330,000	75

			Week	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
Quantity	1st Article Geometry	Weight	Quantity	8-Nov-14	15-Nov-14	22-Nov-14	29-Nov-14	6-Dec-14	13-Dec-14	20-Dec-14	27-Dec-14	3-Jan-15	10-Jan-15	17-Jan-15	24-Jan-15	31-Jan-15	7-Feb-15	14-Feb-15
63	Type 71	5,400	16															
		5,400	15															
		5,400	8															
		5,400	8															
		5,400	10															
		5,400	6															
75	Type 72	4,400	16															
		4,400	17															
		4,400	12															
		4,400	8															
		4,400	8															
		4,400	14															
Weight		670,200	138															

277,200	63
330,000	75

			Week	91	92	93	94	95	
Quantity	1st Article Geometry	Weight	Quantity	21-Feb-15	28-Feb-15	7-Mar-15	14-Mar-15	21-Mar-15	
63	Type 71	5,400	16						
		5,400	15						
		5,400	8						
		5,400	8						
		5,400	10						
		5,400	6						
75	Type 72	4,400	16						
		4,400	17						
		4,400	12						
		4,400	8						
		4,400	8						
		4,400	14						
Weight		670,200	138						

277,200	63
330,000	75

			Week	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	
Quantity	1st Article Geometry	Weight	Quantity	12-Apr-14	19-Apr-14	26-Apr-14	3-May-14	10-May-14	17-May-14	24-May-14	31-May-14	7-Jun-14	14-Jun-14	21-Jun-14	28-Jun-14	5-Jul-14	12-Jul-14	19-Jul-14	
2	Type 601	5,800	1																
		5,800	1																
2	Type 602	5,300	1																
		5,300	1																
4	Type 603	5,300	1																
		5,300	1																
		5,300	1																
		5,300	1																
4	Type 701	10,200	1																
		10,200	1																
		10,200	1																
		10,200	1																
4	Type 702	13,000	1																
		13,000	1																
		13,000	1																
		13,000	1																
Weight		136,200	16																

			Week	61	62	63	64	65	66	67	68	69	70	71	72	73
Quantity	1st Article Geometry	Weight	Quantity	26-Jul-14	2-Aug-14	9-Aug-14	16-Aug-14	23-Aug-14	30-Aug-14	6-Sep-14	13-Sep-14	20-Sep-14	27-Sep-14	4-Oct-14	11-Oct-14	18-Oct-14
2	Type 601	5,800	1	Machining												
		5,800	1													
2	Type 602	5,300	1	Machining												
		5,300	1													
4	Type 603	5,300	1													
		5,300	1													
		5,300	1													
		5,300	1													
4	Type 701	10,200	1													
		10,200	1													
		10,200	1													
		10,200	1													
4	Type 702	13,000	1													
		13,000	1													
		13,000	1													
		13,000	1													
Weight		136,200	16													

Attachment 2 - Payment Schedule

04/23/2013

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
	1-May-13	8-May-13	15-May-13	22-May-13	29-May-13	5-Jun-13	12-Jun-13	19-Jun-13	26-Jun-13	3-Jul-13	10-Jul-13	17-Jul-13	24-Jul-13	31-Jul-13	7-Aug-13	14-Aug-13
Invoicing PMT Due + 30 Days	\$ -	\$ -	\$ -	\$ -	\$ 187,500	\$ 82,234	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 120,739	\$ -	\$ 213,333	\$ -

Need to add Storage and Disposal
 Need to add Weld Test Plates
 Need to add Contract Site Visits

Attachment 2 - Payment Schedule

04/23/2013

Week	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
	21-Aug-13	28-Aug-13	4-Sep-13	11-Sep-13	18-Sep-13	25-Sep-13	2-Oct-13	9-Oct-13	16-Oct-13	23-Oct-13	30-Oct-13	6-Nov-13	13-Nov-13	20-Nov-13	27-Nov-13	4-Dec-13
Invoicing PMT Due + 30 Days	\$ -	\$ -	\$ -	\$ -	\$ 27,964	\$ 117,028	\$ -	\$ -	\$ 117,028	\$ 10,318	\$ 76,447	\$ 117,028	\$ -	\$ 27,964	\$ 237,136	\$ 11,146

Need to add Storage and Disposal
 Need to add Weld Test Plates
 Need to add Contract Site Visits

Attachment 2 - Payment Schedule

04/23/2013

Week	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48
	11-Dec-13	18-Dec-13	25-Dec-13	1-Jan-14	8-Jan-14	15-Jan-14	22-Jan-14	29-Jan-14	5-Feb-14	12-Feb-14	19-Feb-14	26-Feb-14	5-Mar-14	12-Mar-14	19-Mar-14	26-Mar-14
Invoicing PMT Due + 30 Days	\$ 173,622	\$ 290,362	\$ 133,334	\$ 354,221	\$ 290,650	\$ 39,111	\$ -	\$ 290,650	\$ -	\$ 138,325	\$ 908,217	\$ 133,334	\$ 172,444	\$ 264,583	\$ -	\$ 679,617

Need to add Storage and Disposal
 Need to add Weld Test Plates
 Need to add Contract Site Visits

Week	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64
	2-Apr-14	9-Apr-14	16-Apr-14	23-Apr-14	30-Apr-14	7-May-14	14-May-14	21-May-14	28-May-14	4-Jun-14	11-Jun-14	18-Jun-14	25-Jun-14	2-Jul-14	9-Jul-14	16-Jul-14
Invoicing PMT Due + 30 Days	\$ 399,433	\$ -	\$ 167,685	\$ 1,933,901	\$ 13,982	\$ 32,325	\$ -	\$ -	\$ 135,595	\$ 112,482	\$ -	\$ 11,146	\$ 245,483	\$ 1,367,927	\$ 50,638	\$ 561,059

Need to add Storage and Disposal
 Need to add Weld Test Plates
 Need to add Contract Site Visits

Week	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
	23-Jul-14	30-Jul-14	6-Aug-14	13-Aug-14	20-Aug-14	27-Aug-14	3-Sep-14	10-Sep-14	17-Sep-14	24-Sep-14	1-Oct-14	8-Oct-14	15-Oct-14	22-Oct-14	29-Oct-14	5-Nov-14
Invoicing PMT Due + 30 Days	\$ 110,276	\$ 136,888	\$ 229,815	\$ -	\$ -	\$ 112,482	\$ -	\$ 3,858	\$ 1,827,064	\$ 88,704	\$ -	\$ -	\$ 186,426	\$ 215,484	\$ 13,982	\$ 32,325

Need to add Storage and Disposal
 Need to add Weld Test Plates
 Need to add Contract Site Visits

Attachment 2 - Payment Schedule

04/23/2013

Week	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95
	12-Nov-14	19-Nov-14	26-Nov-14	3-Dec-14	10-Dec-14	17-Dec-14	24-Dec-14	31-Dec-14	7-Jan-15	14-Jan-15	21-Jan-15	28-Jan-15	4-Feb-15	11-Feb-15	18-Feb-15
Invoicing PMT Due + 30 Days	\$ -	\$ 53,092	\$ 826,217	\$ -	\$ -	\$ -	\$ -	\$ 143,298	\$ -	\$ -	\$ 232,002	\$ -	\$ 69,298	\$ 1,126,258	\$ -

Need to add Storage and Disposal
 Need to add Weld Test Plates
 Need to add Contract Site Visits

Attachment 2 - Payment Schedule

04/23/2013

Week	Totals		
Invoicing PMT Due + 30 Days	\$ 15,653,460		

- Need to add Storage and Disposal
- Need to add Weld Test Plates
- Need to add Contract Site Visits

Attachment 3 - Payment Requirements

Invoice

1. Seller shall use the following forms when billing for material:
 - a. Exhibit G – Form 1030 – Progress Billing Invoice
 - b. Exhibit G – Form 1030A – Schedule of Values
 - c. Exhibit C – Progress Waivers (Use Applicable Forms)
 - i. Conditional Waiver and Release on Progress Payment 1034 Form Rev 07 2012
 - ii. Unconditional Waiver and Release on Progress Payment Form 1035 Rev 07 2012
 - iii. Conditional Waiver and Release on Final Payment Form 1036 Rev 07 2012
 - iv. Unconditional Waiver and Release on Final Payment Form 1037 Rev 07 2012
2. Seller invoice back up shall show detailed description of items billed (list material as listed on contract, and each cast node as indicated by type, level and gridline, unit price, quantity, etc.), materials shall be free and clear of all liens, charges, security interests and encumbrances.
3. Stored material will need approval in advance by the TJPA. Stored material shall include photo of material and material shall be labeled for TJPA. Title to stored material shall be vested in the TJPA at the time of delivery to the Site or off-Site warehouse or facility. Seller shall allow ability for owner to inspect the material, seller shall submit insurance of the location material is stored naming the TJPA as additional insured, and include bill of lading.

Receiving Record

1. Seller invoice shall include negotiable goods receipt, bill of lading, or any other item that states the items have been received and endorsed over to the TJPA.
2. Seller shall match the listed material with the same detailed description on invoice and PO/contract.

The seller will provide the following documentation when submitting an invoice for payment:

- 1) For Initial - Solidification (F.A.I. Only): Provide screen shots of the rigging and set-up to responsible party for validation.
- 2) For the – Tooling: Provide digital photos emailed of the completed tooling with labeling of the specific node(s) that it would produce.
- 3) For the – First Article Costs, supply a data package that would include the information necessary for the inspection company to buy off the casting (NDT Reports, Dimensional Reports...). A pdf supporting package.
- 4) For the – Actual Nodes, each would have a data package that would accompany the component prior to shipment. It would include all necessary reports required as a pdf supporting package along with a digital photo of the actual casting ready to be shipped.

Attachment 4 - Cost Breakdown

	East Section	Central Section	West Section		
Castings	\$ 5,832,013.00	\$ 2,785,478.00	\$ 2,963,589.00		
Tooling	\$ 1,977,628.00	\$ 484,727.00	\$ 826,222.00		
First Article Costs	\$ 311,002.00	\$ 105,357.00	\$ 179,944.00		
Sub Total (Before Line Items)	\$ 8,120,643.00	\$ 3,375,562.00	\$ 3,969,755.00	\$	15,465,960.00
Solidification (F.A.I. Only)	\$ 120,000.00	\$ 25,000.00	\$ 42,500.00	\$	187,500.00
Sub Total (Before Line Items)				\$	15,653,460.00
Additional Line Items					
Storage of Tooling (6 months)	\$ 15,600.00	\$ 1,200.00	\$ 5,700.00	\$	22,500.00
Disposal of Tooling After Contract	\$ 24,357.00	\$ 2,019.00	\$ 8,512.00	\$	34,888.00
Sub Total (After Line Items)				\$	15,710,848.00
Applied Tax (San Francisco)			8.75%	\$	1,374,699.20
Total				\$	17,085,547.20



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Quote Reference: A121133 Rev. 3

Friday, April 12, 2013

T 816 270 0700

F 816 270 0799

W bradken.com

Project: Transbay Transit Center

Bid Number: TG07.1 (Steel Castings Only)

Bid Title: Structural Steel Superstructure (Steel Castings)

Drawing Reference: Quoted to Drawings Dated 12/07/12

Specification Reference: Quoted to 05 15 21 – 1 Dated December 7, 2012

Dear Jeff,

Please find below and contained in this our bid for the entire scope of steel castings for all levels of the Transbay Transit Center. (Subsequent pages to quote each level) A separate document accompanies this confidential quote; to outline the means by which we will accomplish the delivery based on the need dates supplied in the drawings reference in the 12/07/12 release. All quotes FOB Bradken, Inc.

Project Summary:

1. Ground Floor Level Cast Nodes
 - a. Node types 1 through 8, 10 through 12, 14 through 17, and 19;
2. Bus Deck Level Cast Nodes
 - a. Node types 21A and 21B through 27A and 27B, 29A and 29B through 35A and 35B, and 36 through 38;
3. Roof Level Cast Nodes
 - a. Node types 71 and 72;
4. Light Column Cast Nodes – AESS Critical
 - a. Node types LC 201 through 204, LC 301, LC 302E, LC 302W, LC 303, LC 304, LC 401 through 404, and LC 501 through 504
5. Light Column Cast Nodes – non-AESS Critical
 - a. Node types LC 601 through 603, LC 701, and LC 702.

Revision	Description
Adder: Included	Dwg S1-4205 sample backing bar bevel if required (as forwarded to us)
Surcharges	Locked for period of contract barring +/- 10% change in components for life of contract; assuming release for production no later than May 2013 and ending before March of 2015
Deliveries Quoted	Original schedule assumed negotiated purchase orders received and drawings released by (attached) assumes May 1, 2013 PO and released drawings for production. Schedule moves out every day past provided schedules when PO and drawing release moves past original start dates provided (+1 day = +1 day)



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Quote Project Summary: Overall Project

<u>Quote</u>		
304 = Total Castings Quantity		
<u>Pricing</u>		
Included: Casting Price, Nozzle Adder, Alloy Surcharge, Test Bars, HT Charts, Weld Maps, Machined Bevel	Castings	\$11,581,080
	Tooling	\$ 3,288,577
	First Article Costs	\$ 596,303
	Total before line items	<u>\$15,465,960</u>
<u>Additional Line Items:</u>		
	<u>Per Casting</u>	<u>Extended</u>
Solidification (F.A.I. Only)	\$ 2,500	\$ 187,500
Weld Plates (each)	\$ 650	Per your requirement
Storage of tooling per month		\$ 3,750/month
Disposal of Tooling After Contract		\$ 34,888
Contract Site 3 Party Inspection per visit	\$ 500 x (number of visits)	Per requirement by Cast Connex

** Shipment is FOB Bradken, Inc. (Build location in Appendix A) Subject to Bradken, Inc. Terms and Conditions attached. Weld Test Plates per customer request quoted as an each price. Contract 3rd Party inspection is quoted per visit and requires 2 weeks notification in writing.

Quote valid for 30 days from date sent. Bradken Terms and Conditions are a separate attachment.

Payment terms are Net 30: Solidification Modeling, Patterns and First Article Inspection Costs will be billed at time of completion and castings held pending machining instructions will be billed at cast value and held pending drawings and machining instructions.



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Quote Summary: Central Section

<u>Quote</u>		
70 = Total Castings Quantity		
<u>Pricing</u>		
Included: Casting Price, Nozzle Adder, Alloy Surcharge, Test Bars, HT Charts, Weld Maps, Machined Bevel	Castings	\$2,785,478
	Tooling	\$ 484,727
	First Article Costs	\$ 105,357
	Total before line items	<u>\$3,375,562</u>
<u>Additional Line Items:</u>		
	<u>Per Casting</u>	<u>Extended</u>
Solidification (F.A.I. Only)	\$ 2,500	\$25,000
Weld Plates (each)	\$ 650	Per your requirement
Storage of tooling per month		\$ 200
Disposal of Tooling After Contract		\$ 2,019
Contract Site 3 Party Inspection per visit	\$ 500 x (number of visits)	Per requirement by Cast Connex

** Shipment is FOB Bradken, Inc. (Build location in Appendix A) Subject to Bradken, Inc. Terms and Conditions attached. Weld Test Plates per customer request quoted as an each price. Contract 3rd Party inspection is quoted per visit and requires 2 weeks notification in writing.

Quote valid for 30 days from date sent. Bradken Terms and Conditions are a separate attachment.

Payment terms are Net 30: Solidification Modeling, Patterns and First Article Inspection Costs will be billed at time of completion and castings held pending machining instructions will be billed at cast value and held pending drawings and machining instructions.



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Quote Summary: West Section

<u>Quote</u>		
72 = Total Castings Quantity		
<u>Pricing</u>		
Included: Casting Price, Nozzle Adder, Alloy Surcharge, Test Bars, HT Charts, Weld Maps, Machined Bevel	Castings	\$2,963,589
	Tooling	\$ 826,222
	First Article Costs	\$ 179,944
	Total before line items	<u>\$ 3,969,755</u>
<u>Additional Line Items:</u>		
	<u>Per Casting</u>	<u>Extended</u>
Solidification (F.A.I. Only)	\$ 2,500	\$42,500
Weld Plates (each)	\$ 650	Per your requirement
Storage of tooling per month		\$ 950
Disposal of Tooling After Contract		\$ 8,512
Contract Site 3 Party Inspection per visit	\$ 500 x (number of visits)	Per requirement by Cast Connex

** Shipment is FOB Bradken, Inc. (Build location in Appendix A) Subject to Bradken, Inc. Terms and Conditions attached. Weld Test Plates per customer request quoted as an each price. Contract 3rd Party inspection is quoted per visit and requires 2 weeks notification in writing.

Quote valid for 30 days from date sent. Bradken Terms and Conditions are a separate attachment.

Payment terms are Net 30: Solidification Modeling, Patterns and First Article Inspection Costs will be billed at time of completion and castings held pending machining instructions will be billed at cast value and held pending drawings and machining instructions.



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Quote Summary: East Section

<u>Quote</u>		
162 = Total Castings Quantity		
<u>Pricing</u>		
Included: Casting Price, Nozzle Adder, Alloy Surcharge, Test Bars, HT Charts, Weld Maps, Machined Bevel	Castings	\$5,832,013
	Tooling	\$1,977,628
	First Article Costs	\$ 311,002
	Total before line items	<u>\$8,120,643</u>
<u>Additional Line Items:</u>		
	<u>Per Casting</u>	<u>Extended</u>
Solidification (F.A.I. Only)	\$ 2,500	\$120,000
Weld Plates (each)	\$ 650	Per your requirement
Storage of tooling per month		\$ 2,600
Disposal of Tooling After Contract		\$ 24,357
Contract Site 3 Party Inspection per visit	\$ 500 x (number of visits)	Per requirement by Cast Connex

** Shipment is FOB Bradken, Inc. (Build location in Appendix A) Subject to Bradken, Inc. Terms and Conditions attached. Weld Test Plates per customer request quoted as an each price. Contract 3rd Party inspection is quoted per visit and requires 2 weeks notification in writing.

Quote valid for 30 days from date sent. Bradken Terms and Conditions are a separate attachment.

Payment terms are Net 30: Solidification Modeling, Patterns and First Article Inspection Costs will be billed at time of completion and castings held pending machining instructions will be billed at cast value and held pending drawings and machining instructions.

Appendix A (Tooling Destruction, Disposal, Location and Payment terms)

Storage Cost:

Level Quantity	Cost to Store Per Month
Ground Floor Level A - 16	\$ 800
Bus Deck Level B - 31	\$1,550
Roof Level C - 2	\$ 100
Light Column Critical D - 21	\$1,050
Light Column Non-Critical - 5	\$ 250
Total Storage Cost	\$3,750

Disposal Cost:

Level Quantity	Cost to Destroy
Ground Floor Level A - 16	\$ 8,800
Bus Deck Level B - 31	\$16,275
Roof Level C - 2	\$ 648
Light Column Critical D - 21	\$ 7,665
Light Column Non-Critical - 5	\$ 1,500
Total Disposal Cost	\$34,888

Location of Production: (Estimate at this point. For freight assume farthest location from facility for fabricator estimate as castings are FOB Bradken, Inc.)

Atchison, KS 400 South 4 th Street Atchison, KS 66002	Amite, LA 13040 Foulks Ln Amite, LA 70422
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Level	Proposed Production Location
Ground Floor Level A – 16	Atchison, KS
Bus Deck Level B – 31	Amite, LA
Roof Level C – 2	Atchison, KS
Light Column Critical D – 21	Atchison, KS
Light Column Non-Critical E – 5	Amite, LA

Expediting Scenario and Costs: (If necessary)

(Per standard delivery, move out original chart + day per day on PO and shop drawing dates)

Total Expediting Fee: \$748,932 to be added if exercised to move in production 30 days

- a) **A Ground Floor: Expediting Fee to be added to total quote for the floor: \$218,670**
- b) **B Bus Deck: Expediting Fee to be added to total quote for the floor: \$274,585**
- c) **C Roof Level Nodes: Expediting Fee to be added to total quote for the floor: \$132,604**
- d) **D Light Column critical: Expediting Fee to be added to total quote for the floor: \$85,409**
- e) **E Light Column non-critical: Expediting Fee to be added to total quote for the floor: \$37,664**