

STAFF REPORT FOR CALENDAR ITEM NO.: 17
FOR THE MEETING OF: May 20, 2013

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

The TJPA requests authorization from the Board to execute a Dispute Resolution Board Agreement (“DRB Agreement”) with Webcor/Obayashi Joint Venture (the “CM/GC”) in order to implement the DRB procedure to address any requests by Balfour Beatty Infrastructure, Inc. (“BBII”) for additional compensation and/or time related to the performance of BBII’s work at the Project.

EXPLANATION:

The Claim Procedure set forth in Paragraph 13.02 of the General Conditions, Section 00 07 000, to the Contract with the CM/GC was recently revised to provide an option to the TJPA, the CM/GC, and any Trade Subcontractor to submit a Claim to a Dispute Resolution Advisor (“DRA”) before requesting review of the Claim by the TJPA (*i.e.*, during the administrative claim process). On March 14, 2013, the Board authorized the TJPA to execute a DRA Agreement, which enables the TJPA to implement the DRA procedure for future Trade Subcontracts.

Before the DRA Agreement was approved by the Board, the first major Trade Subcontractor on-site, BBII (the Buttress, Shoring and Excavation [“BSE”] Trade Subcontractor), had entered into a Trade Subcontract and commenced its work at the Project. BBII believes a Dispute Resolution Board (“DRB”) procedure, involving the recommendation of a three panel board, will be more effective in resolving any requests for additional compensation and/or time related to the performance of its work than a DRA procedure involving the recommendation of a single Dispute Resolution Advisor.

The major difference between a DRA and DRB is that under the DRA procedure, there is one neutral, and under the DRB procedure, there is a panel of three neutrals. However, similar to the DRA procedure previously approved by the Board, the DRB procedure will enable the TJPA to implement an alternative dispute resolution procedure with respect to BBII’s requests for additional compensation and/or time related to the performance of its work. Accordingly, with input from BBII, the CM/GC and the TJPA have negotiated a DRB Agreement to implement a DRB procedure to address any requests by BBII for additional compensation and/or time.

Under the DRB Agreement, three neutrals will be selected to serve on a panel to collectively provide an independent, neutral and non-binding review and recommendation regarding any requests by BBII for additional compensation and/or time related to the performance of its work. The TJPA will select one neutral, and the CM/GC and BBII will jointly select one neutral. A third neutral will be jointly selected by the neutrals selected by the TJPA and the CM/GC/BBII. The DRB will then conduct hearings during which the participants (the TJPA, the CM/GC and BBII) will present their respective positions on a particular request by BBII for additional compensation and/or time related to the performance of its work. Following the hearing, the

DRB will issue a non-binding, written decision on whether BBII is entitled to the additional compensation and/or time requested. Also, if requested by the participants, the DRB may issue a non-binding, written decision regarding the amount of the compensation and/or time BBII is entitled to receive. The decision may then be used by the TJPA, the CM/GC, and BBII to further evaluate their respective positions and determine if settlement of a particular request for additional compensation and/or time is appropriate.

The cost of the DRB shall be shared by the parties as follows: 50% of the cost will be paid for by BBII, 25% will be paid for by the TJPA and 25% will be paid for by the CM/GC. Any costs incurred under the DRB procedure will be borne by the parties and are not recoverable.

Execution of the DRB Agreement will permit the parties to implement a DRB procedure and assist the parties in resolving any requests by BBII for additional compensation and/or time related to the performance of its work.

Following the Board's approval of the DRB Agreement, the TJPA will enter into a Dispute Resolution Board Members' Services Agreement with the neutrals selected to serve on the DRB panel. At this time, the anticipated fees and costs to be paid to the DRB panel by the TJPA are not expected to exceed \$100,000.00. Accordingly, the Dispute Resolution Board Members' Services Agreement may be approved and executed by the Executive Director.

RECOMMENDATION:

The TJPA staff recommends that the Board authorize the TJPA to execute the Dispute Resolution Board Agreement.

ENCLOSURES:

1. Resolution
2. Dispute Resolution Board Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On March 12, 2009, the TJPA Board of Directors awarded Contract No. 08-04-CMGC-000 (“Contract”) to the Webcor/Obayashi, Joint Venture (the “CM/GC”) to perform pre-construction and construction services for the Transbay Transit Center Building and Related Structures Project (the “Project”); and

WHEREAS, Paragraph 13.02 of the General Conditions, Section 00 07 000, to the Contract, sets forth the Claim Procedure for Claims by the CM/GC and its Trade Subcontractors related to requests for additional compensation and/or time related to the performance of the Work at the Project; and

WHEREAS, The Claim Procedure was revised to include, among other items, an option to submit Claims to a Dispute Resolution Advisor (“DRA”) for an independent, neutral and non-binding review and written recommendation on whether additional compensation and/or time is owed for work performed on the Project; and

WHEREAS, On March 14, 2013, the Board authorized the TJPA to execute a DRA Agreement enabling the TJPA to implement the DRA procedure for future Trade Subcontractors; and

WHEREAS, Before the DRA Agreement was approved by the Board, the first major Trade Subcontractor on-site, Balfour Beatty Infrastructure, Inc. (“BBII”) (the Buttress, Shoring and Excavation [“BSE”] Trade Subcontractor), had entered into a Trade Subcontract and commenced its work at the Project; and

WHEREAS, BBII believes a DRB procedure, involving the recommendation of a three panel board, will be more effective in resolving any requests for additional compensation and/or time related to the performance of its work than a DRA procedure involving the recommendation of a single, Dispute Resolution Advisor; and

WHEREAS, BBII has agreed to a DRB procedure, in lieu of a DRA procedure, to address any requests for additional compensation and/or time related to the performance of its work at the Project; and

WHEREAS, The CM/GC and the TJPA, with input from BBII, have negotiated a DRB Agreement to implement a DRB procedure; and

WHEREAS, The DRB Agreement reflects the TJPA and CM/GC’s understanding as to the DRB procedure and the DRB’s role in assisting the parties to resolve requests for additional compensation and/or time for the performance of the work by BBII at the Project; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the TJPA to execute the DRB Agreement attached hereto to implement the DRB procedure.

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

DISPUTE RESOLUTION BOARD AGREEMENT

THIS DISPUTE RESOLUTION BOARD AGREEMENT (hereafter this "Agreement") is made and entered into as of May ____, 2013, by and between the Transbay Joint Powers Authority ("TJPA") and Webcor/Obayashi Joint Venture ("W/O").

RECITALS

A. On or about March 17, 2009, the TJPA and W/O entered into a Contract (the "Contract") whereby W/O agreed to serve as the construction manager/general contractor ("CM/GC") for the construction of the Transbay Transit Center Building and Related Structures Project located in San Francisco, California (the "Project").

B. TJPA is the owner of the Project and W/O is the CM/GC for the Project. TJPA and W/O shall be referred to herein collectively as the "Parties," and individually as "Party."

C. On or about January 5, 2011, W/O entered into a trade subcontract with Balfour Beatty Infrastructure, Inc. ("BBII") to perform certain work at the Project ("Trade Subcontract").

D. During the course of the Project, BBII submitted various claims ("Claims") to W/O requesting additional compensation and time. W/O submitted such Claims to the TJPA for consideration.

E. The Parties wish to establish a DRB procedure and select a DRB to assist in resolving the Claims.

NOW, therefore, based on the exchange of valuable consideration, the receipt of which is expressly acknowledged, and the foregoing Recitals, which form a part of this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

I. DESCRIPTION OF DRB'S ROLE

A. This Agreement establishes the requirements for selecting and utilizing the DRB to resolve BBII's Claims arising from the Work at the Project. The DRB is to fairly and impartially consider the Claims placed before the DRB at a Dispute Hearing. At the Dispute Hearing, the TJPA, W/O and BBII (the "Participants") will present evidence in support of their respective positions to the DRB. Following the Dispute Hearing, the DRB will issue a written recommendation with respect to the entitlement portion of the Claim or Claims submitted. The DRB will not address quantum unless specifically requested to do so by the Participants.

B. The DRB shall provide a recommendation based on the facts related to the Claim, the Contract, the Trade Subcontract, and applicable State and Federal laws and regulations.

II. DRB'S QUALIFICATIONS

A. A DRB member shall have a minimum of ten (10) years prior experience in Alternative Dispute Resolution procedures as an arbitrator, DRB member or mediator regarding construction issues arising out of heavy public civil construction projects of a similar size and complexity as the Project.

B. Except as otherwise agreed to in writing by TJPA, W/O and BBII, no DRB member shall have had prior direct or indirect involvement in the Project. For a period of five (5) years prior to the effective date of this Agreement, no DRB member shall have been employed or engaged by the TJPA, W/O, BBII, or any Project subcontractors, suppliers or consultants for any purpose, nor shall any DRB member have been involved in any project involving the TJPA, W/O, BBII, or any Project subcontractors, suppliers or consultants that are involved in a Claim under this Agreement. No DRB member shall have

any direct or indirect ownership or financial interest in W/O, BBII, or any Project subcontractors, suppliers or consultants involved in the Project during the term of this Agreement.

C. Each DRB member shall fully disclose in writing to the Parties and BBII all past, current and future direct and indirect professional or personal relationships with the TJPA, W/O, BBII, or any Project subcontractors, suppliers or consultants, and any of their officers, directors or employees.

D. In the event that any DRB member becomes aware of or has a reasonable belief that a conflict of interest may exist between him/her and the TJPA, W/O, BBII, or any Project subcontractors, suppliers or consultants involved in the Project, the DRB member shall immediately notify the Parties and BBII. The Parties and BBII shall then jointly decide whether to replace that DRB member.

III. DRB MEMBER SELECTION

A. Within thirty (30) days of executing this Agreement, the TJPA, on the one hand, shall select one member. W/O and BBII, on the other hand, already have jointly selected Daniel F. Meyer. The two members selected will then agree upon the selection of a third DRB member who shall act as the Chair. All DRB members will be considered neutrals and shall not engage in any ex parte communications with any Party or BBII after selection and identification to the other Party(ies) and BBII.

B. In the event a DRB member is terminated, withdraws or must be replaced, that DRB member will be replaced in the same manner as he/she was originally appointed.

IV. DRB OPERATION

Preliminary Procedures

A. Following selection of the DRB, the TJPA, W/O and BBII shall meet with the DRB to further refine the procedures set forth herein that will govern: (1) the submission of written materials to the DRB pertaining to a Claim; (2) the conduct and procedures at a Dispute Hearing; and (3) the issuance of a written recommendation concerning the Claim following the Dispute Hearing. Any additional procedures not set forth hereinbelow shall only be implemented upon approval by the TJPA, W/O, and BBII.

Procedures and Schedule for Dispute Hearing.

B. BBII's Claims related to the CDSM Wall (the "CDSM Wall Claims") including the following will be heard first:

BBII's Claim #	Corresponding W/O Claim #
1111	5
1011	23
116	8
1091	12
1177	15
8	N/A
1191	19
1190	24
CR T-010	N/A
CR T-025	N/A

In the event the TJPA, W/O, and BBII reach a negotiated resolution of the CDSM Wall Claims within 30 days following the DRB's issuance of its written recommendation, and, based on the DRB's written recommendation, DND is not liable for any of the CDSM Wall Claims, the TJPA shall release, in full, any retention withheld by the TJPA and related to DND's Subcontract work.

In the event the TJPA, W/O, and BBII reach a negotiated resolution of the CDSM Wall Claims within 30 days following the DRB's issuance of its written recommendation, the DRB shall continue and consider the remaining Claims filed prior to the date of this Agreement in an order collectively decided by the TJPA, W/O, and BBII. If a resolution is not reached, the DRB shall be terminated.

C. Any Claims arising after the date of this Agreement will be heard after the Claims listed above have been addressed. The Dispute Hearings shall commence within thirty (30) days after the DRB members are selected and retained by the Parties or as soon thereafter as the DRB's calendar permits but in no event later than July 15, 2013. In all instances, the DRB will consider the Claim presented as quickly as possible, taking into consideration the particular circumstances and the time required by the Parties and BBII to prepare the necessary documentation for the hearing.

1. Due to the volume of outstanding Claims, the Parties and BBII will meet with the DRB to schedule Dispute Hearings on such Claims which will occur over a period of no more than nine (9) months, or as soon thereafter as the DRB's calendar permits.

D. The Participants shall be afforded an opportunity to be heard by the DRB and present evidence at the Dispute Hearing. Evidence may be in the form of written and electronic documents, photographs, videotapes and oral testimony by key witnesses with direct knowledge of the facts relevant to the Claim. A Participant intending to rely upon tangible evidence at the Dispute Hearing must serve copies of such evidence on the DRB and all other Participants a minimum of fifteen (15) days before the Dispute Hearing. If the DRB requests any additional evidence prior to, during, or after the Dispute Hearing, the Participant to whom the request is directed shall provide the requested information to the DRB and the other Participants. A Participant intending to rely upon oral testimony shall serve a list of its key witnesses, which identifies the name of the witness, his/her connection to the Dispute, and the general nature of the testimony the witness will provide a minimum of fifteen (15) days before the Dispute Hearing.

E. The DRB's written recommendation for resolution of the Claim will be given to the Participants within ten (10) days of completion of the Dispute Hearing. In cases of extreme complexity or for good cause shown, the Participants may agree to allow additional time for the DRB to issue the written recommendation. The written recommendation will address entitlement and shall provide an analysis of the Participants' respective positions and liability, as well as the basis of the written recommendation.

F. Within twenty-one (21) days of receiving the DRB's written recommendation, the Participants shall respond to each other signifying either acceptance or rejection of the DRB's written recommendation. If the Participants are able to resolve the Claim with or without the aid of the DRB's written recommendation, the Participants shall process any required Change Order to the Contract within ten (10) calendar days of such resolution. Any responses to the DRB's written recommendation are inadmissible in any subsequent litigation or other dispute resolution proceeding. Failure to respond is deemed acceptance of the DRB's written recommendation.

G. Although the Participants should place great weight on the DRB's written recommendation, it is not binding. With respect to the CDSM Wall Claims, such recommendation is not admissible in any later litigation or arbitration. For all remaining Claims heard by the DRB, the recommendation is admissible in later litigation and/or arbitration between the TJPA, W/O and/or BBII provided that any party may challenge the relevance or correctness of the recommendation.

The DRB's Consideration of Disputes

H. The Participants in a Dispute Hearing understand and agree that the DRB's written recommendation concerning any Dispute is strictly advisory in nature. It is further understood and agreed that the DRB is to act impartially and independently in considering the disputed factual and legal issues submitted to the DRB for consideration. With the exception of communications regarding purely ministerial and logistical issues (*e.g.*, the timing of a Dispute Hearing), the DRB shall not discuss the substance of any Claim with any of the Participants.

I. Dispute Hearings shall be kept informal. Except for the DRB's recommendation, no formal record of a Dispute Hearing shall be maintained.

J. All Participants in a Dispute Hearing must have a representative at the Dispute Hearing. BBII will present its evidence first, followed by the TJPA and W/O. Each Participant will then be allowed successive rebuttals until all aspects of the Claim are fully covered. Subject to the discretion of the DRB, Participants may be afforded an opportunity to present questions to the DRB to ask any witness presenting oral evidence at the Dispute Hearing. The DRB may also ask its own questions, request clarification, or ask for additional data.

K. Outside and in-house lawyers shall not be permitted to speak, present evidence or argue at any Dispute Hearing. A Participant presenting evidence may retain the services of an outside expert or consultant to present information at the Dispute Hearing, subject to the DRB's approval. The Participant utilizing the services of an outside expert or consultant must disclose the name of the outside expert or consultant and the anticipated topics the outside expert or consultant may testify about at the Dispute Hearing no later than fifteen (15) days prior to the scheduled Dispute Hearing.

L. During the Dispute Hearing, the DRB will not express any opinion concerning the merits of the Claim.

M. The DRB shall not divulge any information acquired in connection with a Claim or at a Dispute Hearing without obtaining prior written approval from the Participants.

N. The DRB may not be called as a witness in any subsequent legal proceedings involving any issue related to the Project.

V. NO IMPACT ON LEGAL RIGHTS

Nothing contained in this Agreement is intended to foreclose, waive, impair or restrict any Participants' right to pursue any claim against the other Party through litigation, arbitration or any other form of dispute resolution allowed by the Contract. The Participants' attempt to resolve a Claim in accordance with the DRB procedures outlined in this Agreement shall have no bearing whatsoever on any Party's right to seek legal or equitable relief under the Contract.

VI. THE PARTICIPANTS' RESPONSIBILITIES

A. The Participants shall provide to the DRB a complete copy of the Claim and any related documents. The Participants shall also provide to the DRB a complete copy of all other pertinent documents relating to a Claim. Pertinent documents include, but are not limited to, design assumptions, calculations, drawings and BIM data, sketches, specifications, calculations, procedures, change order requests, change orders, clarifications/RFIs, schedules, estimates, correspondence (including emails), supporting cost records or other documents which are related to the Claim. Copies of such pertinent documents and any documents on which a Participant may rely at the Dispute Hearing must also be furnished to the other Participants in the Dispute Hearing.

B. The Participants will not solicit advice or consultation from the DRB on matters dealing in any way with the Project, the Contract, or the performance of the Work at the Project.

VII. DURATION OF AGREEMENT

Unless otherwise terminated pursuant to Article IV.B. above, the DRB is to remain appointed throughout the duration of the Trade Subcontract, and, if needed, for a reasonable period following final acceptance of BBII's Work. However, in no event shall the DRB remain appointed after the date that the TJPA administratively closes the Contract.

VIII. PAYMENT

Payment to the DRB for services rendered shall be provided as follows:

A. The DRB's fees and expenses for services rendered under this Agreement shall be allocated as follows:

50% by BBII
25% by the TJPA
25% by W/O

Any expenses of the DRB (e.g., meals, lodging, travel, expert fees, copying, etc.) shall be reimbursed at actual cost with no mark-up. In instances where the DRB considers more than one Claim at the Dispute Hearing, the DRB shall make a good faith estimate of the percentage of its time dedicated to each Claim. Each Participant's responsibility for the DRB's fees and expenses shall be based on the DRB's good faith estimate using the allocation percentages set forth above.

B. Each DRB member shall submit his/her invoice for fees and expenses to W/O by the 25th day of each month. Within fourteen (14) calendar days of receipt, W/O shall send an invoice to the TJPA and BBII for their portion of the DRB's monthly invoice. The Participants shall remit their portion of the DRB's invoice directly to the DRB within sixty (60) days of receipt of the monthly invoice from W/O.

C. Such payments shall constitute full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to the operation of the DRB. The DRB shall comply with all applicable portions of 48 C.F.R. 31 (Federal Acquisition Regulations: Contract Cost Principles and Procedures).

D. The DRB will be paid based on an agreed hourly rate, with an not to exceed daily amount, excluding expenses. Any subsequent changes in the DRB's hourly rate and/or maximum daily limit must be authorized in writing and by a supplemental agreement between the Parties and the DRB. The Parties and BBII will enter into a separate services agreement with each member of the DRB following the DRB's selection. This Agreement will be attached as an exhibit to the services agreement and incorporated therein.

E. Any costs (including, but not limited to, project personnel costs, DRB fees and costs, expert and consultant costs, and attorneys' fees and costs) incurred by any Participant arising out of or related to a Dispute Hearing shall be borne by the Participant. Such costs shall not be submitted to the TJPA for payment at any time and are not recoverable against the TJPA in any subsequent arbitration, litigation or other dispute resolution procedure.

IX. ASSIGNMENT OF TASKS OF WORK

The DRB shall not assign any of the work to be performed under this Agreement.

X. TERMINATION OF DRB MEMBER

The member of the DRB selected by the TJPA may be terminated with or without cause by the TJPA on sixty (60) days written notice to W/O and the DRB members. The member of the DRB selected by W/O and BBII may be terminated with or without cause with the joint consent of both W/O and BBII (termination team: W/O's John Bowles and BBII's Christine McAnney), on sixty (60) days written notice to the TJPA and the DRB members. The member of the DRB jointly selected by the other DRB members may be terminated with or without cause jointly by the TJPA and W/O (with consent of BBII) on sixty (60) days written notice to the DRB members. The selection of a replacement DRB member shall begin promptly upon termination and shall be completed within thirty (30) calendar days. Once a new member of the DRB is selected, the Parties and the new DRB member shall execute a written services agreement confirming the appointment of the member to the DRB. The replacement DRB Member shall be selected in the same manner as the terminated DRB member was selected.

XI. WITHDRAWAL OF DRB MEMBER

A DRB member may withdraw under this Agreement by providing sixty (60) days written notice to the Parties and BBII. The withdrawal of a DRB member shall not result in the termination of this Agreement. The selection of a replacement DRB member shall begin promptly upon notification of the necessity for a replacement DRB member and shall be completed within thirty (30) calendar days. Once a new DRB member is selected, the Parties and the new DRB member shall execute a written services agreement confirming the appointment of the member to the DRB. The replacement DRB Member shall be selected in the same manner as the withdrawing DRB member was selected.

XII. LEGAL RELATIONS

A. The Parties hereto mutually understand and agree that each member of the DRB is acting in the capacity of an independent agent and not as an employee or agent of the TJPA, W/O or BBII.

B. The TJPA and W/O agree that each member of the DRB shall not be personally liable for any act or omission performed in the scope of his/her employment as DRB member unless the DRB member acted: (i) in bad faith; (ii) with malicious purpose; or (iii) in a manner exhibiting wanton and willful disregard of his/her responsibilities under this Agreement.

C. This Agreement creates no third party rights or contractual rights on behalf of any person or entity that is not a signatory to this Agreement.

XIII. VENUE, APPLICABLE LAW

In the event that the TJPA or W/O deems it necessary to institute legal proceeding to enforce this Agreement, it must do so in San Francisco, California. The Parties agree that all questions shall be resolved by application of California law.

XIV. PUBLIC RECORDS

A. The DRB, W/O, and the TJPA shall allow public access to all documents, papers, letters, and other material made or received by the Parties to this Agreement to the full extent required by California law. Upon receipt of any public records request, the TJPA must immediately notify W/O (and BBII) and obtain W/O and BBII's prior written consent before releasing any requested records that may contain proprietary, trade secret, or business-sensitive information. Upon W/O's receipt of any third-party subpoena seeking documents produced to the DRB, W/O shall immediately notify TJPA and obtain the TJPA and BBII's prior written consent before releasing the requested records.

B. The DRB shall keep available the cost records and accounts pertaining to this Agreement for inspection by representatives of the TJPA, W/O and BBII for a period of three years after final payment (the "Retention Period") to the DRB. At that time, all such cost records and accounts shall be delivered to the TJPA for further retention as may otherwise be required. Notwithstanding the foregoing, if any litigation, claim, or audit arising out of the Contract is initiated prior to expiration of the Retention Period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

XV. MISCELLANEOUS

A. The Parties hereto understand and agree that each Party has a right to enforce the terms and conditions of this Agreement.

B. Each Party warrants and represents that the individual executing this Agreement has the right, power, and authority to do so.

C. Each Party understands and agrees that the headings are used only for the convenience of the Parties. The Parties agree that these headings shall have no evidentiary value whatsoever in any action to enforce the terms of this Agreement.

D. It is expressly agreed and understood that all agreements and understandings between the Parties regarding the use of the DRB are embodied and expressed herein and contains the entire agreement between the Parties regarding the use of the DRB. This Agreement fully supersedes any and all prior agreements or understandings, whether written or oral, between the Parties pertaining to the use of the DRB. This Agreement may not be modified or amended except in writing, signed and executed by all Parties.

E. This Agreement is the product of negotiations between the Parties, which have been represented by counsel, and it shall not be construed in favor of or against any Party as the drafting party.

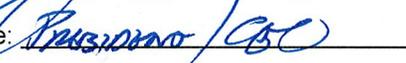
F. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, representatives, successors in interest, predecessors in interest, and assigns, as the case may be.

G. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures may be utilized in the execution of this Agreement. The Parties agree that facsimile signatures are binding in the same manner and degree as an original signature.

IN WITNESS WHEREFOR, the Parties hereto have executed this Agreement as of the day and year first written above.

**WEBCOR BUILDERS - OBAYASHI
CORPORATION, A JOINT VENTURE**

By:  _____

Title:  _____

TRANSBAY JOINT POWERS AUTHORITY

By: _____

Title: _____