

PROJECT LABOR AGREEMENT
FOR THE TRANSBAY TRANSIT CENTER PROGRAM

TJPA PROJECT LABOR AGREEMENT

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**PROJECT LABOR AGREEMENT
FOR THE TRANSBAY TRANSIT CENTER**

RECITALS

WHEREAS, the Transbay Transit Center Program is a visionary, \$4 billion public work project to transform the San Francisco Bay Area's regional transportation system by constructing a multi-modal transit center in the heart of downtown San Francisco; and

WHEREAS, under the Transbay Transit Center Program, a new Transbay Transit Center Building and bus ramps will replace the former Transbay Terminal at First and Mission Streets and a new underground Downtown Extension (DTX) will bring commuter trains from the current terminus of Fourth and Townsend Streets into the new Transbay Transit Center Building; and

WHEREAS, the new Transbay Transit Center Building will be an architecturally significant, modern regional transit hub connecting eight Bay Area counties and the State of California through eleven transit systems: AC Transit, BART, Caltrain, Golden Gate Transit, Greyhound, MUNI, SamTrans, WestCAT Lynx, Amtrak, Paratransit, and future High Speed Rail from San Francisco to Los Angeles/Anaheim; and

WHEREAS, when completed, the new Transbay Transit Center will accommodate more than 100,000 passengers each weekday and more than 45 million people per year and make public transportation a convenient and accessible option for everyone who lives and works in, or visits the San Francisco Bay Area; and

WHEREAS, the successful completion of the Transbay Transit Center Program is of the utmost importance to the general public in the San Francisco Bay Area because it will serve as the central transit hub; and

WHEREAS, it is in the parties' collective interest that the public work construction projects under the Transbay Transit Center Program be completed safely, efficiently, on time and within budget; and

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WHEREAS, large numbers of skilled and trained workers of various construction trades will be required in the performance of the construction work; and

WHEREAS, without an overriding commitment to maintain continuity of work on a project of this magnitude with multiple contractors and crafts on the job site at the same time over an extended period of time, the potential for work disruption is substantial; and

WHEREAS, the interests of the general public, the Transbay Joint Powers Authority, and the Unions would best be served if the construction work proceeds in an orderly manner without disruption due to strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns, labor disputes or other interference with work; and

WHEREAS, the Transbay Joint Powers Authority and the Unions desire to mutually establish standards, wages, hours, and working conditions for the workers employed on the public works projects under the Transbay Transit Center Program and further, to encourage close cooperation between the Transbay Joint Powers Authority, its contractors and the Unions to foster a satisfactory, continuous and harmonious relationship among the parties to this Project Labor Agreement; and

WHEREAS, the public work contracts for the construction of the Transbay Transit Center Program will be awarded in accordance with the applicable provisions of Federal, State and local laws, rules and regulations, through fair and open competition, to ensure that taxpayer dollars are spent efficiently; and

WHEREAS, it is the policy of the Transbay Joint Powers Authority to encourage and ensure opportunities for young people, women, minorities, veterans – including disabled veterans – and economically disadvantaged individuals to pursue careers in the trades; and

WHEREAS, it is the policy of the Transbay Joint Powers Authority to ensure that Small Business Enterprises and Disadvantaged Business Enterprises have an equal opportunity to receive and participate in Transbay Joint Powers Authority contracts on a level playing field; and

WHEREAS, a project labor agreement will advance the goals of the Transbay Joint Powers Authority and the interests of the public by controlling costs, increasing efficiency,

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providing safe working conditions, and maintaining the highest quality of construction work on the Transbay Transit Center projects; and

WHEREAS, a project labor agreement will advance the goals of the Transbay Joint Powers Authority and the interests of the public by ensuring that all construction work will proceed continuously and without interruption with due consideration for the protection of labor standards, wages, hours, and working conditions by providing effective, prompt and binding procedures for resolution of all labor disputes that may arise and by providing mechanisms for labor-management cooperation on matters of mutual interest and concern; and

WHEREAS, nothing in this document is intended by the Transbay Joint Powers Authority to enact or express any generally applicable policy regarding labor-management relations, or to regulate those relations in any way; and

WHEREAS, the Transbay Joint Powers Authority shall allow and encourage all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements; and

WHEREAS, the parties pledge their full good faith and trust to work towards a mutually satisfactory and timely completion of the Transbay Transit Center Program;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE 1 PURPOSE

1.1 The purpose of this Project Labor Agreement (Agreement) is to promote efficient building operations in the Transbay Transit Center Program public work construction projects and to prevent strikes, sympathy strikes, work stoppages, picketing, slowdowns or lockouts, thereby advancing the public interest in assuring the timely and economical completion of these projects safely and without costly delays.

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ARTICLE 2 INITIAL PROVISIONS

2.1 This Project Labor Agreement is made and entered into this ____ day of _____, 2011 by and among the following parties with respect to Transbay Transit Center Program public work construction projects: (1) the Transbay Joint Powers Authority (the TJPA), (2) the unions (collectively, the Unions), (3) the San Francisco Building and Construction Trades Council (Council or Local Council), and (4) the Contractors (as defined in Article 3 below) who agree to be bound by this Agreement through a Letter of Assent.

2.2 Construction work covered by this Agreement shall be contracted exclusively to Contractors who agree to be bound by the terms of this Agreement by executing a Letter of Assent, attached as Appendix B. The TJPA shall administer and monitor compliance with this Agreement by all parties. For purposes of this Agreement, the Contractors recognize and appoint the TJPA Executive Director or her/his designee as its agent, with full, independent authority to implement and administer this Agreement.

2.3 The Unions and Contractors agree to abide by the terms and conditions of this Agreement and further agree that this Agreement, together with the local collective bargaining agreements of the Unions listed in Appendix A (Schedule A agreements), represent the complete understanding of the parties. No practice, understanding or agreement between the Contractors and Unions that is not specifically set forth in this Agreement or the applicable Schedule A agreements will be binding on any party unless endorsed in writing by the TJPA's Executive Director or his/her designee. Where a subject is covered by both this Agreement and a Schedule A agreement, this Agreement shall prevail. Where a subject is covered by a Schedule A agreement and not by this Agreement, the Schedule A agreement shall prevail.

**ARTICLE 3
DEFINITIONS**

- 3.1 “Agreement” means this Project Labor Agreement.
- 3.2 “Concessionaire” or “Non-Transportation Tenant” means a Tenant that (a) provides or operates a food and beverage establishment, newsstand, gift shop, retail or specialty shop, advertising display, financial services, telecommunications, or other merchandising concession or service; or (b) leases space within the Transit Center Building as described in Appendix C for office, commercial, educational, cultural or other non-transit related enterprises; or (c) provides or operates courtesy vehicles and other private ground transportation services; or (d) provides private events or functions; or (e) provides any other goods or services other than public transportation.
- 3.3 “Construction Contract(s)” or “Contract(s)” means any public work construction and/or improvement contract or subcontract of any tier for on-site Project Work as described in Appendix C, except as specifically excluded in Section 4.9 of this Agreement.
- 3.4 “Contractors” means any individual, firm, partnership or corporation, or combination thereof, including joint ventures that are independent of the TJPA and have entered into a Contract with the TJPA or Contractors of any tier. As applicable depending on its context, “Contractors” shall refer to contractors and/or subcontractors.
- 3.5 “Effective Date” means the date this Agreement is approved by the TJPA Board of Directors.
- 3.6 “Executive Director” means the Executive Director of the TJPA.
- 3.7 “Disadvantaged Business Enterprise” (DBE) means a for-profit small business as defined in 49 C.F.R §26.5, and referenced in the TJPA Disadvantaged

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Business Enterprise Program in TJPA Board Policy No. 010, (attached as Appendix D) as that regulation and/or policy may be amended from time to time.

3.8 “Helmets to Hardhats” means a national program that connects National Guard, Reserve and transitioning active-duty military members with career training and employment opportunities within the construction industry. The program is administered by a non-profit Section 501(c)(3) joint labor-management committee established under Section 302(c)(9) of the Labor Management Relations Act.

Helmets to Hardhats also runs the “Wounded Warrior” program, which provides information to veterans about construction careers that employers have specifically identified as potentially suitable for disabled veterans.

3.9 “Local Council” or “Council” means the San Francisco Building and Construction Trades Council, AFL-CIO.

3.10 “Prevailing Wage” means the latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of any Contractor’s contract. Any person performing labor in the provision of the Project Work will be paid not less than the highest applicable general prevailing rate of wages as so determined. Because federal funds are involved, where the minimum rate of pay for any classification may differ among State, City and Federal wage rate determinations, the highest of the rates of pay for the applicable jurisdiction in which the work is performed will prevail. The Contractor will include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract will be paid not less than the highest prevailing rate of wages for the labor so performed. The Contractor will require any contractor or subcontractor to

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provide, and will deliver to the TJPA every month during any construction period, certified payroll reports with respect to all persons performing labor in the Provision of the Project Work.

3.11 “Program Management/Program Controls Consultant,” means the persons or business entities under direct contract with the TJPA to provide program management, project management, and program/project controls professional services for the Transbay Transit Center Program to support the management and administration of the Program.

3.12 “Project” or “Project Work” covered by this Agreement shall include on-site Phase I and Phase II construction under public work contracts of the Transbay Transit Center Building which shall include the train box, the bus storage facilities, the bus ramps connecting the Transbay Transit Center Building to the bus storage facilities and the West approach to the Oakland-San Francisco Bay Bridge, the DTX, and the eventual demolition of the Temporary Transbay Terminal. The elements of Phase I and Phase II of the Project, which may be amended at any time and in the sole discretion of the TJPA, are listed in Appendix C.

3.13 “Schedule A agreement(s)” means the local collective bargaining agreement of a construction Union signatory to this Agreement. These Schedule A agreements are listed in Appendix A.

3.14 “Small Business Enterprise” (SBE) means any small business that is certified under any of the programs expressly referenced in the TJPA Small Business Enterprise Program in TJPA Board Policy No. 015, (attached as Appendix E) as that policy may be amended from time to time.

3.15 “Tenant” means any entity (excluding the TJPA) occupying space in the Transbay Transit Center Building or the Temporary Transbay Terminal and includes Transportation Tenants and Concessionaires.

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3.16 “Transportation Tenant” means any Tenant that is a public or long-distance transportation operator.

3.17 “Transbay Transit Center Program” or “Program” means the new multi-modal Transit Center Building including the train box, bus ramps, bus storage facility, DTX, and eventual demolition of the Temporary Transbay Terminal, when the Transbay Transit Center commences operations.

3.18 “Unions” mean the construction labor organizations, acting on their own behalf or on behalf of their respective affiliates and member organizations whose names are subscribed hereto, and who have executed this Agreement through their authorized officers.

ARTICLE 4 SCOPE OF AGREEMENT

4.1 This Agreement shall apply and is limited to all Construction Contracts solicited and awarded by the TJPA or Contractors for on-site Project Work on or after the Effective Date of this Agreement. Any Construction Contract for Project Work awarded prior to the Effective Date of this Agreement, including, but not limited to, neighborhood utility relocation; demolition of existing structure and bus ramps; and buttress, shoring and excavation, will be subject to this Agreement only if the Contractors performing such work agrees to the Letter of Assent (Appendix B); provided, however, that no such Contractor shall be required to sign the Letter of Assent as a condition of continuing to perform already contracted work.

4.2 The TJPA reserves the right, in its sole discretion, to terminate, delay, suspend, modify, augment and/or expand any and all portions of the Project Work at any time; including, but not limited to, value engineering, re-packaging, and/or re-bidding any Project Work or otherwise combining, modifying, consolidating, or canceling contracts identified as part of the Project Work. Further, the TJPA may require or prohibit some or all work on certain days or during certain hours of the

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day and/or require such other operational or schedule changes that it may deem necessary.

4.3 Pursuant to federal guidelines and the TJPA SBE Policy, the TJPA has the right, in its sole discretion, to set aside particular work, bid packages, contracts or subcontracts for Small Business Enterprises. Nothing herein is intended to discourage or preclude contractors who are signatory to Schedule A agreements from bidding on such work.

4.4 The parties recognize that the Contractor's goal for Small Business Enterprise participation on the Transbay Transit Center Building and Related Structures Agreement for Construction Manager/General Contractor Services (Webcor/Obayashi Contract) is seventeen (17) percent. In addition, goals will be set for other Construction Contracts awarded as part of Phase I, as well as Construction Contracts awarded in Phase II. These goals will be set at the sole discretion of the TJPA. All parties are committed to the achievement of these goals, and to ensuring that nothing in the language or application of this Agreement shall operate as an impediment to achieving these goals. Should the TJPA or any Contractor determine that additional steps are necessary to ensure achievement of these goals, the parties shall refer the matter to the Joint Administrative Committee (JAC) – established pursuant to Article 15 - for recommendations.

4.5 This Agreement shall be included in all invitations to bid or solicitations for proposals from Contractors for Construction Contracts.

4.6 The liability of the TJPA, any Contractor and the separate Unions under this Agreement shall be several and not joint. This Agreement does not create any joint employment, single employer or alter ego status among or between the TJPA and any Contractor. Nor does it create any employment relationship between the TJPA and employees of such Contractors.

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4.7 This Agreement shall be binding only on the signatory parties hereto, including the signatories to any Letter of Assent, including their successors and assigns, but shall not apply to any parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor that do not perform work under a Construction Contract.

4.8 Nothing in this Agreement shall be construed to prohibit, restrict, or interfere with any other operation, work or function that may be performed by the TJPA on its property or in and around the Project Work construction site.

4.9 The following are specifically **excluded** from the scope of the Agreement:

- (a) Work of non-manual employees including but not limited to: superintendents; supervisors above the level of general foreperson; inspectors and quality control personnel, except that this Agreement shall cover the classifications of surveyors, on-site inspectors, material testers, and/or x-ray technicians which are customarily covered by the Schedule A agreements and as to which a prevailing wage determination has been published; quality assurance personnel; timekeepers; mail carriers; clerks, office workers (including messengers); guards; safety personnel; emergency medical and first aid technicians; and professional, architectural, engineering, administrative, supervisory and management employees.
- (b) All employees of the TJPA, Program Management/Program Controls Consultant, and Design Team, including, but not limited to, architects and engineers, attorneys, environmental consultants and any other consultant for the TJPA and their sub-consultants, including other employees of professional service organizations.

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- (c) All work on equipment and machinery owned, controlled or operated by the TJPA, or any Tenant.
- (d) All work performed by public agency Tenants and their employees or contractors necessary to their operations, including but not limited to, installation, maintenance and operation of electronic, radio and other telecommunications equipment and facilities, ticket vending equipment and/or machines, scheduling and transit vehicle location, GPS, and related operations management systems.
- (e) All work on tenant improvements; provided, however, that any such tenant improvement work undertaken prior to all portions, sections or segments of Phase I of the Project being deemed complete and turned over to the TJPA pursuant to Article 26 shall be covered by this Agreement.
- (f) Any work performed on, near, or leading to or into the site of work covered by this Agreement undertaken by state, county, city or other governmental bodies, or their contractors, or by public or private utilities or their contractors.
- (g) All off-site manufacture, fabrication, delivery and handling of raw materials, manufactured products, equipment or machinery, except at lay-down or storage areas in the proximity of the Project that are dedicated exclusively to Project Work, except as modified by Side Letters of Agreement approved by the TJPA Board.
- (h) The off-hauling of debris, refuse and excess fill material and/or mud from the job-site to an outside disposal location; except that the movement of materials or goods, ready-mix, asphalt, aggregate, sand, or other materials between locations on the site, and delivery of ready-mix, asphalt, aggregate, sand or other materials that are

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incorporated directly into the construction process shall be covered by this Agreement. The TJPA is committed to the payment of California prevailing wage rates, where applicable, for any off-hauling of debris, refuse and excess fill material and/or mud from the job-site.

- (i) Off-site maintenance of leased equipment and on-site supervision of such work.
- (j) Work by employees of a manufacturer or vendor necessary to install, commission and/or maintain such manufacturer's or vendor's specialty products, including but not limited to, security systems, life safety systems, fire protection systems, information technology systems and building automation systems requiring special knowledge of the particular item(s), including work necessary to protect a manufacturer's warranty, provided that the manufacturer or vendor can demonstrate by an enumeration of specific tasks that the work cannot be performed by covered employees. Any dispute will be resolved using the grievance procedure and under no circumstances will a dispute impact project work.
- (k) Employees engaged in off-site laboratory and off-site specialty testing are excluded, provided, however, that on-site inspection customarily covered by the Schedule A agreements and as to which classifications a prevailing wage rate determination has been published shall be covered by this Agreement. Inspection of aesthetic and functional features of the Art Program are excluded.
- (l) Work performed under the terms and conditions of the National Agreement of the International Union of Elevator Constructors and

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the NTL Articles of Agreement, with the exception that Articles 9, 17 and 19 of this Agreement shall apply to such work.

- (m) All work related to public art, provided, however, to the extent installation work falls within the scope of a Schedule A agreement, it shall be subject to Section 7.6 of this Agreement.

4.10 In the event of their expiration, Schedule A agreements incorporated as part of this Agreement shall continue in full force and effect until a new or modified agreement is reached and the Union notifies the Executive Director of the TJPA and applicable Contractors in writing of changes in such agreements and their effective dates within thirty (30) days of execution. Unless the successor agreement contains an explicit retroactivity provision, the Contractor shall be liable for any additional compensation granted by the successor agreement only for a period of thirty (30) days prior to notice. If the successor agreement contains an explicit retroactivity agreement but the Union fails to give notice within thirty days of execution, the contractor's liability for any compensation increases shall be reduced by the number of days over thirty (30) that notice is actually given to the Contractor. Moreover, any provisions negotiated in said Schedule A agreements will not apply to work covered by this Agreement if such provisions are more costly to the Contractor or the TJPA for work covered by this Agreement than those uniformly required of contractors for construction work normally covered by those agreements, nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this Agreement.

4.11 This Agreement, together with the referenced Schedule A agreements, constitutes an integrated, self-contained, stand-alone agreement and, by virtue of having become bound to this Agreement, Contractors will not be obligated to sign any other local, area, or national collective bargaining agreement as a condition of performing work within the scope of this Agreement.

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4.12 Grievances and disputes involving the interpretation or application of this Agreement shall be adjudicated according to the procedures set forth in Article 17 of this Agreement. Any dispute as to the interpretation or application of a Schedule A agreement between a Union and a Contractor who is also a signatory to that Schedule A agreement, where such dispute involves an issue arising under that Schedule A agreement, shall be adjudicated pursuant to the grievance and arbitration procedures contained in the applicable Schedule A agreement.

4.13 Where there is a dispute in the first instance as to whether the provisions of Article 17 of this Agreement or the grievance procedures of a Schedule A agreement apply, the dispute shall be presented initially to an arbitrator selected under Article 17.2, Step 4 for resolution as to the applicable procedures. The arbitrator shall hold an expedited hearing within forty-eight (48) hours after receipt of the notice invoking the procedure and shall issue an award within twenty-four (24) hours after the close of the hearing. The award shall specify the appropriate procedure to be followed and may be issued without an opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay a hearing on the merits under the appropriate procedure as determined by the arbitrator. The requesting party shall be responsible to pay any additional costs associated with the written opinion.

4.14 Copies of all Schedule A agreements shall be on file with the TJPA and shall be available for inspection by all entities seeking to bid on work for the Project. It shall be the responsibility of the respective Unions to provide current and updated copies of all Schedule A agreements.

ARTICLE 5 SUBCONTRACTORS

5.1 The TJPA has the right to award Construction Contracts to any Contractor notwithstanding the existence or nonexistence of any agreement between such

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Contractor and any Union party, provided only that such Contractor is willing, ready and able to execute and comply with this Agreement, should such Contractor be awarded work covered by this Agreement.

5.2 All Contractors who are awarded Construction Contracts that were solicited after the Effective Date of this Agreement shall be required to accept and be bound by the terms and conditions of this Agreement by executing the Letter of Assent (Appendix B) which shall be submitted to the TJPA prior to the commencement of Project Work.

ARTICLE 6 UNION SECURITY

6.1 The Contractors recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement.

6.2 All employees who are employed by Contractors to perform Project Work subject to this Agreement will be required to become members and maintain membership in the appropriate Union on or before the eighth (8th) day of continuous or cumulative employment on the Project or, in the alternative, this obligation may be satisfied by the tendering of periodic dues and fees uniformly and non-discriminatorily required to the extent allowed by law.

ARTICLE 7 REFERRAL

7.1 The Contractors performing Project Work subject to this Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions. The Contractors shall have the sole right to determine the competency of all referrals and to reject any applicant referred by the Unions. No Contractor shall be required to employ a worker the Contractor deems not sufficiently qualified for the position in question or to employ any particular worker.

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7.2 The Unions will exert their utmost efforts to recruit sufficient numbers of skilled applicants to fulfill the workforce requirements of the Contractor. In the event of an emergency or in the event that referral facilities maintained by the Unions are unable to fill the requisition of a Contractor for employees within a forty-eight (48) hour period after the Contractor makes such a requisition, excluding Saturdays, Sundays and holidays designated in Section 11.6, the Contractor shall be free to obtain skilled personnel from other sources. In the event the Contractor hires an employee from another source, the Contractor shall immediately provide the appropriate Union with the name, address and social security number of the employee.

7.3 The Unions shall be the primary source of all craft labor employed on Project Work subject to this Agreement. In the event, however, that a Contractor not signatory to a Schedule A agreement has its own core workforce, the Contractor may request by name, and the Union will honor, the referral of the Contractor's core employees who have applied to the Union for Project Work. The Contractor shall provide the appropriate Union with the name, address and social security number of each core employee to be used on Project Work and each core employee shall register in person with the Union before commencing Project Work. The TJPA and Unions agree to cooperate in developing expedited and simplified procedures for registering core employees. An employee shall be considered a member of a Contractor's core workforce for the purpose of this Article if (1) the employee's name appears on the Contractor's active payroll for at least five hundred (500) hours in the calendar year immediately prior to the award of the Contract, and (2) the employee possesses any license required by state or federal law for the Project Work to be performed. Upon request, the Contractor shall provide satisfactory proof of the core employee's eligibility to perform Project Work. Such core employees shall be subject to the requirements of Article 6.2 of this Agreement.

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7.4 For Contractors covered by Section 7.3 above, the Union shall refer to such Contractor one (1) of such Contractor's core employees as a journeyman and will then refer one (1) journeyman employee from the hiring hall out-of-work list for the affected trade or craft and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired seven (7) core employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list. For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, the Contractor shall apply the alternating process in reverse, maintaining the same ratio of core employees to hiring hall referrals that existed in the initial hiring period.

7.5 The parties recognize and support the TJPA's commitment to provide opportunities for participation to qualified participants in the TJPA's SBE and DBE Programs. In furtherance of this commitment, notwithstanding Section 7.4 above, such SBEs and DBEs who are Contractors shall be allowed to employ two (2) core employees. Thereafter, if the SBE or DBE has additional core employees, the Union shall refer to such Contractor one (1) journeyman employee from the hiring hall out-of-work list for the affected trade or craft and will then refer one (1) of such Contractor's core employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired seven (7) core employees, whichever occurs first. Any additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list.

7.6 All hiring for Project Work related to public art not excluded pursuant to Section 4.9 (m) of this Agreement shall be subject to the following limitations:

(a) The artist/contractor shall be allowed two (2) core employees.

Thereafter, if the artist/contractor has additional core employees,

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the Union shall refer to such artist/contractor one (1) journey person employee from the hiring hall out-of-work list for the affected trade or craft and will then refer one (1) of such artist/contractor's core employees as a journey person. This process shall be repeated, one and one, until the artist/contractor's crew requirements are met or such artist/contractor's core workforce is exhausted.

- (b) Core employees shall not be subject to the requirement that the employee's name appear on the artist/contractor's active payroll for at least five hundred (500) hours in the calendar year immediately prior to the award of the Contract.
- (c) The artist/contractor shall be entitled to approve or disapprove Union referred employees in their sole discretion based upon the referred employees' demonstrated skills and qualifications.

7.7 All parties to this Agreement shall comply with the requirements of the State of California, Department of Industrial Relations, Division of Apprenticeship Standards and the State Apprenticeship Program (as set forth in the California Labor Code, Sections 1777.5 et seq.), as they may be amended from time to time. All apprentices shall be provided by state-certified joint labor-management apprenticeship programs.

7.8 All parties recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment, and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to

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apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities, and other needs as identified by the parties.

7.9 The Unions and the Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, the Unions will give credit for bona fide, provable past experience.

7.10 To effectuate the goals of the Helmets to Hardhats program, Unions shall request the Helmets to Hardhats Program to report, on a monthly basis, on the total number of intakes to the program and shall, on a quarterly basis, report on the status of ongoing outreach efforts to increase participation in the program. Furthermore, the TJPA and the Contractors will strive to identify opportunities suitable for disabled veterans pursuant to the Wounded Warrior program.

7.11 The Unions agree to exercise their best efforts in recruiting applicants for apprenticeship programs to recruit from community-based programs throughout the Bay Area to ensure that the project serves to encourage young people, women and economically disadvantaged individuals to pursue careers in the trades. The Unions agree to cooperate with and support any programs developed by the TJPA designed to help achieving these goals.

7.12 In addition, the Unions agree to partner with the TJPA on outreach efforts to high school and community college students and other young people. These efforts will be directed toward educating young people on the diverse Project Work performed by the various trades and crafts, to promote pre-apprenticeship and apprenticeship programs, and to encourage other opportunities for engagement with construction work in general and with the Transbay Transit Center Program in particular.

ARTICLE 8

UNION REPRESENTATION AND STEWARDS

8.1 Authorized Union representatives shall have access to the Project site at all times when work is being performed, provided that they do not interfere with the work of the employees and they comply with applicable rules and regulations including posted visitor, security and safety rules. Authorized Union representatives shall also complete the TJPA's designated health and safety training program prior to accessing the Project site. Union representatives shall not be charged for this training program.

8.2 Each Union shall have the right to appoint a working steward for each shift who will be paid the journeyman rate of pay. Written notification shall be given to the Contractor within twenty-four (24) hours after such assignment. Steward overtime shall be provided per the applicable Schedule A agreement, provided the steward is qualified to perform the work available. Such designated steward shall not perform any supervisory functions. Stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

8.3 The steward will be permitted a reasonable amount of time to fulfill her/his duties as steward.

ARTICLE 9

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

9.1 Until final termination of this Agreement, as defined in Section 26.3, there shall be no strikes, sympathy strikes, work stoppages, slowdowns, labor disputes or other disruptive activity for any reason by the Unions or employees, including disputes relating to the negotiation or renegotiation of any Schedule A agreement or disputes directed at non-construction service companies or Contractors not subject to this Agreement at the Project site. There shall also be no picketing, handbilling, or otherwise advising the public that a labor dispute exists by the Unions or employees

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at the Project site because of a dispute on or related to the Project or for any other reason.

9.2 In the event that any applicable Schedule A agreement between a Contractor and Union expires before the Contractor completes the performance of the Contract and the Union or Contractor fail to reach agreement on a new or modified contract, the Union shall not strike or engage in other activities prohibited in Section 9.1 for work covered under this Agreement. The expired Schedule A agreement shall continue in full force and effect until a new or modified Schedule A agreement is reached between the Contractor and the Union.

9.3 There shall be no lockout of any kind of employees at the Project site by a Contractor.

9.4 Failure of any Union or employee to cross any picket line at the Project site established by any union, signatory or non-signatory to the Agreement, or by any other organization or individual is a violation of this Article. Contractors and Unions shall take all steps necessary to obtain compliance with this Article.

9.5 If the TJPA or any Contractor contends that any Union has violated this Article, it will notify in writing the Secretary-Treasurer of the San Francisco Building and Construction Trades Council, the Senior Executive of the involved Union(s) and the Executive Director of the TJPA, setting forth the facts that the TJPA or Contractor contends violate the Agreement prior to invoking the procedures of Section 9.7. The Secretary-Treasurer will immediately use his/her best efforts to cause the cessation of any violation of this Article. The leadership of the involved Union(s) shall immediately order the membership to cease any violation of this Article.

9.6 If a Union contends that any Contractor has violated this Article, it will notify in writing the Contractor and the Executive Director of the TJPA, setting forth the facts that the Union contends violate the Agreement prior to invoking the

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procedures of Section 9.7. The Contractor and/or Executive Director of the TJPA shall immediately order the involved Contractor to cease any violation of this Article.

9.7 The following procedure shall be instituted when a breach of this Article is alleged to have occurred:

- (a) The party invoking this procedure shall contact the Executive Director of the TJPA who shall provide notice to Barry Winograd who is the permanent arbitrator under this procedure and to the parties alleged to be in violation of this Article within twenty-four (24) hours after receipt of notice from the party invoking this procedure. In the event that the permanent arbitrator is unavailable at any time, John Kagel shall be appointed the alternate, or if he is unavailable, he shall appoint an alternate. The Executive Director may provide written notice by facsimile, electronic mail, hand delivery, or overnight mail which will be deemed effective upon receipt.
- (b) The arbitrator shall hold a hearing within twenty-four (24) hours after receipt of the notice invoking the procedure.
- (c) The arbitrator shall notify the parties of the place and time chosen for this hearing. Said hearing shall be completed in one session not to exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party or parties to attend said hearings shall not prevent the arbitration from proceeding, nor delay the hearing of evidence or the issuance of any award by the arbitrator.
- (d) The sole issue at the hearing shall be whether or not a violation of this Article has occurred. The arbitrator shall not consider any

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matter in justification, explanation, or mitigation of such violation and shall not award damages except as set forth in Section 9.8 below. These issues are reserved for court proceedings, if any. The decision shall be issued in writing within three (3) hours after the close of the hearing and may be issued without an opinion. If any party desires a written opinion, one shall be issued within five (5) days but its issuance shall not delay compliance with or enforcement of the award. The requesting party shall be responsible to pay any additional cost associated with the written opinion. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties and the Executive Director by hand, facsimile or electronic mail.

- (e) Any rights created by statute or law governing arbitration proceedings and any practices, understandings, or agreements between the Contractors and Unions that are not specifically set forth in this Agreement or the applicable Schedule A agreements and that are inconsistent with and/or interfere with the above procedure are hereby waived by the parties to whom they accrue.
- (f) The fees and expenses of the arbitrator shall be equally divided between or among the party or parties initiating this procedure and the respondent party or parties.
- (g) The arbitration provision above shall not preclude any party from seeking judicial enforcement of the promises set forth in Sections 9.1 and 9.2 of this Article in addition to the relief set forth herein.
- (h) Nothing in this Agreement shall preclude a Union from informing an employee of non-payment of wages or benefits by any

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Contractor. The Union shall not be responsible for an employee's withholding of his/her labor for non-payment of wages or benefits, and no employee shall be penalized for withholding his/her labor for non-payment of wages or benefits. The Union shall concurrently inform the TJPA of any non-payment of wages or benefits by any Contractor. In the event that an employee withholds his/her labor for non-payment of wages or benefits, all other terms of Article 9.1 shall continue to apply. Similarly, nothing in this Agreement shall preclude a Union from withdrawing its members from employment of any Contractor that has failed to pay wages, or failed to make required benefits payments to a trust fund. However, the Union shall only be permitted to do so if it has initiated the applicable grievance procedure and has provided written notice of the intent to withdraw the employee to the Executive Director of the TJPA no less than five (5) business days prior to withdrawal of the employee. This provision is not intended to apply to routine disputes over the amounts paid, but rather to failure by a Contractor to pay wages or gross and continuing failure to contribute to appropriate trust funds for benefits. TJPA considers non-payment of wages and benefits by a Contractor, or non-compliance with a grievance resolution by a Contractor, to be grounds for termination of a contract.

9.8 If the arbitrator determines that a violation of Sections 9.1, 9.2, 9.3, or 9.4 has occurred, the breaching party shall within eight (8) hours after the issuance of the decision take all steps necessary to immediately cease such activities and return to work. If the breaching party does not cease such activities by the beginning of the next shift following the expiration of the eight (8) hour period after the arbitrator's

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issuance of the decision, then the breaching party shall pay the sum of twenty-five thousand dollars (\$25,000) per shift as liquidated damages to the TJPA until the breach is remedied. The arbitrator shall retain jurisdiction for the purpose of determining compliance with this obligation, and determining the amount of liquidated damages, if any; but such retention shall not prevent or delay judicial enforcement of the initial decision.

9.9 Moreover, there shall be no strike, work stoppage or interruption in protest of any decision or resolution resulting from a grievance or arbitration proceeding pursuant to Articles 9, 17 and 19.

9.10 The TJPA is a party in interest in all proceedings arising under this Article and, at its option, may participate in any proceeding initiated under this Article. However, the TJPA shall not be responsible for fees and expenses under Section 9.7(f) unless it initiates the procedure.

ARTICLE 10 WAGES & BENEFITS

10.1 All employees covered by this Agreement shall be classified in accordance with work performed and paid according to the hourly wage rates for those classifications pursuant to the applicable Schedule A agreement. Any employee who is discharged or laid off shall be entitled to receive all accrued wages immediately upon discharge or layoff.

10.2 All employees covered by this Agreement shall have fringe benefit contributions made on their behalf by the Contractor employing those employees to the recognized Employee Benefit Trust Funds identified in the applicable Schedule A agreements.

10.3 The Contractors shall pay contributions to the established Employee Benefit Trust Funds in the amounts designated in the appropriate Schedule A agreement on behalf of all covered employees and make all employee-authorized

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deductions in the amounts designated in the applicable Schedule A agreement provided, however, that only such bona fide employee benefits as accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, training funds, etc.) shall be included in this requirement and required to be paid by the Contractor on this Project. This provision, however, does not prohibit Contractors that are also signatory to the Schedule A agreements of the signatory Unions from making contributions to other funds as set forth in those agreements.

10.4 While performing Project Work, Contractors agree to be bound by the written terms of the applicable, legally-established trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds for Contractor's employees. The Contractors authorize the parties to such trust agreements to appoint Trustees and successor Trustees to administer the trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

10.5 If the trust fund offices do not receive payments for contributions by the date prescribed by the appropriate trust funds for hours worked the previous month, the applicable Trust Fund office(s) will notify the Executive Director of such delinquency within sixty (60) days after the alleged failure of payment. Nothing in this Agreement shall affect contract remedies available for recovery against Contractors for any delinquencies in trust or benefit contribution payments under those agreements.

ARTICLE 11 WORK RULES

11.1 The standard workday shall consist of eight (8) hours of work scheduled between 6:00 AM and 5:30 PM with one-half hour designated as an unpaid period for lunch. Forty (40) hours per week shall constitute a regular work week. The

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regular work week shall be five (5) days of work between Monday and Sunday. Any Schedule A provision or industry practice that mandates work hours of less than forty (40) hours per week to accommodate limited employment or other non-project considerations are not applicable to this Agreement. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.

11.2 Notwithstanding the above, the parties acknowledge that certain construction activities may pose unique work scheduling issues including a requirement for continuous work twenty-four (24) hours per day and up to seven (7) days per week. Contractors have the right and sole discretion to establish different work weeks, number of shifts, and shift schedules for employees as reasonably required to meet the operational needs of the Project or otherwise to mitigate adverse affects of construction activity on the affected communities. Nothing in this Agreement is intended to alter any notice provisions with respect to shift change in the applicable Schedule A agreements.

11.3 Employees shall be at their place of work at the designated starting time and shall remain at their place of work during working hours until the designated quitting time. A reasonable clean-up time will be allowed for employees to put company and personal tools in secured storage by quitting time. The place of work shall be defined as the gang or toolbox, or equipment at the employee's assigned work location or the place where the foreperson gives instructions; provided however, that for tunnel work, the place of work shall be the portal, and pay shall be on a portal-to-portal basis.

11.4 Each employee must personally check in and out at the beginning and ending of his/her shift. A badge system may be used to check in and out. If a badge system is used, Contractors will provide adequate facilities for check in and out in an expeditious manner.

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11.5 Overtime shall be paid in accordance with the requirements of the applicable Schedule A agreement. There shall be no restriction on Contractors' scheduling of overtime or the non-discriminatory designation of employees who will work the available overtime.

11.6 Recognized holidays on this Project shall be: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day. Holidays that fall on a Saturday shall be observed on the preceding Friday and holidays that fall on a Sunday shall be observed on the following Monday.

11.7 To the extent permitted by a Schedule A agreement, when an employee has been prevented from working during the regularly scheduled work week for reasons beyond the control of the Contractor – including, but not limited to inclement weather or other natural causes or major mechanical breakdowns – a voluntary make-up day may be worked.

ARTICLE 12 HEALTH/SAFETY

12.1 It shall be the responsibility of the Contractors to comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices, including the accident prevention safety program of the TJPA. Further, it is the responsibility of the Contractors to ensure safe working conditions and employee compliance with safety rules.

12.2 It is also understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the TJPA and Contractors. Employees shall be bound by the safety, security and visitor rules and requirements established by the TJPA and

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Contractors. The Contractors shall publish and post such requirements in conspicuous places throughout the Project site. An employee's failure to satisfy her/his obligations under this Article shall subject her/him to discipline, including discharge.

12.3 Prior to the commencement of Project Work, all employees and Contractors shall complete the TJPA's designated health and safety training program.

12.4 A Contractor may suspend all or a portion of Project Work to protect the life and safety of an employee or employees. In such cases, employees shall be compensated only for the actual time worked, provided, however, that where a Contractor requests employees to remain at the Project site and available for work, the standby time shall be considered time worked and compensated at the appropriate rate of pay.

12.5 Contractors retain the right to inspect incoming shipments of equipment, apparatus, machinery, and construction materials of every kind.

12.6 Contractors shall provide adequate supplies of drinking water and sanitary facilities for all employees.

12.7 The Unions shall cooperate with the Contractors and with each employee in carrying out all pertinent rules and regulations dealing with health, safety and welfare of employees promulgated by the Department of Industrial Relations of the State of California. All employees shall perform their duties in each operation in such manner as to promote safe and efficient operations of each particular duty and of any job as a whole. It is recognized that it is the responsibility of the Contractors to ensure safe working conditions and employee compliance with safety rules.

12.8 Adequate first aid equipment shall be maintained and provisions shall be made available for the safety of employees by each Contractor. Each Contractor shall arrange for adequate and prompt transportation to a hospital or doctor for any

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employee who is injured on the job and may require doctor's care or hospitalization or both. Each Contractor must post the name and address of its doctor and of the Worker's Compensation Insurance carrier on the Project site.

12.9 Nothing in this Agreement shall make the TJPA or Contractors liable to any employee or to other persons or entities in the event an injury or accident occurs as a result of the failure of an employee to comply with applicable safety standards. The Unions shall have no liability for injuries to any employee of a Contractor; provided, however, that the TJPA and Contractors shall not be liable for injuries to any Union employee, agent or representative in the event of injury or accident on the Project site caused by the failure of such Union employee, agent or representative to comply with safety rules or instructions of Project personnel.

12.10 The parties recognize that, due to the transportation-related nature of the project, the TJPA and Contractors shall have the right to adopt security risk standards governing access of workers to the Project site. This reservation includes the right to conduct background checks of workers for the purposes of determining potential security threats to the extent permitted by law, and the right to deny access to the Project site to any worker who does not meet security risk standards as adopted by the TJPA or the Contractors. Further, the TJPA and Contractors reserve the right to enter into an agreement with an appropriate organization or agency to administer a security risk program.

ARTICLE 13 TRAVEL AND SUBSISTENCE

13.1 The TJPA adheres to the City and County of San Francisco Transit-First Policy under Charter Section 8A.115 which promotes travel by public transit as an economically and environmentally-sound alternative to travel by private automobile. Consistent with the Transit-First Policy, no Contractor shall provide employees with parking on or near the Project site, including staging areas. Where an applicable

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Schedule A agreement provides for parking reimbursement, but not for reimbursement of transit expenses, the Contractor shall make available to employees reimbursement for verifiable commute related transit expenses.

ARTICLE 14 SUBSTANCE ABUSE

14.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time at the Project site or at any other site controlled by the TJPA related to Project Work are prohibited.

14.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Policy set forth in Appendix F.

ARTICLE 15 JOINT ADMINISTRATIVE COMMITTEE

15.1 The parties to this Agreement shall establish a four (4) person Joint Administrative Committee (JAC). The JAC shall be comprised of two (2) representatives designated by the TJPA and two (2) representatives of the Unions. Each representative shall designate an alternate who shall serve in her/his absence for any purpose contemplated by this Agreement.

15.2 The JAC shall meet as needed, but not less than once each quarter to review the implementation of this Agreement, the progress of the Project, and to resolve problems and/or grievances by majority vote with such resolutions to be binding on all signatories of the Agreement as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement may, by mutual consent, be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. This provision shall not apply to disputes arising under Article 9.

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15.3 The JAC shall have the authority to name, by consensus, replacement arbitrators for actions under either Article 9 or Article 17.

ARTICLE 16 EMPLOYEE GRIEVANCE PROCEDURE

16.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through grievance and arbitration provisions contained in the Schedule A agreement for the Union of the affected employee.

ARTICLE 17 GRIEVANCE AND ARBITRATION PROCEDURE

17.1 Any question, dispute, or claim arising out of, or involving the interpretation or application of this Agreement, excluding jurisdictional disputes and alleged violations of Article 9, shall be considered a grievance and shall be resolved in accordance with the procedures set forth below, provided that the question, dispute or claim arose during the term of this Agreement. No grievance shall be recognized unless the grieving party (Union or Council on its own behalf, or on behalf of a represented employee, or a Contractor or the TJPA on its own behalf) provides notice in writing to the designated representative of the signatory party with whom it has a dispute, within ten (10) business days after the alleged violation was committed, but in no event, more than thirty (30) days after the grievant knew or reasonably should have known of the event giving rise to the dispute. The Executive Director shall be copied on all notifications required by this Article. Upon executing this Agreement, each party shall be required to designate a representative in writing for the purpose of this Article.

17.2 Grievances shall be resolved according to the following procedures:

- (a) **Step 1.** Within five (5) business days after the receipt of the written notice of the grievance, the designated representatives of the parties shall confer and attempt to resolve the grievance. If the

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grievance is not resolved within five (5) business days after its referral, or such time as mutually agreed upon, either involved party may refer the dispute to Step 2 if one of the parties is a Local Union or District Council, or directly to Step 3 if neither party is a Local Union or District Council.

- (b) **Step 2.** An International Representative of the involved Union and the involved Contractor shall meet within seven (7) business days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be referred by either party to Step 3.
- (c) **Step 3.** In the event that the representatives are unable to resolve the grievance within seven (7) business days after its referral to Step 2, either involved party may submit it within three (3) business days to the JAC, which shall meet within five (5) business days after such referral (or such time as is mutually agreed upon by all representatives on the JAC), to confer in an attempt to resolve the grievance.
- (d) **Step 4.** If the grievance is not settled at Step 1, Step 2, or Step 3, within five (5) business days, either party to the grievance may request in writing to the Executive Director of the TJPA that the grievance be submitted to arbitration. After the request is made in writing, an arbitrator shall be selected by each party alternately striking a name from the following list of arbitrators: Thomas Angelo, Robert Hirsch, John Kagel, Katherine Thompson, Carol Vendrillo, Barry Winograd and William Engler. The party to strike first shall be determined by a coin toss.

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- (1) Upon selection of an arbitrator, the Executive Director shall provide notice to the arbitrator and parties to the grievance. Any arbitrator who does not respond within twenty-four (24) hours or who is not available within eight (8) weeks of this notice shall be deemed to have waived the assignment. The grievance shall be referred to the next arbitrator on the list who was last to be struck (and so on, until an arbitrator is selected). The Executive Director may provide written notice by facsimile, electronic mail, hand delivery, or overnight mail which will be deemed effective upon receipt.
- (2) The arbitrator shall arrange for a hearing on the earliest date available from the date of her/his selection. The arbitrator's decision shall be confined to the issue(s) posed by the grievance and shall be remedial only. The arbitrator shall not have the authority to modify, amend, alter, cancel, add to or subtract from, any provision of this Agreement.
- (3) A decision shall be given to the parties within five (5) business days after completion of the hearing unless such time is extended by mutual agreement. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The requesting party shall be responsible to pay any additional cost associated with the written opinion. The arbitrator's decision shall be final and binding upon all parties to the grievance.
- (4) The cost of the arbitrator's fees and expenses, including a court reporter, and any cost to pay for facilities for the hearing shall be borne equally by the parties to the grievance.

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- (5) Any of the time periods set forth in this Article may be modified in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, faxed, electronically mailed, or postmarked during the extended time period. Failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such disputes with prejudice.

17.3 The TJPA is a party in interest in all proceedings arising under this Article and, at its option, may participate in any proceeding initiated under this Article. However, the TJPA shall not be responsible for fees and expenses unless it initiates or is a necessary party to the procedure.

ARTICLE 18 PRE-JOB CONFERENCE

18.1 The TJPA shall provide notice and hold pre-job conferences at least ten (10) days prior to the commencement of any Project Work after the Effective Date of this Agreement. Each conference shall be held in the TJPA office or other office designated by the TJPA and shall be attended by representatives from the TJPA and participating Contractors and Unions.

18.2 At the pre-job conference, the Contractor shall announce the assignment of work. The assignment of work to a craft shall be the determining factor for proper wage payment as required under Article 10 of this Agreement.

18.3 Any objection to the assignment of work made at a pre-job conference shall be waived if not made as set forth in Section 19.1 below. All Project Work shall proceed on schedule as assigned at the pre-job conference notwithstanding any pending disputes about the assignment of any portion of that work.

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18.4 For each Contractor or Subcontractor of any tier, the applicable core employee provisions shall be identified by the Contractor and confirmed by the TJPA or the TJPA representative.

ARTICLE 19

JURISDICTIONAL DISPUTES – NORTHERN CALIFORNIA PLAN

19.1 The assignment of Covered Work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.

19.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Contractors party to this Agreement shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions party to this Agreement.

19.3 For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, DC, at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator’s hearing on the dispute shall be held at the offices of the applicable Building and Construction Trades Council. All other procedures shall be as specified in the Plan.

19.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, or other disruptive activity, and the Contractor’s or the TJPA’s assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

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The TJPA and/or Contractors will conduct a pre-job conference, in accordance with Article 18, with the Local Council prior to commencing work. The Contractors and the TJPA will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractors may be held together.

19.5 The TJPA is a party in interest in all proceedings arising under this Article and, at its option, may participate in any proceeding initiated under this Article. However, the TJPA shall not be responsible for fees and expenses unless it initiates the procedure.

ARTICLE 20 JURISDICTIONAL DISPUTE NOTICE

20.1 In the event of a jurisdictional dispute between or among Unions, the affected Unions shall have three (3) working days after notice to submit the dispute in writing to the Executive Director who shall provide a copy of the objection to each Union whose jurisdiction is being challenged.

ARTICLE 21 NON-DISCRIMINATION

21.1 The parties to this Agreement shall never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in employment, or in connection with the award and performance of any contract covered by this Agreement on the basis of a person's actual or perceived race, color, sex, national origin, ethnicity, creed, religion, ancestry, age, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus status (AIDS/HIV). The Unions shall cooperate with the Contractors' obligations to ensure that employees are treated during employment without regard to such status. Relevant employment actions shall include, but are not limited to, the

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following: hiring, promotion or upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including participation in any apprenticeship program.

21.2 No party shall discriminate against Contractors or employees, or interfere with their right to bid on and/or perform Project work because they are or are not signatories to collective bargaining agreements, or because they are or are not covered by existing collective bargaining agreements.

21.3 Any complaints regarding the application of Sections 21.1 or 21.2 shall be brought to the immediate attention of the involved Contractor for consideration and resolution, with notice of such complaint brought to the TJPA and the Unions.

ARTICLE 22 MANAGEMENT RIGHTS

22.1 The TJPA and Contractors shall have the right to select contractors or subcontractors based on the lowest responsive bid or other competitive bid process, as allowed by the TJPA Procurement Policy. Nothing in this Agreement shall limit Contractors from using any lawful method or technique of construction.

22.2 Contractors retain the right to direct their workforce, including determining the number and qualifications of their employees; the promotion, transfer, layoff of their employees; the discipline or discharge of their employees; the selection of forepersons and other supervisors; the assignment and scheduling of work; the promulgation of reasonable work rules that are consistent with this Agreement; and the determination of when overtime will be worked and the number and identity of employees engaged in such work. No rules, customs or practices that limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The lawful manning provisions of the applicable Schedule A agreements shall be recognized.

ARTICLE 23
FEDERAL REGULATIONS

23.1 It is the intent of the parties to fully conform to applicable statutes, regulations, executive orders and agency requirements governing the use of project labor agreements on Federal projects. This includes, specifically, all applicable requirements codified by Title 49 of the United States Code and Title 49 of the Code of Federal Regulations, such as the USDOT disadvantaged business enterprise (DBE) program, the requirement for full and open competition for all procurements, and the prohibition on exclusionary or discriminatory specifications in procurements.

23.2 All provisions of this Agreement shall be construed to conform to the requirements set forth in Section 23.1; to the extent that any provision of this Agreement is in conflict with those requirements, the Federal requirements shall prevail.

ARTICLE 24
SAVINGS CLAUSE

24.1 In the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. To the extent possible under such circumstances, the parties shall substitute, by mutual agreement, in place and stead of the invalidated article, provision, clause, sentence or word another article, provision, clause, sentence or word that will resolve the issues identified by the court and be in accordance with the intent and purpose of the article, provision, clause, sentence or word invalidated.

24.2 Should a court of competent jurisdiction nullify a portion of this Project Labor Agreement, the remaining provisions of this Agreement shall remain in full force and effect unless and until a successor Agreement is executed.

ARTICLE 25
DURATION OF AGREEMENT

25.1 This Project Labor Agreement shall be effective on the date approved by the TJPA Board of Directors and shall continue in effect for the duration of Phase I, in locations under construction pursuant to Phase I, and for the duration of Phase II, in locations under construction pursuant to Phase II, as each is defined in Appendix C.

25.2 In the event that the TJPA determines that extending this Agreement to any further construction projects would meet one or more legitimate governmental interests, this Agreement may be extended by mutual consent of the parties.

ARTICLE 26
TURNOVER

26.1 Construction of any phase, portion, section or segment of the Project shall be deemed complete when such a phase, portion, section or segment has been turned over to the TJPA by the Contractor and the TJPA has accepted such phase, portion, section or segment. As areas and systems of the Project are inspected and construction-tested and/or approved by and accepted by the TJPA or third parties with approval of the TJPA, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the TJPA to engage in repairs or modifications required by its contract(s) with the Contractor.

26.2 Notice of each final acceptance received by the Contractor shall be provided to the Union with a description of what portion or segment has been accepted. Final acceptance may be subject to a punch list, and in such case, the Agreement will continue to apply to each such item on the punch list until it is completed to the satisfaction of the TJPA and the TJPA gives notice of acceptance to the Contractor.

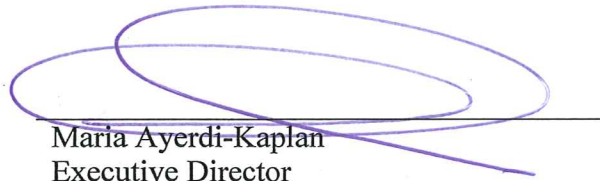
TJPA PROJECT LABOR AGREEMENT

26.3 Final termination of all obligations, rights, and liabilities arising from this Agreement shall occur upon receipt by the Unions of a notice from the TJPA stating that no work remains within the scope of the Agreement.

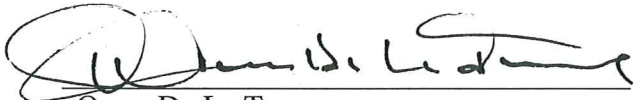
IN WITNESS HEREOF, the parties hereto have executed this agreement this 10th day of November, 2011



Michael Theriault, Secretary-Treasurer
San Francisco Building and Construction
Trades Council, AFL-CIO



Maria Ayerdi-Kaplan
Executive Director
Transbay Joint Powers Authority



Oscar De La Torre
Northern California District
Council of Laborers




Robert Alvarado
Northern California Carpenters
Regional Council

Russ Burns
International Union of Operating
Engineers, Local 3



Print name
International Union of Bricklayers and
Allied Craftworkers, Local 3



Sign name

TJPA PROJECT LABOR AGREEMENT

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IN WITNESS HEREOF, the parties hereto have executed this agreement this ____ day of _____, 2011

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Oscar De La Torre
Northern California District
Council of Laborers

Robert Alvarado
Northern California Carpenters
Regional Council



Russ Burns
International Union of Operating
Engineers, Local 3

David Jackson
Print name
International Union of Bricklayers and
Allied Craftworkers , Local 3

Paul Jackson
Sign name

WILMER D. Ellis

Print name

International Brotherhood of
Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers,
Local 549

Wilmer D Ellis

Sign name



Print name
United Brotherhood of Carpenters,
Local 22



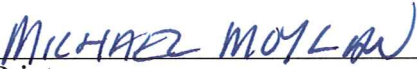
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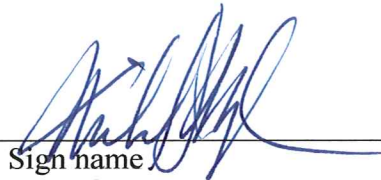
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United Brotherhood of Carpenters,
Local 2236



Sign name



Print name
Operative Plasterers' and Cement
Masons' International Association,
Local 300



Sign name



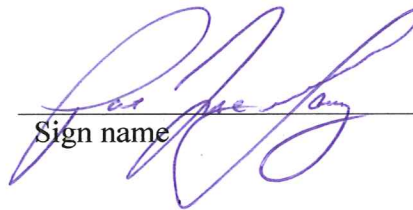
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Workers, Local 6



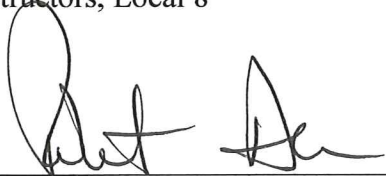
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Print name
International Union of Elevator
Constructors, Local 8



Sign name



Print name
United Brotherhood of Carpenters
Hardwood Floor Layers, Local 1861



Sign name

Print name
Laborers' International Union of North
America, Hod Carriers, Local 166

Mel Breshnars

Print name
International Association of Heat and
Frost Insulators and Allied Workers,
Local 16

Sign name

Mel Breshnars

Sign name

Dan Helling

Print name
International Association of Bridge,
Structural, Ornamental and Reinforcing
Iron Workers, Local 377

Dan Helling

Sign name

Victor Paez

Print name
Laborers International Union of North
America, Local 67

Sign name

Victor Paez

Ramon Hernandez

Print name
Laborers International Union of North
America, Local 261

Ramon Hernandez

Sign name

Robert Alvarez

Print name
United Brotherhood of Carpenters,
Lathers, Local 68L

Sign name

Robert Alvarez

Samuel Robinson

Print name
Laborers' International Union of North
America, Hod Carriers, Local 166

Samuel Robinson

Sign name

McL Breshears

Print name
International Association of Heat and
Frost Insulators and Allied Workers,
Local 16

McL Breshears

Sign name

Dan Hellerig

Print name
International Association of Bridge,
Structural, Ornamental and Reinforcing
Iron Workers, Local 377

Dan Hellerig

Sign name

Vic Victor Paez

Print name
Laborers International Union of North
America, Local 67

Vic Victor Paez

Sign name

Ramon Hernandez

Print name
Laborers International Union of North
America, Local 261

Ramon Hernandez

Sign name

Robert Alvarez

Print name
United Brotherhood of Carpenters,
Lathers, Local 681.

Robert Alvarez

Sign name

Print name
International Union of Operating
Engineers, Local 3

Robert Alvarez

Print name
United Brotherhood of Carpenters,
Millwrights, Local 102

Sign name

Robert Alvarez

Sign name

DOUG CHRISTOPHER
Print name
International Union of Painters and Allied
Trades, District Council 16

Douglas E. Christopher
Sign name

Robert Alvarez
Print name
United Brotherhood of Carpenters, Pile
Drivers, Local 34

Robert Alvarez
Sign name

Chester Murphy
Print name
Operative Plasterers' and Cement
Masons' International Association,
Local 66

Chester Murphy
Sign name

Larry Mazzola Sr
Print name
United Association of Journeymen and
Apprentices of the Plumbing and
Pipefitting Industry, Local 38

Larry Mazzola Sr
Sign name

Russell E. Burns

Print name

International Union of Operating
Engineers, Local 3


Sign name

Print name


United Brotherhood of Carpenters,
Millwrights, Local 102

Sign name

Doug CHRISTOPHER

Print name

International Union of Painters and Allied
Trades, District Council 16


Sign name

Print name

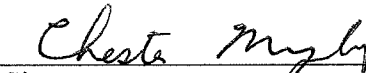
United Brotherhood of Carpenters, Pile
Drivers, Local 34

Sign name

Chester Murphy

Print name

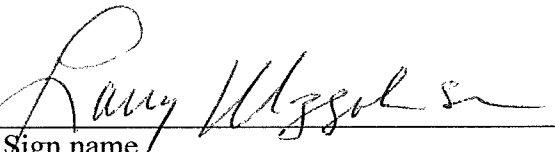
Operative Plasterers' and Cement
Masons' International Association,
Local 66


Sign name

LARRY MAZZOLA SR

Print name

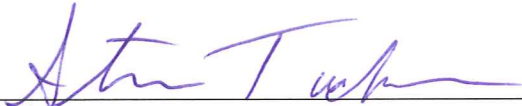
United Association of Journeymen and
Apprentices of the Plumbing and
Pipefitting Industry, Local 38


Sign name

Steven Tucker

Print name

United Union of Roofers, Waterproofers
and Allied Workers, Local 40



Sign name

Bruce Word

Print name

Sheet Metal Workers' International
Association, Local 104

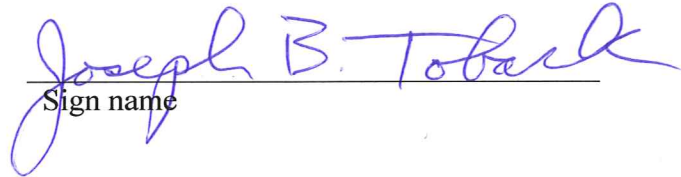


Sign name

Joseph B. Toback

Print name

International Union of Painters and Allied
Trades, Sign and Display, Local 510

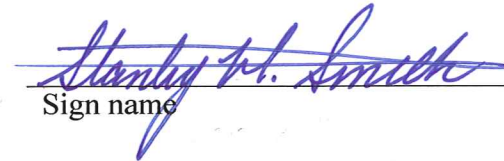


Sign name

STANLEY M. SMITH

Print name

United Association of Journeymen and
Apprentices of the Plumbing and
Pipefitting Industry, Sprinkler Fitters,
Local 483




Sign name

Rome A. Aloise

Print name

International Brotherhood of Teamsters,
Local 853



Sign name

APPENDIX A
LIST OF SCHEDULE A AGREEMENTS

San Francisco Building and Construction Trades Council, AFL-CIO
Northern California District Council of Laborers
Northern California Carpenters Regional Council
International Union of Operating Engineers, Local 3
International Union of Bricklayers and Allied Craftworkers , Local 3
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 549
United Brotherhood of Carpenters, Local 22
United Brotherhood of Carpenters, Local 2236
Operative Plasterers' and Cement Masons' International Association, Local 300
International Brotherhood of Electrical Workers, Local 6
International Union of Elevator Constructors, Local 8
United Brotherhood of Carpenters Hardwood Floor Layers, Local 1861
Laborers' International Union of North America, Hod Carriers, Local 166
International Association of Heat and Frost Insulators and Allied Workers, Local 16
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 377
Laborers International Union of North America, Local 67
Laborers International Union of North America, Local 261
United Brotherhood of Carpenters, Lathers, Local 68L
International Union of Operating Engineers, Local 3
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Sheet Metal Workers' International Association, Local 104
International Union of Painters and Allied Trades, Sign and Display, Local 510
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Sprinkler Fitters, Local 483
International Brotherhood of Teamsters, Local 853

APPENDIX B

LETTER OF ASSENT

Maria Ayerdi-Kaplan
Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite, 2100
San Francisco, CA 94105

Re: Transbay Transit Center Project Labor Agreement – Letter of Assent

Dear Ms. Ayerdi-Kaplan:

The undersigned party confirms that it agrees to be a party to and bound by the Transbay Transit Center Project Labor Agreement (“Agreement”) as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

The undersigned, as a Contractor or Subcontractor (“Contractor”) on the Transbay Transit Center Project (“Project”), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Agreement, a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- (2) While performing Project Work, Contractors agree to be bound by the written terms of the applicable, legally-established trust agreements as set forth in Article 10 of this Agreement.
- (3) Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.
- (4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- (5) Agrees to require that any subcontractor at any tier under an agreement with the undersigned party performing Project Work as defined and limited by the Agreement execute a Letter of Assent to the Agreement.

[Name of Contractor]
[Authorized Officer & Title]
[Address]
[Phone / Fax]
[Contractor’s State License]

Date

APPENDIX C
ELEMENTS OF PHASE I AND PHASE II PROJECT WORK

The scope of the Transbay Transit Center Program is categorized into two Phases of construction based upon funding. As of the Effective Date of this Agreement, Phase I of construction is fully funded while additional funding remains to be secured to fully fund Phase II elements of construction. Based upon funding availability, the scope currently identified as Phase II may be reclassified into multiple phases. The TJPA reserves the right, in its sole discretion, to terminate, delay, suspend, modify, augment and/or expand any and all portions of the Phase I and Phase II Project Work at any time.

As of the Effective Date of this Agreement, the elements of Phase I and Phase II of the Project shall include the following:

Phase I:

- A Temporary Terminal located between the Streets of Main, Beale, Howard and Folsom (construction completed).
- Demolition of the former Transbay Terminal, Bus Ramps and other structures (to be completed September 2011).
- Utility Relocation in the region bounded by Second, Main, Mission and Howard Streets to facilitate construction of the new Transit Center (in progress).
- AC Transit Bus Storage facilities to be constructed beneath the West Approach to the Bay Bridge between Second, Third, Perry and Stillman Streets.
- New Bus Ramps located between First and Second Streets and connecting the new Transit Center Building with the Bay Bridge West Approach structure and AC Transit Bus Storage.
- The new Transit Center Building in the area between and generally bounded by Second, Main, Minna and Natoma Streets, including:
 - Construction of the structural core and shell of two below grade levels from the western end of Transit Center near Second Street to east of Beale Street, including: (i) the structure to accommodate the tunnel connection for rail service; (ii) those elements necessary to support the above-grade elements of the Transit Center Building, including but not limited to utility (PG&E) vaults, generator rooms, and service rooms; (iii) those elements required for life safety, including egress, illumination, fire detection, fire alarm, and sprinklers; and (iv) rough-ins, penetrations, and sleeves to allow and provide for the integration and/or expansion of building systems and vertical circulation systems to be constructed in Phase II.
 - Construction above grade of three occupied levels of the Transit Center Building to support initial facility operations and AC Transit, MTA, Golden Gate Transit, SamTrans, WestCAT, Paratransit, Amtrak, and Greyhound bus operations.
 - Core and shell construction suitable for future tenant improvements of commercial, retail, and other related spaces in the above grade levels.
 - Construction of a five acre rooftop park serving as the roof of the Transit Center.

TJPA PROJECT LABOR AGREEMENT

Phase II:

- Demolition of the existing buildings to create access portals for tunnel construction.
- Utility Relocation in Second Street between Howard and Folsom Streets and in Townsend Street between Second and Seventh Streets to facilitate construction of the Downtown Construction.
- Construction of the Downtown Extension including:
 - A tunnel from at-grade at Seventh and Common Streets through a portal near Sixth and Townsend Streets, underneath Townsend Street to Second Street, beneath Second Street to the train platform level of the Transit Center Building northeast of the intersection of Second and Howard Streets.
 - Shoring and underpinning, as necessary, to protect existing structures and facilitate tunnel construction.
 - Track, signaling, overhead catenary, smoke exhaust, emergency exiting and other systems necessary to support Caltrain and High Speed Rail operations into and within the tunnel alignment.
- Construction of an underground station at Fourth and King for Caltrain service to the Mission Bay neighborhood.
- The build-out of and finishes of all below-grade areas (the train platform level and the lower concourse level) to support Caltrain and High Speed Rail operations.
- Subject to further study, Phase II may be expanded to include:
 - An underground connection from the Transit Center Building to the Embarcadero BART Station
 - The extension of the below grade levels of the Transit Center Building eastward from the limits of Phase I construction to the east side of Main Street.
 - Construction above the eastward extension of an at-grade facility for future intercity bus operations and shuttle services.
- Any remediation associated with above work.

APPENDIX D
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 010

Category: Financial Matters

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

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**Transbay Joint Powers Authority
Disadvantaged Business Enterprise (DBE) Program**

I. Definitions of Terms

The following terms used in this Program have meanings as defined in 49 CFR §26.5:

A. Disadvantaged Business Enterprise (DBE) is a for-profit small business concern:

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. Socially and Economically Disadvantaged Individual is any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

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(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

II. Objectives / Policy Statement (§§26.1, 26.23)

The Transbay Joint Powers Authority (TJPA) hereby establishes a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The TJPA expects to receive Federal financial assistance from the DOT, and as a condition of receiving this assistance, the TJPA will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of the TJPA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the TJPA's policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Contract Compliance Manager has been designated the DBE Liaison Officer (DBELO). In that capacity, the Contract Compliance Manager is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the TJPA in its financial assistance agreements with the California Department of Transportation (Caltrans) and DOT.

The Contract Compliance Manager has disseminated this policy statement to the Transbay Joint Powers Authority Board of Directors and all components of the TJPA's organization. The TJPA has made the draft DBE Program and final DBE program available to DBE and non-DBE business communities that perform work for it on DOT-assisted contracts by publishing an announcement of availability in general circulation, woman/minority-focused, and trade association publications.

III. Nondiscrimination (§26.7)

The TJPA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE Program, the TJPA will not, directly or through contractual or other arrangements, use criteria or methods of administration whose purpose is to defeat or

TJPA PROJECT LABOR AGREEMENT

substantially impair accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

IV. DBE Program Updates (§26.21)

The TJPA will continue to carry out this Program until the TJPA has established a new goal setting methodology or until significant changes to this DBE Program are adopted. The TJPA will provide to FTA a proposed Annual Anticipated DBE Participation Level (AADPL) and methodology and other Program updates by August 1 of every year.

V. Quotas (§26.43)

The TJPA will not use quotas or set-asides in any way in the administration of this DBE Program.

VI. DBE Liaison Officer (DBELO) (§26.45)

The TJPA has designated the following individual as the DBE Liaison Officer (DBELO):

Contract Compliance Manager
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105
(415) 597-4620

In this capacity, the Contract Compliance Manager is responsible for implementing all aspects of the DBE Program and ensuring that the TJPA complies with all provisions of Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." This is available on the Internet at the website <http://osdbuweb.dot.gov/DBEProgram/index.cfm>. The Contract Compliance Manager has direct, independent access to the TJPA Executive Director concerning DBE Program matters.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required.
2. Review third-party contracts and purchase requisitions for compliance with this Program.
3. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals) and monitor results.
5. Analyze the TJPA's progress toward goal attainment and identify ways to improve progress.
6. Participate in pre-bid meetings.

TJPA PROJECT LABOR AGREEMENT

7. Advise the TJPA Executive Director and Board of Directors on DBE matters and achievement.
8. Participate with legal counsel and project staff to determine contractor compliance with good faith efforts.
9. Provide DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
10. Plan and participate in DBE training seminars.
11. Provide outreach to DBEs and community organizations to advise them of opportunities.

VII. Federal Financial Assistance Agreement Assurance (§26.13)

The TJPA will sign the following assurance, applicable to all DOT-assisted contracts and their administration as part of the Program Supplement Agreement for each project:

The TJPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The TJPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The TJPA's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the TJPA of its failure to carry out its approved Program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

VIII. DBE Financial Institutions (§26.27)

It is the policy of the TJPA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO.

IX. Directory (§26.31)

The TJPA will refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at www.dot.ca.gov/hq/bep.

X. Over-concentration (§26.33)

The TJPA has not identified any types of work in DOT-assisted contracts that have an over-concentration of DBE participation. If in the future the TJPA identifies the need to address over-concentration, measures for addressing over-concentration will be submitted to the FTA Civil Rights Officer (CRO) for approval.

XI. Business Development Programs (§26.35)

The TJPA does not have a business development or mentor-protégé program. If the TJPA identifies the need for such a program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to the CRO.

XII. Required Contract Clauses (§§26.13, 26.29)

1. Contract Assurance

The TJPA ensures that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the TJPA deems appropriate.

2. Prompt Payment

The TJPA ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the TJPA's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

Prompt Payment of Withheld Funds to Subcontractors. If the TJPA requires retainage from the prime contractor and prompt and regular incremental acceptances of portions, as determined by the TJPA of the contract work and retainage is paid to the prime contractor based on these acceptances, then the prime contractor or subcontractor shall return all

monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the TJPA. Any delay or postponement of payment may take place only for good cause and with the TJPA's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIII. Monitoring and Enforcement Mechanisms (§26.37)

1. Monitoring Actual DBE Participation (§ 26.37 and 26.55)

The DBELO shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments. The DBELO will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments.

The DBELO shall ensure that DBE participation is counted toward contract availability advisories on DOT-assisted contracts and the AADPL in accordance with the DBE Program. Credit toward overall or contract goals may only be given upon satisfactory evidence that payments were actually made to DBEs.

2. Contracting and Tracking DBE Participation (§ 26.55)

Only the work actually performed by a DBE will be counted towards contract availability advisories and the AADPL. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

Work that a DBE subcontracts to a non-DBE firm does not count toward the AADPL. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent (60%) of the cost will be counted.

DBE achievement will not be counted toward the AADPL until the DBE has been paid. The DBELO will track the participation of DBEs in availability advisory

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contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the Administrator will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

3. Construction Contract Monitoring

The TJPA will assign, or engage under a professional services contract, a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

A. After Contract Award

After the contract award, the TJPA will review the award documents for the portion of items each DBE and first-tier subcontractor will be performing and the dollar value of that work. With these documents, the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

B. Pre-construction Conference

A pre-construction conference will be scheduled between the RE/Contract Manager and the contractor or its representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, the TJPA will require the contractor, supplier, vendors, or manufacturers to submit a completed "Bidders/Proposers Information Request Form." (see Attachment A). The RE/Contract Manager will ensure that the RE/Contract Manager's staff (inspectors) knows what items of work each DBE is responsible for performing based on the "Bidders/Proposers Information Request Form." Inspectors will notify the RE/Contract Manager immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE/Contract Manager will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the RE/Contract Manager will take appropriate action: The DBELO will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the FTA Civil Rights Office. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

Providing evidence of DBE payment is the responsibility of the contractor. The TJPA will require the contractor to submit a "Progress Payment Report" (see Attachment B) with every invoice, which summarized the actual amounts due to every DBE and non-DBE subcontractor for services performed in that period. The contractor will also be

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required to submit to the TJPA a “Subcontractor Payment Declaration” (see Attachment C) as proof of payment to DBE and non-DBE subcontractors.

4. Substitution

When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and the reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify the DBE subcontractor in writing regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration.

If there is any doubt in the RE/Contract Manager’s mind regarding the requested substitution, the RE/Contract Manager may contact the DBELO or the CRO for assistance and direction.

5. Record Keeping and Final Report

The contractor shall maintain records and prepare a “Final Expenditure Report” (see Attachment D) showing the name and address of each first-tier subcontractor. The “Final Expenditure Report” shall also show:

- a) The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials, and DBE trucking company; and
- b) The date of final payment and the total dollar figure paid to each of the firms.

The DBE prime contractor shall also show the date of work performed by its own forces, along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed, the contractor will provide the “Final Expenditure Report” and a summary of the records stated above. The RE/Contract Manager will compare the completed “Bidders/Proposers Information Request Form” to the contractor’s completed “Final Expenditure Report.” The DBEs shown on the

completed records should be the same as those originally listed unless an authorized substitution was made or the contractor used additional DBEs. The dollar amount should reflect any changes made in planned work done by the DBEs. The contractor will be required to explain in writing why the names of the subcontractors, the work items, or the dollar figures are different from what was originally shown on the completed “Bidders/Proposers Information Request Form” when:

- a) There have been no changes made by the RE/Contract Manager; or

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- b) The contractor has not provided a sufficient explanation in the comments section of the completed “Final Expenditure Report.”

The explanation will be attached to the completed “Final Expenditure Report” for submittal. The RE/Contract Manager will file this in the project records.

The DBELO will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE/Contract Manager informed of changes that affect the contract. The RE/Contract Manager will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The TJPA will bring to the attention of the DOT through the CRO any false, fraudulent, or dishonest conduct in connection with the Program, so that the DOT can take the steps provided in §26.109 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). The TJPA also will consider similar action under its own legal authority, including responsibility determinations in future contracts.

XIV. Annual Anticipated DBE Participation Level (AADPL) (§26.45)

1. Amount of AADPL

See Attachment E.

2. Methodology

See Attachment E.

3. Process

Upon approval of this Program and by June 1 of each year hereafter, the TJPA will submit to the TJPA Board its draft overall AADPL and methodology (the amount of the overall AADPL and the method to calculate the AADPL).

Once the TJPA has approved the draft overall AADPL for distribution, the TJPA will publish a notice of the proposed overall AADPL, informing the public that the proposed AADPL and its rationale are available for inspection during normal business hours at the TJPA’s principal office for 30 days following the date of the

notice, and informing the public that comments will be accepted on the AADPL for 45 days following the date of the notice. Advertisements in newspapers, woman/minority-focused media, trade publications, and websites will be the normal media to accomplish this effort. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The TJPA will, on or before August 1 of each year, resubmit the final overall AADPL information to the TJPA Board for approval, along with a summary of information

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and comments received during the public participation process and the TJPA's responses.

Following approval of the final overall AADPL by the TJPA Board, the TJPA will, on or before August 1 of each year, submit the final overall AADPL to the CRO. The TJPA may begin using the overall AADPL on October 1 of each year.

XV. Contract Availability Advisory (§26.51)

The TJPA shall use contract availability advisories to meet any portion of the overall AADPL that the TJPA does not project being able to meet by use of race-neutral means. Contract availability advisories are established to assist bidders in ascertaining what a reasonable level of DBE participation would be for any given contract. The contract availability advisory is not an enforceable goal and compliance with the advisory shall not be a condition of contract award.

Contract availability advisories will be established only on DOT-assisted contracts that have subcontracting possibilities. Contract availability advisories need not be established on every such contract, and the size of contract availability advisories will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will be made regarding which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The availability advisory will then be incorporated into the contract documents. Contract availability advisories will be expressed as a percentage of the total amount of a DOT-assisted contract.

XVI. Transit Vehicle Manufacturers (§26.49)

If DOT-assisted contracts will include transit vehicle procurements, the TJPA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. The TJPA will direct the transit vehicle manufacturer to the subject requirements located on the Internet at <http://osdbuweb.dot.gov/DBEProgram/index.cfm>.

XVII. Good Faith Efforts (§26.53)

[Good Faith Efforts shall only be required when TJPA is following a race-conscious DBE Program.]

1. Information to be Submitted

The TJPA treats bidders'/proposers' compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal meets all the requirements of the advertisement and solicitation.

Each solicitation for bids/proposals will require the bidders/proposers to submit the "Bidders/Proposers Information Request Form" (Attachment A), which should include:

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- a) The names and addresses of known DBE firms that will participate in the contract;
 - b) A description of the work that each DBE will perform;
 - c) The dollar amount of each DBE firm's participation;
 - d) Written and signed documentation of commitment to use a DBE subcontractor whose participation is submitted to meet a contract availability advisory;
 - e) Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - f) If the contract availability advisory is not met, evidence of good faith efforts.
2. Demonstration of Good Faith Efforts

The obligation of the bidder/proposer is to make good faith efforts. The bidder/proposer can demonstrate that it has done so either by meeting the contract availability advisory or by documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26, which is attached.

The Contract Compliance Manager is responsible for determining whether a bidder/proposer who has not met the contract availability advisory has documented sufficient good faith efforts to be regarded as responsive.

The TJPA will ensure that all information is complete and accurate and adequately documents the bidder's/proposer's good faith efforts before a commitment to the performance of the contract by the bidder/proposer is made.

3. Administrative Reconsideration

Within ten (10) days of being informed by the TJPA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposers should make this request in writing to the following reconsideration official:

Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105
(415) 597-4620

The reconsideration official will not have played any role in the original determination that the bidder/proposer did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/proposer will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The TJPA will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith

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efforts to do so. The result of the reconsideration process is not administratively appealable to Caltrans, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) or DOT.

4. Good Faith Efforts when a DBE is Replaced on a Contract

The TJPA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to notify the RE/Contract Manager immediately of a DBE's inability or unwillingness to perform, and it must provide reasonable documentation.

In this situation, the prime contractor will be required to obtain the TJPA's prior approval of a substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the TJPA's contracting office will issue an order stopping all or part of the payment and/or work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

XVIII. Counting DBE Participation (§26.55)

The TJPA will count DBE participation toward the AADPL and contract availability advisories as provided in the contract specifications for the prime contractor, subcontractor, joint venture partner with prime or subcontractor, or vendor of material or supplies.

XIX. Certification (§26.83(a))

The TJPA ensures that only DBE firms currently certified in the California Unified Certification Program (UCP) will participate as DBEs in the TJPA's DBE Program. The UCP directory can be found at the website: http://www.dot.ca.gov/hq/bep/dbe_query.htm.

XX. Information Collection and Reporting

1. Bidders List

The TJPA will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. The TJPA has incorporated a "Bidders/Proposers Information Request Form," (Attachment A) hereto into its solicitation documents, requiring that bidders/proposers provide all requested information in their submissions.

2. Monitoring Payments to DBEs

Prime contractors are required to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records shall be made available for inspection upon request by any authorized representative of the TJPA, Caltrans, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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Payments to DBE subcontractors will be reviewed by the TJPA to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

3. Reporting to U.S. DOT (§ 26.11)

The TJPA will continue to report DBE participation and AADPL setting methods to FTA and Caltrans on behalf of FHWA as directed. Statistical data will be maintained as prescribed on a semi-annual basis to provide reports to U.S. DOT agencies reflecting the DBE participation on the TJPA's federally-assisted procurement activities. These reports will provide DBE participation information on the TJPA's race-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally-assisted procurement activities. The TJPA will report final DBE participation to the CRO using data from the "Final Expenditure Reports".

4. Confidentiality

The TJPA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws.

APPENDIX A TO PART 26 GUIDANCE CONCERNING GOOD FAITH EFFORTS

[Good Faith Efforts shall only be required when TJPA is following a race-conscious DBE Program.]

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this Part that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this Part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call; meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions that you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - A. Soliciting through all reasonable and available means (*e.g.*, attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

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- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D.
 - 1. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - 2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available woman/minority community organizations, woman/minority contractors' groups, local, state, and Federal woman/minority business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

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- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX E
SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 015

Category: Financial Matters

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

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**Transbay Joint Powers Authority
Small Business Enterprise (SBE) Program**

I. Certification Requirements

Any business that is certified under any of the programs outlined below shall qualify to participate in the Transbay Joint Powers Authority (TJPA) Small Business Enterprise (SBE) Program.

A. California Certified Small Business (SB) as certified by the California Department of General Services (DGS) – Procurement Division (PD) – Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS)

- Must be independently owned and operated; not dominant in its field of operation;
- With its principal office located in California; its owners (or officers in the case of a corporation) domiciled in California; and
- Together with its affiliates, be either:
 - A business with 100 or fewer employees, and an average annual gross receipts of \$12 million or less over the previous three tax years, or
 - A manufacturer with 100 or fewer employees. A *manufacturer* is a business that is both of the following:
 1. Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.
 2. Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

B. City and County of San Francisco Local/Minority/Woman-Owned Business Enterprise (L/M/WBE) as certified by the San Francisco Human Rights Commission (HRC)

- A Local Business Enterprise (LBE) is a Small or Micro business that has had its principal place of business in San Francisco for more than six months, has gross income that does not exceed the economic threshold set by San Francisco Administrative Code Chapter 14B for the applicable industry and has any necessary license.
- A Minority-Owned Business Enterprise (MBE) is any HRC-certified LBE that is owned and controlled by one or more people who belong to one or more of the following ethnic groups: (1) African Americans, defined as persons whose ancestry is from any of the Black racial groups of Africa or the Caribbean; (2) Arab Americans, defined as persons whose ancestry is from an Arabic speaking country that is a current or former member of the League of Arab States; (3) Asian Americans, defined as persons with Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian Indian, and Southeast Asian ancestry; (4) Iranian Americans, defined as persons whose ancestry is from the country of Iran; (5) Latino Americans, defined as persons with Mexican, Puerto Rican, Cuban, Central American or South American ancestry; and (6) Native Americans, defined as any

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person whose ancestry is from any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition. The minority-owner must be the license qualifier and own at least 51 percent of the business.

- A Woman-Owned Business Enterprise (WBE) is any HRC-certified LBE and is owned and controlled by one or more women. The woman-owner must be the license qualifier and own at least 51 percent of the business.

C. *A Disadvantaged Business Enterprise (DBE), as certified by the California United Certification Program (CUCP); a for-profit small business concern:*

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- A Socially and Economically Disadvantaged Individual is any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

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Administration (SBA), at such time as the SBA designation becomes effective.

Businesses interested in certification may obtain information at the following sites:

- California Department of General Services, OSDS:
<http://www.pd.dgs.ca.gov/smbus/certapps.htm>
- City & County of San Francisco HRC: <http://www.sfgov.org/sfhumanrights>
- California United Certification Program:
http://www.dot.ca.gov/hq/bep/business_forms.htm

II. Objectives / Policy Statement

The TJPA hereby establishes a Small Business Enterprise (SBE) Program. It is the policy of the TJPA to ensure that SBEs, as defined above, have an equal opportunity to receive and participate in TJPA contracts. It is also the TJPA's intention to:

- create a level playing field on which SBEs can compete fairly for TJPA contracts;
- remove barriers to SBE participation in the bidding, award and administration of TJPA contracts;
- assist SBEs to develop and compete successfully outside of the Program
- ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs
- identify business enterprises that are qualified as SBEs and are qualified to provide TJPA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises

The Contract Compliance Manager has been designated the SBE Liaison Officer (SBELO). In that capacity, the Contract Compliance Manager is responsible for implementing all aspects of the SBE Program. Implementation of the SBE Program is accorded the same priority as compliance with the TJPA DBE Program.

The Contract Compliance Manager has disseminated this policy statement to the TJPA Board of Directors and all components of the TJPA's organization. The TJPA has made the draft SBE Program and final SBE program available to SBE and non-SBE business communities that perform work for it by publishing an announcement of availability in general circulation, woman/minority-focused, and trade association publications.

III. Nondiscrimination

The TJPA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin, nor on the fact or perception of a person's creed, religion, ancestry, age, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status). In administering its SBE Program, the TJPA will not, directly or through contractual or other arrangements, use criteria or methods of administration whose purpose is to defeat or substantially impair accomplishment of the objectives of the SBE

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Program with respect to individuals in the groups or categories or having the characteristics listed above.

IV. SBE Participation

TJPA will not provide bid discounts or bid preferences for SBE participation. For contracts with no SBE goal, TJPA strongly encourages the prime contractor to make good faith efforts to include SBEs to perform meaningful work in all aspects of the project. To count towards an SBE contract goal, a business must be certified on the date bids or proposals are received.

1. Nature of SBE Participation. SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the contract. An SBE may participate as a prime contractor, subcontractor, joint venture partner with a prime contractor, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the contract.
2. Function. An SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. There is a rebuttable presumption that if the SBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function. An SBE trucking company is performing a commercially useful function if it is responsible for the overall management and supervision of the transportation services involved and uses at least one truck that is owned, insured and operated by its own employees.
3. Determining the Amount of SBE Participation. SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE's participation can only be counted if it is performing a commercially useful function on the contract, as defined above.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

- a. **SBE Prime Contractor** - Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

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- b. SBE Subcontractor - Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.
- c. SBE Joint Venture Partner - Count the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.
- d. SBE Regular Dealer - Count 60 percent of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.
- e. Other SBEs - Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.
- f. SBE Trucking Company - Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it owns, insures and operates with its own employees.

Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it leases from another SBE (including an owner-operator) provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the contract.

Count the entire amount of fees and commissions charged for providing the management and supervision of transportation services using trucks it leases from a non-SBE trucking company (including owner-operator) provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the contract.

V. SBE Program Updates

The TJPA will continue to carry out this Program until significant changes to the Program are adopted.

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VI. Small Business Set-Asides

The TJPA shall use set-asides for small business enterprises as appropriate in the administration of this SBE Program.

VII. SBE Liaison Officer (SBELO)

The TJPA has designated the following individual as the SBE Liaison Officer (SBELO):

Contract Compliance Manager
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
(415) 597-4620

In this capacity, the Contract Compliance Manager is responsible for implementing all aspects of the SBE Program. The Contract Compliance Manager has direct, independent access to the TJPA Executive Director concerning SBE Program matters. The SBELO is responsible for developing, implementing, and monitoring the SBE Program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required.
2. Review third-party contracts and purchase requisitions for compliance with this Program.
3. Ensure that bid notices and requests for proposals are available to SBEs in a timely manner.
4. Identify contracts and procurements so that SBE goals are included in solicitations and monitor results.
5. Analyze the TJPA's progress toward goal attainment and identify ways to improve progress.
6. Participate in pre-bid meetings.
7. Advise the TJPA Executive Director and Board of Directors on SBE matters and achievement.
8. Participate with legal counsel and project staff to determine contractor compliance with good faith efforts.
9. Provide SBEs with information and assistance in preparing bids.
10. Plan and participate in SBE training seminars.
11. Provide outreach to SBEs and community organizations to advise them of opportunities.

VIII. Directories

The TJPA will refer interested persons to the SBE directories available from the following certification agencies:

- California Department of General Services Procurement Department website - <http://www.eprocure.dgs.ca.gov/default.htm>
- San Francisco Local Business Enterprise Directory website - http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm
- California United Certification Program (CUCP) website - <http://www.dot.ca.gov/hq/bep/ucp.htm>

IX. Monitoring and Enforcement Mechanisms

1. Monitoring Actual SBE Participation

The SBELO shall monitor and track the actual SBE participation through contractor and subcontractor reports of payments. The SBELO will maintain a running tally of payments actually made to SBE firms and may require prime contractors and SBE subcontractors and suppliers to provide appropriate documentation to verify such payments.

The SBELO shall ensure that SBE participation is counted toward contract and overall goals on TJPA contracts in accordance with the SBE Program. Credit toward overall or contract goals may only be given upon satisfactory evidence that payments were actually made to SBEs.

2. Contracting and Tracking SBE Participation

Only the work actually performed by a SBE will be counted towards contract and overall goals. The cost of supplies and materials obtained by the SBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

Work that a SBE subcontracts to a non-SBE firm does not count toward the contract goal. Expenditures may only be counted if the SBE is performing a commercially useful function. A SBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

If materials or supplies are obtained from a SBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a SBE regular dealer, 60 percent (60%) of the cost will be counted.

SBE achievement will not be counted toward the goal until the SBE has been paid. Additionally, the SBELO will not count that portion of a SBE's participation that is achieved after the certification of the SBE has been removed during the performance of a contract.

3. Construction Contract Monitoring

The TJPA will assign, or engage under a professional services contract, a Resident Engineer (RE) or Contract Manager to monitor and track actual SBE participation through contractor and subcontractor reports of payments in accordance with the following:

A. After Contract Award

After the contract award, the TJPA will review the award documents for the portion of items each SBE and first-tier subcontractor will be performing and the dollar value of that work. With these documents, the RE/Contract Manager will be able to determine the work to be performed by the SBEs or subcontractors listed.

B. Pre-construction Conference

A pre-construction conference will be scheduled between the RE/Contract Manager and the contractor or its representative to discuss the work each SBE subcontractor will perform.

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Before work can begin on a subcontract, the TJPA will require the contractor, supplier, vendors, or manufacturers to submit a completed “Bidders/Proposers Information Request Form.” (see Attachment A). The RE/Contract Manager will ensure that the RE/Contract Manager’s staff (inspectors) knows what items of work each SBE is responsible for performing based on the “Bidders/Proposers Information Request Form.” Inspectors will notify the RE/Contract Manager immediately of apparent violations.

When a firm other than the listed SBE subcontractor is found performing the work, the RE/Contract Manager will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor’s response, the RE/Contract Manager will take appropriate action: The SBELO will perform a preliminary investigation to identify any potential issues related to the SBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the relevant certification office. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

Providing evidence of SBE payment is the responsibility of the contractor. The TJPA will require the contractor to submit a “Progress Payment Report” (see Attachment C) with every invoice, which summarizes the actual amounts due to every SBE and non-SBE subcontractor for services performed in that period. The contractor will also be required to submit to the TJPA a “Subcontractor Payment Declaration” (see Attachment D) as proof of payment to SBE and non-SBE subcontractors.

4. Substitution

When a SBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and the reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify the SBE subcontractor in writing regarding the proposed substitution and procedure for written objection from the SBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for consideration.

If there is any doubt in the RE/Contract Manager’s mind regarding the requested substitution, the RE/Contract Manager may contact the SBELO for assistance and direction.

5. Record Keeping and Final Report

The contractor shall maintain records and prepare a “Final Expenditure Report” (see Attachment E) showing the name and address of each first-tier subcontractor. The “Final Expenditure Report” shall also show:

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- a) The name and business address, regardless of tier, of every SBE subcontractor, SBE vendor of materials, and SBE trucking company; and
- b) The date of final payment and the total dollar figure paid to each of the firms. The SBE prime contractor shall also show the date of work performed by its own forces, along with the corresponding dollar value of the work claimed toward SBE goals.

When a contract has been completed, the contractor will provide the “Final Expenditure Report” and a summary of the records stated above. The RE/Contract Manager will compare the completed “Bidders/Proposers Information Request Form” to the contractor’s completed “Final Expenditure Report.” The SBEs shown on the completed records should be the same as those originally listed unless an authorized substitution was made or the contractor used additional SBEs. The dollar amount should reflect any changes made in planned work done by the SBEs. The contractor will be required to explain in writing why the names of the subcontractors, the work items, or the dollar figures are different from what was originally shown on the completed “Bidders/Proposers Information Request Form”. The explanation will be attached to the completed “Final Expenditure Report” for submittal. The RE/Contract Manager will file this in the project records.

The SBELO will keep track of the SBE certification status and keep the RE/Contract Manager informed of changes that affect the contract. The RE/Contract Manager will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The TJPA will bring to the attention of the relevant certification agency any false, fraudulent, or dishonest conduct in connection with the Program. The TJPA also will consider similar action under its own legal authority, including responsibility determinations in future contracts.

X. Contract Goals

The TJPA shall use contract goals for SBE participation on contracts that have subcontracting possibilities. Contract goals shall be enforceable and compliance with the goal or good faith efforts to do so shall be a condition of contract award. Contract goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of SBEs to perform the particular type of work). The contract work items will be compared with eligible SBE contractors willing to work on the project. A determination will be made regarding which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal will then be incorporated into the contract documents. Contract goals will be expressed as a percentage of the total amount of a contract.

XI. Good Faith Efforts

1. Information to be Submitted

The TJPA treats bidders’/proposers’ compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal meets all the requirements of the advertisement and solicitation. Each solicitation for bids/proposals will require

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the bidders/proposers to submit the “Bidders/Proposers Information Request Form” (Attachment A), which should include:

- a) The names and addresses of known SBE firms that will participate in the contract;
- b) A description of the work that each SBE will perform;
- c) The dollar amount of each SBE firm’s participation;
- d) Written and signed documentation of commitment to use a SBE subcontractor whose participation is submitted to meet a contract goal;
- e) Written and signed confirmation from the SBE that it is participating in the contract as provided in the prime contractor’s commitment; and
- f) If the contract availability advisory is not met, evidence of good faith efforts (Attachment B).

2. Demonstration of Good Faith Efforts

The obligation of the bidder/proposer is to make good faith efforts. The bidder/proposer can demonstrate that it has done so either by meeting the contract goal or by documenting good faith efforts. Examples of good faith efforts are found in Appendix A, attached.

The Contract Compliance Manager is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The TJPA will ensure that all information is complete and accurate and adequately documents the bidder’s/proposer’s good faith efforts before a commitment to the performance of the contract by the bidder/proposer is made.

3. Administrative Reconsideration

Within ten (10) days of being informed by the TJPA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposers should make this request in writing to the following reconsideration official:

Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
(415) 597-4620

The reconsideration official will not have played any role in the original determination that the bidder/proposer did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/proposer will also have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The TJPA will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good

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faith efforts to do so. The result of the reconsideration process is not administratively appealable to the State of California, City and County of San Francisco, or U.S. Department of Transportation.

4. Good Faith Efforts when a SBE is Replaced on a Contract

The TJPA will require a contractor to make good faith efforts to replace a SBE that is terminated or has otherwise failed to complete its work on a contract with another certified SBE, to the extent needed to meet the contract goal. The prime contractor is required to notify the RE/Contract Manager immediately of a SBE's inability or unwillingness to perform, and it must provide reasonable documentation.

In this situation, the prime contractor will be required to obtain the TJPA's prior approval of a substitute SBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the TJPA's contracting office will issue an order stopping all or part of the payment and/or work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

XII. Information Collection and Reporting

1. Bidders List

The TJPA will create and maintain a bidders list, consisting of information about all SBE and non-SBE firms that bid or quote on its contracts. The bidders list will include the name, address, SBE/non-SBE status, age, and annual gross receipts of firms. The TJPA has incorporated a "Bidders/Proposers Information Request Form," (Attachment A) hereto into its solicitation documents, requiring that bidders/proposers provide all requested information in their submissions.

2. Monitoring Payments to SBEs

Prime contractors are required to maintain records and documents of payments to SBEs for three (3) years following the performance of the contract. These records shall be made available for inspection upon request by any authorized representative of the TJPA. This reporting requirement also extends to any certified SBE subcontractor.

Payments to SBE subcontractors will be reviewed by the TJPA to ensure that the actual amount paid to SBE subcontractors equals or exceeds the dollar amounts stated in the schedule of SBE participation.

3. Confidentiality

The TJPA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws.

APPENDIX A

GUIDANCE CONCERNING GOOD FAITH EFFORTS

- I. When a goal has been established on a contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by SBE firms sufficient for this purpose. Second, even if it does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a SBE goal or other requirement of this Program that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient SBE participation, even if they were not fully successful.
- II. In any situation in which a contract goal has been established, it is up to the TJPA to make a fair and reasonable judgment as to whether a bidder that did not meet the goal made adequate good faith efforts. TJPA shall consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain SBE participation sufficient to meet the SBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the SBE contract requirements; however, meeting quantitative formulas is not required.
- III. The TJPA shall not require that a bidder meet a contract goal (*i.e.*, obtain a specified amount of SBE participation) in order to be awarded a contract if the bidder makes an adequate good faith efforts showing. This rule specifically prohibits TJPA from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions that TJPA shall consider as part of the bidder's good faith efforts to obtain SBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - A. Soliciting through all reasonable and available means (*e.g.*, attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the SBEs to respond to the solicitation. The bidder must determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - C. Providing interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

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- D. 1. Negotiating in good faith with interested SBEs. It is the bidder's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work.
2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a bidder's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.
- E. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available woman/minority community organizations, woman/minority contractors' groups, local, state, and Federal woman/minority business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.
- V. In determining whether a bidder has made good faith efforts, TJPA may take into account the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average SBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts

**APPENDIX F
SUBSTANCE ABUSE POLICY**

**NORTHERN CALIFORNIA CONSTRUCTION INDUSTRY UNIFORM SUBSTANCE
ABUSE PREVENTION POLICY**

POLICY

The Contractors and the Union are committed to protecting the health and safety of individual employees, their co-workers, and the public at large from the hazards caused by the misuse of drugs and alcohol on the job. The safety of the public, as well as the safety of fellow employees, dictates that employees are not permitted to perform their duties while under the influence of drugs or alcohol.

This Policy supersedes any otherwise applicable substance abuse policies negotiated for work outside of the Project by Contractors and the Unions. Nothing in this Agreement is intended to supersede or diminish more restrictive controlled substance or alcohol regulations imposed by federal or state agencies upon specific employee groups or categories of employees who are also covered by this Policy. A summary of this Policy will be provided to all dispatched employees Project Work subject to this Agreement (Project employees). The full Agreement will be made available to any Union representative or to Project employees upon request.

The purpose of this Policy is to comply with the TJPA's requirement of maintaining a drug and alcohol free workplace in order to assure safe and productive working conditions with due regard for the personal privacy interests of Project employees. It is not the intention of the parties that any Contractor intrude on off-duty activities of Project employees away from the Project site unless those activities have a job-related impact. The circumstances permitting controlled substance and alcohol testing in this Policy have been carefully defined and intentionally restricted.

The Substance Abuse Prevention Coordinator (SAP), at the direction of the TJPA, shall retain oversight over this Policy and will monitor test procedures for consistency and compliance. The SAP shall designate one or more third party administrators to effectuate this Policy.

In order to implement this Policy, the following Agreements have been reached:

1. No employee may purchase, sell, transfer, furnish, possess, use or be under the influence of illegal drugs or any alcoholic beverage while working on any Project job site in connection with work performed under the Project Labor Agreement, or when using any Contractor vehicle.
2. The proper use of prescription drugs or over-the-counter medication as part of a medical treatment program and consistent with the terms of this Policy is not a violation of this Policy. The improper use of prescription drugs, over-the-counter medication or the use of designer or synthetic drugs that alters or affects an individual's motor function or mental capacity is prohibited and is a violation of this Policy. Employees who believe or have been informed that their use of any prescription drug or over-the-counter medication may present a safety risk are to

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report such use to the Contractor's supervision to insure the safety of themselves, other employees, and Contractor or Project property or vehicles.

3. Any employee, while employed on the Project, who tests positive for drug or alcohol abuse or who is convicted for selling illegal drugs off the Project will not be permitted to work on the Project and will be subject to discipline up to and including discharge, subject to the provisions of this policy. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination and removed from the project and will not be eligible for rehire.

4. Any prospective or dispatched worker who fails the pre-employment testing required pursuant to this Policy will be denied employment and will not be eligible for referral to any Contractor on the Project until a period of not less than sixty (60) calendar days has passed and the applicant has provided a certification of rehabilitation and satisfactory participation in an approved counseling or rehabilitation program, which will be at the employee's expense.

5. Any prospective or Project employee who refuses to submit to a properly administered drug or alcohol test will be treated as having tested positive on the test and will be subject to removal from the Project and will not be granted permission for a second drug or alcohol test for a period of ninety (90) days.

NOTICE

1. When calling the Union hiring hall for workers, the Contractor shall advise the Union dispatcher that the Contractor will require any dispatched worker to take a pre-employment drug and alcohol test, and that worker(s) will be subject to further testing in accordance with specified circumstances outlined in this Policy.

2. At the commencement of a contract, the Contractor shall also provide notice in advance of the first dispatch request either by certified mail, by facsimile transmission or by hand delivery.

3. The Contractor shall provide written notice to each employee, attached hereto as Appendix C, of the major provisions of the drug and alcohol testing policy and its consequences.

4. A contractor that fails to provide notice to the dispatcher shall be liable for two hours show up pay for any dispatched worker that refuses to take a pre-employment test, and a dispatched worker's refusal to take the test may not be used in any adverse manner against that worker, except that no dispatched worker will be hired without having taken a pre-employment drug test.

TERMS / DEFINITIONS

For purposes of this Policy, the following terms/conditions will apply:

1. **Illegal Drugs:**

For the purpose of this Policy, the terms "illegal drugs" or "drugs" refer to those drugs listed in Appendix A, except in those circumstances where they are prescribed by a duly licensed health care provider. Appendix A lists the illegal drugs and alcohol and the

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threshold levels for which an employee/applicant will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration (“SAMHSA”) (formerly the National Institute of Drug Abuse, or “NIDA”) threshold levels, or U.S. government required thresholds where required, in effect at the time of testing. Appendix A will be updated periodically to reflect the SAMHSA or the U.S. Government threshold changes, subject to mutual agreement of the parties.

2. Prescription Drug:

A drug or medication prescribed by a duly licensed health care provider for current use by the person possessing it that is lawfully available for retail purchase only with a prescription.

3. Reasonable Cause:

Reasonable cause to test (which test must be conducted pursuant to this Policy’s Identification and Consent Procedures outlined below) an employee for illegal drugs or alcohol will exist when specific, reliable objective facts and circumstances are sufficient for a prudent person to believe that the employee more probably than not has used a drug or alcohol as evidenced by work performance, behavior or appearance while on the jobsite. These indicators will be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol, and will be indicators not reasonably explained as resulting from causes other than the use of such controlled substances (such as, but not by way of limitation, fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.) If cause results from an observation, the observation must be confirmed by a second member of the Individual Contractor’s supervision and those Contractor representatives will endeavor to consult with the Contractor’s Safety Representative or a jobsite management representative, one who must be trained in detection of drug use, and whose training will be documented. The specific behavioral, performance or on-the-spot physical indicators of being under the influence of drugs or alcohol on the job will be substantiated in writing by the use of an Incident Report Form (attachment 5).

The following may constitute some of the reasonable causes to believe that an employee is under the influence of drugs or alcohol.

- (a) Incoherent, slurred speech;
- (b) Odor of alcohol on the breath;
- (c) Staggering gait, disorientation, or loss of balance;
- (d) Red and watery eyes, if not explained by environmental causes;
- (e) Paranoid or bizarre behavior; or
- (f) Unexplained drowsiness.

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4. Post-Accident Testing

A Contractor will require that a Project employee who is involved in an accident in the course of job duties resulting in serious damage to plant, property or equipment or injury to him/herself or others as defined below may be tested (which test must be conducted pursuant to this Policy's Identification and Consent Procedures outlined below) for drugs or alcohol where the Contractor safety representative or designee concludes that:

- (a) The accident may have resulted from human error or could have been avoided by reasonably alert action; and
- (b) The employer's representative reasonably concluded that the employee(s) to be tested caused or contributed to the following circumstances:

- (i) An OSHA recordable injury, i.e., medical treatment case, restricted work case or lost workday case;

- (ii) Damage to equipment, vehicles, structures, or guarding resulting in repair costs that in the judgment of the Contractor will exceed \$2,500.00;

- (iii) Loss of material containment resulting in an environmental spill notification; or

- (iv) Any incident resulting in job site shutdown or involving a fatality; and

A basis exists to believe that the employee was under the influence of a drug or alcohol at the time of the accident.

5. Adulterated, Substituted or Diluted Specimens

This Substance Abuse Prevention Policy adheres to guidelines established in SAMHSA Public Document 035 dated September 28, 1998 for determining the validity of a specimen. This guideline is consistent with the Department of Transportation (DOT) regulations (49 CFR Part 40 and 382) that permit laboratories to conduct additional tests to determine the validity of a specimen.

An employee/applicant submitting a specimen for which an approved testing laboratory reports the existence of an "adulterant", "interfering substance" and /or "masking agent" or the sample is identified as a "substituted specimen" will be deemed a violation of this Project Labor Agreement and Policy and will be processed as if the test result were positive. Those employees/applicants for whom the testing laboratory reports an "adulterated", interfering substance", masking agent", or substituted" specimen will be prohibited from the Project for not less than ninety (90) calendar days and the employee/applicant shall be required to show certification of rehabilitation and satisfactory participation in a Substance Abuse Prevention Coordinator-approved rehabilitation program, not at the expense of the Contractor or Owner, as a condition of the employee's return to work at that time.

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The guideline issued in PD 035, in the SAMHSA September 28, 1998 memo uses the following reporting protocols:

(a) Adulterated Specimen: PD035 includes three definitions for Adulterated:

If the nitrite concentration is equal to or greater than 500 mcg/mL.

1. If the pH is less than or equal to 3, or if it is greater than or equal to 11.
2. If a foreign substance is present, or if an endogenous substance (one that is normally found in urine) is present at a concentration greater than the normal physiological concentration.

(b) Substituted Specimen: one that has a creatinine of less than or equal to 5mg/dL and a specific gravity less than or equal to 1.001 or greater than or equal to 1.020. These specimens do not exhibit the clinical signs or characteristics associated with normal urine.

(c) Dilute Tests: Protocol covering dilute specimens will follow guidelines established by SAMSHA PD 035 in their memo dated September 28, 1998. Specimens identified by the testing laboratory as dilute will require the employee/applicant to be retested. A second test due to a dilute specimen will require the employee/applicant to submit to an observed test. Refusal to retest or noncompliance with drug testing procedures will result in the employee/applicant being prohibited from working on the Project for ninety (90) calendar days and the employee/applicant will be required to successfully complete a Substance Abuse Prevention Coordinator-approved rehabilitation program at his/her own expense as a condition of the employee's return to work at that time.

A "dilute specimen" is defined as: "one that has a creatinine reading less than 20 mg/dL, but greater than 5 mg/dL, and a specific gravity less than 1.003 but greater than 1.001.

6. Project. The Project is defined as any construction activity that is undertaken under the terms of the TJPA Transbay Transit Center Program Project Labor Agreement.

IDENTIFICATION AND CONSENT PROCEDURES

1. When a prospective employee or dispatched worker arrives at the job site for potential employment, he/she will be shown and sign a copy of the Pre-Employment Substance Abuse Prevention Testing Consent/Waiver Form attached as Attachment 4 before taking a preemployment drug or alcohol screening test. An employee who is working on the Project and has submitted to the pre-employment drug and alcohol test and has tested negative may thereafter be required to submit to drug or alcohol testing only if the Contractor has "reasonable cause" to believe that the employee is under the influence of drugs or alcohol in violation of this Policy or in connection with an accident as set out above in this Policy. The Contractor may order urine (or in the case of alcohol, breathalyzer) testing only.

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2. If a management representative (preferably not in the bargaining unit) makes observations of an employee which may constitute reasonable cause for drug or alcohol testing, the supervisor shall immediately take the following actions:

(a) Inform the employee that he/she may have a Union Representative present, if reasonably available. The employee will be shown the Substance Abuse Prevention Testing Consent/Waiver Form (Attachment 2).

(b) Fill out the Incident Report Form, including a statement of the specific facts constituting reasonable cause to believe that the employee is under the influence of drugs or alcohol, and the names of the person(s) making the supporting observations;

(c) Provide a completed copy of this Incident Report Form to the bargaining unit employee before he/she is required to be tested, (and one copy made available to the Union Representative, if present). After being given a copy of the Incident Report Form, the bargaining unit employee will be allowed enough time to read the entire document, to understand the reasons for the test;

(d) Provide the employee with an opportunity to provide an explanation of his/her condition, including providing evidence (e.g., doctor's prescription or note, or prescription container) of existing medical treatment or reaction to a prescribed drug. If available, the Union Representative shall be present during such explanation; and will be entitled to confer with the employee before the explanation is required; and

(e) If the Management representative(s), after observing the employee, and hearing any explanation, concludes that there is in fact reasonable cause to believe that the employee is under the influence of drugs or alcohol, the employee may be ordered to submit to a drug and/or alcohol test and will be asked to sign the Consent/Waiver Form attached as Attachment 2.

3. Failure to follow any of these procedures will result in the elimination of the test results as if no test had been administered; the test results will be destroyed and no discipline shall be imposed against the bargaining unit employee. Refusal of the employee to submit to the test where these procedures have been followed will be treated as a positive test and subject the employee to discipline including removal from the Project and discharge.

4. Unless there is reason to believe that the person being tested has previously altered a sample, or unless there is agreement in writing, an individual will be allowed to provide the required specimen in the privacy of a stall or partitioned area.

5 A worker initially dispatched to a Project jobsite where this Policy is in effect will be required to submit to testing for illegal drugs or alcohol as defined in this Policy. The testing of such workers must be conducted in compliance with the "Drug Testing Procedures" described in this Policy, and be required of dispatched workers only on the first day of reporting to the initial jobsite. The urine drug and alcohol testing of these dispatched workers, is the only testing allowed under this Policy other than for "reasonable cause" or in connection with an accident as set out above in this Policy. Notwithstanding this provision, if a rehabilitation program or drug treatment program determines that periodic testing is appropriate or necessary for the employee who has tested positive under this Policy, then that employee will be subject to future urine drug testing as recommended by the rehabilitation program.

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Except as set out in the Notice provision above, a worker initially dispatched to such jobsite who refuses to submit a urine sample for drug/alcohol testing will not be entitled to show-up pay for that day, and will be denied employment on the Project for a period of ninety (90) calendar days. If a worker who has refused a test returns to the same jobsite within ninety (90) calendar days, and is denied work, that worker will not be entitled to show-up pay. If a worker initially dispatched to the jobsite refuses to submit a urine sample or to take a breathalyzer test for drug/alcohol testing, and that worker is denied employment for ninety (90) calendar days, this Individual Contractor action will not be grievable under the Project Labor Agreement. If the worker tests negative for drugs and alcohol, he/she will not be drug tested again while employed by the Individual Contractor at any jobsite except for reasonable cause or post-accident as described in this Policy.

6. If the Individual Contractor has reasonable cause to believe an employee is under the influence of drugs or alcohol, or requires a post accident drug or alcohol test, as set forth in this Policy, and the employee refuses to submit to a drug test, the refusal shall be treated as a positive test result and the employee/applicant shall be subject to discipline, including removal from the Project and discharge.

7. The following rules control the pay for dispatched workers tested on the first day of their employment:

(a) A dispatched worker who is put to work immediately after having passed the test shall be paid starting at the time the worker reported for the test(s).

(b) Where a contractor requests a dispatched worker to report for purposes of a pre-hire substance abuse test, and does not intend to place the worker in an active work position on that day, the worker shall receive four (4) hours of pay at the regular straight-time hourly rate if the test is negative.

(c) If the dispatched worker is not allowed to work until the results of the drug test are received, and the test results are positive, the dispatched worker is not entitled to any form of pay (including show-up pay).

(d) If the dispatched worker is put to work, that dispatched worker is entitled to pay and benefits under the Project Labor Agreement for all hours worked, regardless of the results of the drug test.

(e) Where a contractor fails to provide notice, pursuant to this Policy, to the Union hiring hall that the job site is a drug and alcohol testing site, a dispatched worker who refuses to take the pre-employment test will be paid two hours show up pay, except that no dispatched worker will be hired without having taken a pre-employment drug test.

DRUG TESTING PROCEDURES

1. The testing shall be done at a certified laboratory located in California. The collective bargaining parties retain the right to inspect the laboratory to determine conformity with the

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standards described in this policy. The laboratory will only test for alcohol and the illegal drugs listed in the Definition Section of this Policy and Attachment 1. All testing will be at the Contractor's expense.

Testing procedures, including controlled substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Controlled substance tests shall be conducted only by laboratories licensed and approved by SAMHSA which comply with the American Occupational Medical Association (AOMA) ethical standards. Controlled substance tests shall be by urinalysis and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS). Alcohol tests shall be by breathalyzer. Any test revealing a blood/alcohol level equal to or greater than 0.08 or the established California State standard for non-commercial motor vehicle operations, or when operating a moving vehicle or crane any test revealing a blood/alcohol level equal to or greater that 0.04 or the established California State standard for commercial motor vehicle operations, percent shall be positive and will be conducted under procedures consistent with California State law.

An employee/applicant presenting himself/herself at a Substance Abuse Prevention Coordinator-approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until he/she has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee/applicant being classified as “refusing to test” and being prohibited from working on the Project for a minimum of ninety (90) calendar days from the date of the scheduled test.

At the time the urine specimens are collected, two (2) separate samples shall be placed in separate sealed containers. One (1) of the samples collected in a separate container shall be kept refrigerated at the site where the sample is given. Upon request, this second sample shall be made available to the employee for testing by a certified laboratory selected by the employee at the employee's expense.

2. The specific required procedure is as follows:

(a) Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee's option in a wide-mouthed clinic specimen container that must remain in full view of the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.

(b) Immediately after the specimen is collected, it will be divided into two (2) urine bottles, which, in the presence of the employee, will be labeled and then initialed by the employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employee's presence and the employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.

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(c) A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.

3. The initial test of all urine specimens will utilize immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed utilizing gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3) ions. In order to be considered "positive" for reporting by the laboratory to the employer, both samples must be tested separately in separate batches and must also show positive results on the GC /MS confirmatory test.

4. All positive drug, alcohol or adulterant test results must be reported to a Medical Review Officer (MRO) appointed by the designated testing laboratory. The MRO shall review the test results and any disclosure made by the employee/prospective or dispatched worker and shall attempt to interview the employee/ prospective or dispatched worker to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO shall make good faith efforts to contact the employee/applicant, but failing to make contact within two (2) working days, may deem the employee/applicant's result a "lab positive." After the issuance of a "lab positive", the employee/applicant will be barred from the Project until the employee/applicant makes contact with the MRO and the MRO sends the Substance Abuse Prevention Coordinator a written confirmation of a negative result.

5. If the testing procedures confirm a positive result, as described above, the employee/dispatched worker and the Substance Abuse Prevention Coordinator will be notified of the results in writing by the MRO, including the specific quantities. If requested by the employee or the Union, (with the written consent of the member), the laboratory will provide copies of all laboratory reports, forensic opinions, laboratory work sheets, procedure sheets, acceptance criteria and laboratory procedures.

6. In the event of a positive drug or alcohol test, an automatic confirmation test will be performed on the original specimen by the testing laboratory at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the request of the employee at his/her expense. The same, or any other, approved laboratory may conduct retests. The laboratory shall endeavor to notify the MRO of positive drug, alcohol or adulterant tests results within five (5) working days after receipt of the specimen. The employee may request a retest within five (5) working days from notice of a positive test result by the MRO. The requesting party will pay costs of re-tests in advance.

7. The Substance Abuse Prevention Coordinator shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.

8. All information from an employee's or dispatched worker's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed.

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9. Every effort will be made to insure that all employee substance abuse problems will be discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in any disciplinary procedure, and those persons will be identified in writing at the time of the procedure.

No laboratory or medical test results will appear in the employee's Personnel File. Information of this nature will be kept in a separate, confidential file.

All necessary measures shall be taken to keep the fact and the results of the test confidential.

PROCEDURE FOR PRE-EMPLOYMENT **“ON SITE SCREEN TEST”**

1. The parties agree that an Employer may conduct for pre-employment purposes only an “on-site screen test” (“Quicktest” – saliva testing), and only if that test is “non-negative” will a confirmation test be performed. This on-site screen test is to enable the dispatched worker and the employer to know immediately that the prospective employee has been cleared for work.
2. The parties acknowledge that this effort to provide a quicker way to put an employee to work requires a slightly different set of test protocols for the on-site test (set out in Attachment 1(a)). The parties understand that this in no way changes the ultimate right of the employee to have his/her eligibility for employment determined under the original Attachment 1 (as it might be changed by evolving federal standards). The parties also acknowledge that the category of Amphetamines includes Methamphetamines.
3. In order to facilitate the on-site test, the parties agree that an individual’s sample will be divided into three separate containers. One of the containers will provide a sample for the on-site test that will be read within 5-10 minutes of collection. The other two containers will be sealed and sent to the lab when a confirmation is necessary because of a “non-negative” outcome of an on-site test. The laboratory will store the split sample in accordance with SAMSHA guidelines. One of the two samples will be used for a confirmation test and the other will be made available to the employee for testing by a certified laboratory selected by the employee at the employee’s expense. The parties acknowledge that this is consistent with the intent of this Agreement.
4. An employee who originally passed a pre-employment drug test and who is continuously employed by a Contractor on covered project work does not have to be re-tested solely as a consequence of being shifted from work on one covered project to another. In addition, the parties agree that the term “prospective employee or dispatched worker” does not include an individual that has previously passed a pre-employment drug test, has not failed any employment-related test on the Project, has been employed on covered work and was laid off from that project and dispatched to another Contractor on covered work within seven days of being laid off. Such an employee will be considered to have passed an on-site test and the Substance Abuse Prevention Coordinator will so notify the Employer; however this does not preclude an Employer from determining that there is reasonable cause to require drug or alcohol testing of that employee under the provisions of this Policy.

**CONSEQUENCES FOR VIOLATING
THE RULES AND PROVISIONS OF THIS POLICY**

1. Prospective or dispatched workers: Dispatched workers who test positive to the pre-employment drug and alcohol test conducted pursuant to this Policy will be denied employment by the Individual Contractor until their test is confirmed to the dispatched worker in writing. Dispatched workers will be informed in writing if they are rejected on the basis of a confirmed positive drug test result. A dispatched worker may utilize the Project Labor Agreement grievance procedure to challenge the validity of a positive test result.

2. Employees: If the initial results of a drug or alcohol test administered by the Individual Contractor show that the employee was under the influence of drugs or alcohol while on duty, the employee will be removed from the Project until the test results have been confirmed by the procedures contained in this Policy.

(a) If the final test is negative, the employee will be reinstated with full backpay for lost time.

(b) If the initial positive test result is confirmed, the employee will be barred from the Project effective the date and time of the collection of the test specimen. The employee is subject to termination, subject to the provisions of this section below.

(c) Discipline imposed for a first positive test for an employee subjected to reasonable-cause testing, or subject to post-accident testing when in fact drugs or alcohol played no role in the accident, and any grievance filed in response thereto, will be held in abeyance pending voluntary participation by the employee in a Substance Abuse Prevention Coordinator-approved treatment program during an unpaid leave of absence.

(d) The employee may return to work if work is available after a certificate of either rehabilitation or satisfactory participation in the program. If the program determines that periodic testing is appropriate or necessary, the employee will be subject to future urine drug or alcohol testing, even on a random basis.

(e) If the employee successfully completes or participates in such a program or is not disciplined for substance use, possession or being under the influence of drugs or alcohol for twenty-four (24) months following the initial confirmed positive test, the discipline shall be revoked.

(f) A second positive test will result in the imposition of discipline, including termination and removal from the Project and the lifting of any suspension regarding discipline imposed for a first test less than twenty-four months preceding the date of the second positive test.

NOTICE AND CONSENT/WAIVER FORMS

Employees must execute a written consent and waiver to submit to the drug and alcohol tests and for the testing laboratory to release the report of test results to the Contractor. The individual to be tested will sign the form as shown in Attachment 4 at the time of submitting to a pre-employment test and the form attached as Attachment 2 for any subsequent test. Signing the

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Consent/Waiver Form will not waive any individual rights available to the employee under federal or state law. The employee must also sign at the time of employment the Notice Form, as shown in Attachment 3, describing the employee's obligations under this Uniform Substance Abuse Prevention Policy.

SUBSTANCE ABUSE PREVENTION COORDINATOR

The TJPA will designate a Substance Abuse Prevention Coordinator to monitor compliance with this Policy and to provide assistance to Project employees with questions concerning drug or alcohol test procedures, availability of approved counseling or rehabilitation or any other drug or alcohol matters. All inquiries to the Coordinator will be confidential. The parties are eager to help employees with drug and alcohol abuse problems. The Coordinator will be prepared to assist employees in discussing insurance coverage and locating available counseling, rehabilitation and community resources.

SUPERVISOR TRAINING

The Contractor shall develop and implement a program of training to assist Management representatives and stewards in identifying factors which constitute reasonable cause for drug testing, as well as a detailed explanation and emphasis on the terms and conditions of the drug policy.

EMPLOYEE VOLUNTARY SELF-HELP PROGRAM

An employee who engages in drug/alcohol abuse is encouraged to participate in an Employee Voluntary Self-Help Program. Employees who seek voluntary assistance for alcohol and/or substance abuse not arising out of or in connection with the occurrence of any testing incident or related disciplinary action may not be disciplined for seeking such assistance. Request by employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Such Voluntary Self-Help Program will not be at the expense of the Owner or Contractor. An Employee Voluntary Self-Help Program Counselor shall not disclose information on drug/alcohol use received from an employee for any purpose or under any circumstances, unless specifically authorized in writing by the employee.

The Contractor shall offer an employee affected by alcohol or drug dependency an unpaid medical Leave of Absence, for the purpose of enrolling and participating in a drug or alcohol rehabilitation program. Any employee who voluntarily submits to such Voluntary Self-Help Program may return to employment on the project upon successful completion of such a program, or upon a certification of rehabilitation and satisfactory participation in such a program, and provided that the employee passes a drug and alcohol test upon return to the project and agrees for a period of one (1) year thereafter, to submit to periodic drug and alcohol testing which shall be conducted in addition to any reasonable cause or post-accident testing otherwise conducted, if considered appropriate or necessary by the rehabilitation program.

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The Substance Abuse Prevention Coordinator will work with the signatory Unions to develop an “approved” list of counseling and rehabilitation programs to be used by employees/applicants who test positive for illegal drugs, alcohol, adulterants or misuse of prescription drugs. The cost of counseling and rehabilitation will not be the responsibility of the Contractor or Owner.

GRIEVANCE PROCEDURE

All disputes concerning the interpretation or application of this Policy shall be subject to the Grievance and Arbitration Procedure established by Article 17 of the Project Labor Agreement. Such disputes may be initiated at Step 3 of the Grievance and Arbitration Procedure. Nothing in the Grievance Procedure may void this Uniform Substance Abuse Policy on the TJPA Transbay Transit Center Program from continued utilization on Project work.

SAVINGS CLAUSE

The establishment or operation of this Policy shall not curtail any right of any employee found in any law, rule or regulation. Should any part of this Policy be determined contrary to law, such invalidation of that part or portion of this Policy will not invalidate the remaining portions. In the event of such determination, the parties to the Project Labor Agreement agree meet promptly to commence negotiations concerning the provision affected by such decision for the purpose of achieving conformity with the requirements of the applicable law and the intent of the parties hereto.

TERM OF AGREEMENT

This Policy constitutes the only Agreement in effect between the parties to the Project Labor Agreement concerning drug abuse, prevention and drug testing. No revisions or amendments will be made to this Policy except with the written approval of the parties hereto. This Policy shall become effective for all work covered by the Project Labor Agreement upon the effective date of the Project Labor Agreement and shall remain in effect for the duration of the Agreement unless terminated or amended by the mutual consent of the parties hereto.

The parties to the Project Labor Agreement agree to meet on an annual basis to review this Policy, to bring it into compliance with the law, if necessary, and to review other considerations, which may arise during the course of this Agreement. Changes in this Policy may be made only if mandated by law or agreed upon by the collective bargaining parties.

ATTACHMENT 1**SUBSTANCE ABUSE PREVENTION AND DETECTION
THRESHOLD LEVELS**

CONTROLLED SUBSTANCE*	SCREENING METHOD	SCREENING LEVEL**	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml**	GC/MS	500 ng/ml**
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml**	GC/MS	150 ng/ml**
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Opiates	EMIT	2000 ng/ml**	GC/MS	2000 ng/ml**
PCP (Phencyclidine)	EMIT	25 ng/ml**	GC/MS	25 ng/ml**
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
THC (Marijuana)	EMIT	50 ng/ml**	GC/MS	15 ng/ml**
Alcohol	EMIT	0.08 or 0.04% as required	GC/MS	0.08 or 0.04% as required

* All controlled substances including their metabolite components

** SAMHSA specified threshold

*** A sample reported positive contains the indicated drug at or above the cutoff level for that drug. A negative sample either contains no drug or contains a drug below the cutoff level. Testing levels may be changed to meet revised industry standards subject to mutual agreement.

EMIT – Enzyme immunoassay

GC/MS – Gas Chromatography/Mass Spectrometry

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ATTACHMENT 1(a)

**SUBSTANCE ABUSE PREVENTION AND DETECTION
THRESHOLD LEVELS FOR ON-SITE TEST**

CONTROLLED SUBSTANCE*	SCREENING METHOD	SCREENING LEVEL**	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml**	GC/MS	500 ng/ml**
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml**	GC/MS	150 ng/ml**
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Opiates	EMIT	2000 ng/ml**	GC/MS	2000 ng/ml**
PCP (Phencyclidine)	EMIT	25 ng/ml**	GC/MS	25 ng/ml**
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
THC (Marijuana)	EMIT	50 ng/ml**	GC/MS	15 ng/ml**
Alcohol	EMIT	0.08 or 0.04% as required	GC/MS	0.08 or 0.04% as required

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ATTACHMENT 2

**EMPLOYEE DRUG TEST
CONSENT/WAIVER FORM**

TO: (Name of Contractor/Employer) _____

FOR: (Project Name) _____

Name of Dispatched Worker/Employee: _____

Social Security Number: _____

Home Address: _____

City: _____ State: _____ Zip code: _____

Home Telephone: _____

Other phone numbers: Pager _____ Mobile _____

Consent for Testing

I (write your name) _____ understand that my Employer has determined that there is probable cause to believe that I have been working at the job site under the influence of alcohol or drugs. In response to this, my Employer requires that I provide a urine (or breathalyzer) sample as is allowed under the Project drug testing policy.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be subject to discipline including discharge from employment.

I hereby consent and agree to give specimens of my urine or to take the breathalyzer test. **My refusal to provide such a specimen or take such a test will lead to termination of my employment.**

All charges for these tests will be paid for by the Employer and not by me.

Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.

I have read, understand and agree to the above:

Witness

Date: _____

Signature Employee Signature

Date: _____

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ATTACHMENT 3

UNIFORM SUBSTANCE ABUSE PREVENTION POLICY NOTICE FORM

The TJPA Transbay Transit Center Program Substance Abuse Prevention Policy requires that:

- Use, possession or the sale of controlled substances at the Project site is prohibited. Employees engaged in the sale, purchase or use of illegal drugs during the employee's working hours will be subject to immediate termination, removed from the project and not be eligible for rehire.
- Conviction for selling illegal drugs, while employed on this Project, even if off the Project, will cause me to be barred from the Project and will subject me to discipline, including discharge.
- Use of prescribed or over-the-counter medication is permitted if it will not affect work performance.
- If prescribed or over-the-counter may cause a safety risk, I must notify my Contractor employer prior to using such substances on the job.
- If I refuse to submit to pre-employment screening/testing for controlled substances and alcohol as requested by the Contractor in accordance with the terms of the Program, I will not be eligible to retake the drug test for ninety (90) calendar days. I understand that nobody will be hired on the Project without taking and passing such a test.
- The presence of an adulterant in my system at or above the defined threshold levels will make me ineligible for employment, or will result in the termination of my employment and ineligibility for reemployment, for at least ninety (90) calendar days.
- I will not be hired if I fail the test because an illegal drug or alcohol is found in my system, and I will not be eligible to be employed for ninety (90) calendar days and unless I have participated successfully in a drug or alcohol rehabilitation program.
- I may be terminated for failing a drug or alcohol test, and I will be required to complete an approved counseling or rehabilitation program and to agree to periodic testing at that program's request in order to return to work.

I sign this acknowledgment voluntarily, with full knowledge and understanding of the TJPA Transbay Transit Center Program Substance Abuse Prevention Policy and I agree to be bound by its terms.

(Employee Name)

Print _____

Signature _____

Date _____

Contractor/Company Name _____

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ATTACHMENT 4

TJPA TRANSBAY TRANSIT CENTER PROGRAM
PRE-EMPLOYMENT DRUG TEST
CONSENT/WAIVER FORM

TO: (Name of Contractor/Employer) _____

FOR: (Project Name) _____

Name of Dispatched Worker/Employee: _____

Social Security Number: _____

Home Address: _____

City: _____ State: _____ Zip code: _____

Home Telephone: _____

Other phone numbers: Pager _____ Mobile _____

Consent for Testing

I (write your name) _____ understand that the TJPA Project to which I have been dispatched, or for which I am seeking employment, requires pre-employment drug and alcohol testing. The company to which I have been dispatched requires that I take and pass this test prior to commencing employment.

These tests will be used to detect the presence of alcohol, marijuana and/or other drugs in my body. I understand that if these drugs are found to be present in my body that I will be ineligible for employment on the Project and will not be able to take a new drug or alcohol test for ninety (90) days.

I hereby consent and agree to give specimens of my urine. **My refusal to provide such a specimen will prevent me from gaining employment on the Project for 90 days.**

All charges for these tests will be paid for by the Employer and not by me.

Waiver: The results of any test I am required to take may be furnished, in accordance with the terms of this policy, to the Medical Review Officer, the Substance Abuse Prevention Coordinator and my employer. The company may inform the Union that I failed the test only if a grievance is filed in my behalf.

I have read, understand and agree to the above:

Witness Signature

Date: _____

Prospective/Dispatched Worker

Date: _____

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ATTACHMENT 5

INCIDENT REPORT FORM

Employer _____

Employee Involved _____

Date of Incident _____ Time of Incident _____

Location of Incident _____

Employee's Job Assignment/Position _____

Has employee been notified of his/her right to Union representation? _____

Date/Time Notified _____

DATE

TIME

Employee's Initials _____

Witness to Incident _____

OBSERVATIONS _____

EMPLOYEE'S EXPLANATION _____

Action Recommended: _____

Action Taken _____

1. _____ 2. _____

Signature

Signature

Employer Representative

Union Representative (if present)

Title: _____ Title: _____

Date/Time/Action Taken: _____

1/431678