

STAFF REPORT FOR CALENDAR ITEM NO.: 12
FOR THE MEETING OF: June 14, 2012

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a Professional Services Agreement between the Transbay Joint Powers Authority (TJPA) and Cast Connex Corporation (CCC) to provide engineering and administrative services for architecturally exposed structural cast steel nodes on the Transbay Transit Center, for an amount of \$1,200,000 and a four year term, with an option to extend the term for an additional two years.

EXPLANATION:

Because of the intricate design of the new Transbay Transit Center, the TJPA needs to utilize the specialized services of a cast steel node engineering services firm. The Transbay Transit Center features a basket-like steel and glass design comprised of large-diameter hollow steel elements intersecting at several complex, heavily stressed, architecturally exposed node-type connections which may lend themselves to steel casting manufacturing. In general, the use of cast steel nodes provides the following advantages over the use of conventional, weld-fabricated connections in tubular steel structures:

- an improved aesthetic, as castings can provide sweeping transitional geometrics that are unattainable in weld-fabricated connections;
- simplified fabrication and enhanced connection stiffness, as weld-fabricated connections would likely require significant internal stiffening and, unlike castings, weld-fabricated connections cannot be internally tapered to increase stiffness and to reduce hot-spot stresses;
- improved site fit-up, as complex nodal geometry is “locked in” during the casting manufacturing process; and,
- simplification of the structural analysis of the overall building structure, as cast nodes can be made to be effectively rigid, unlike fabricated tube-to-tube connections which may be semi-rigid.

For these reasons, steel castings have been used in a number of similar structures constructed abroad and here in North America. Although the technical and aesthetic benefits of using cast steel nodes in tubular structures is clear, the manufacturing costs associated with producing steel castings of the size required for the Transbay Transit Center can vary, and cost is an important consideration in assessing the cost-benefit of the use of castings on this project.

The TJPA thus sought qualified firms with expertise in civil, structural, and other related professional engineering disciplines specific to architecturally exposed structural cast steel node shop drawing detailing in buildings and transit facilities and the administration of fabrication of cast steel nodes in buildings and transit facilities and their related infrastructure.

A Request for Proposals (RFP) was advertised on April 17, 2012. Notices advising potential proposers of the RFP were sent to 532 contacts. An optional pre-proposal conference call was held on April 19, 2012. Two potential proposers identified themselves during the call: CCC in Toronto, Ontario, Canada, and Pacific Steel Casting Company in Berkeley, California.

On May 7, 2012, the TJPA received one proposal in response to the RFP. Following the receipt of the single proposal from CCC, the TJPA reviewed its process to confirm that appropriate efforts were taken to promote full and open competition, in accordance with FTA Circular C 4220.1F. The work scope specified in the proposal was reviewed, and it was determined that it was not restrictive and promoted full and open competition. Pacific Steel Casting is a likely prospective bidder to provide the cast nodes themselves, and the firm providing these design services will be precluded from bidding on the cast node production in the structural steel package.

A selection committee of TJPA, CMGC, PMPC, and Construction Management Oversight representatives evaluated the CCC proposal and determined that it was responsive and that CCC was qualified to provide the services. The TJPA entered into negotiations with CCC on May 18, 2012. The negotiated agreement is for a lump sum value of \$1,200,000 over a four-year period, paid on a percent-complete basis.

The consultant will prepare a set of preliminary drawings and manufacturing specifications for the cast steel nodes which can then be used to secure realistic cost estimates for the supply of the castings. Through this phase of work, the design team should have all of the information necessary, with respect to the steel castings, to make an informed decision as to where cast nodes should be used in the project.

After the TJPA determines where to implement castings in the project, the preliminary casting designs must then be finalized, which involves finite element stress analysis of each of the geometrically unique nodes acting under a variety of load cases, and the refinement of each unique nodal design prior to the production of Issued for Construction casting drawings and specifications.

There are three specific phases of work, as follows:

Phase 1: Preparation of Bid Documents

- Provide preliminary shop drawings and 3-D models in the TJPA's required format for each type of cast steel node, in sufficient detail to secure competitive foundry bids for the manufacturing of the structural cast steel nodes, and to incorporate into the design team's finite element stress analysis model for structural adequacy.
- Provide detailed specifications for architecturally exposed structural cast steel nodes to supplement and revise existing structural steel specifications as necessary.
- Assess production capacity at potential foundries in conjunction with required delivery dates in order to develop a realistic schedule for cast node production.

Phase 2: Preparation of Final Manufacturing Documents

- Coordinate with selected foundries and steel fabricator on final designs and joint details.

- Produce 3-D model for every node and prepare final, production-level casting drawings.

Phase 3: Construction Administration

- Provide necessary coordination between all applicable Transit Center project architectural and engineering disciplines, steel fabricator, and foundries for the design and production of the cast steel nodes as required by the TJPA.
- Provide detailed design shop drawings sufficient to fabricate the cast steel nodes; provide manufacturing and production oversight, and inspection services as required by the TJPA.
- Participate in meetings as directed by the TJPA throughout the course of design and construction to address project team questions regarding the design and production of the cast steel nodes.

Schedule

Preparation of Bid Documents	6/14/12 to 8/29/12
Preparation of Final Manufacturing Documents	8/30/12 to 4/1/13
Construction Administration	8/30/12 to 6/13/16

If the structural steel subcontractor were to produce the cast node drawings, there could be a 6-12 month delay as that package is currently in the qualifications phase. Bringing the specialized consultant on board now relieves that potential delay. However, the contract may potentially be novated to the CM/GC for Phase 2 and 3 of the work. The CM/GC would in turn novate the agreement to the steel fabricator selected through the structural steel bid process, for more seamless construction coordination purposes. The agreement anticipates and accounts for this novation.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute a Professional Services Agreement with CCC for a lump sum value of \$1,200,000 to provide engineering and administrative services for architecturally exposed structural cast steel nodes for the Transbay Transit Center for a term not to exceed four years.

ENCLOSURES:

1. Resolution
2. Agreement No.12-01-CAST-000

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The TJPA issued a Request for Proposals on April 17, 2012, for professional engineering and administrative services for architecturally exposed structural cast steel nodes for the superstructure of the new Transbay Transit Center, and Cast Connex Corporation responded; and

WHEREAS, TJPA Staff negotiated a Professional Services Agreement with Cast Connex Corporation for a lump sum value of \$1,200,000 over a four-year period, commencing on the date of the TJPA's first issuance of notice-to-proceed; and

WHEREAS, As part of the agreement, Cast Connex Corporation agreed to perform engineering and administrative services for architecturally exposed structural cast steel nodes for the Transbay Transit Center; and

WHEREAS, Staff recommends that the TJPA Board of Directors approve the agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Professional Services Agreement with Cast Connex Corporation for a four-year term, and a lump sum value of \$1,200,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 14, 2012.

Secretary, Transbay Joint Powers Authority

AGREEMENT BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
CAST CONNEX CORPORATION
TO FURNISH
ENGINEERING AND ADMINISTRATIVE SERVICES
FOR
ARCHITECTURALLY EXPOSED STRUCTURAL CAST STEEL NODES
FOR
THE TRANSBAY TRANSIT CENTER PROGRAM
(Agreement No. 12-01-CAST-000)

CONTENTS

ARTICLE		PAGE
1	THE PROJECT	1
1.1	DESCRIPTION	1
1.2	NOT USED.....	2
1.3	SCHEDULE OF SERVICES.....	2
1.4	PROGRAM.....	3
2	DEFINITIONS	4
2.1	ADDITIONAL SERVICES.....	4
2.2	ADVISE.....	4
2.3	APPROPRIATE AUTHORITIES	4
2.4	AUTHORIZATION.....	4
2.5	BASIC SERVICES.....	5
2.6	CHIEF FINANCIAL OFFICER	5
2.7	CITY	5
2.8	CONSULTANT	5
2.9	CONSULTANT PROJECT PRINCIPAL-IN-CHARGE	5
2.10	CONTRACT DOCUMENTS	5
2.11	CONSTRUCTION DOCUMENTS.....	5
2.12	CONSTRUCTION MANAGER	6
2.13	CONSTRUCTION MANAGER/GENERAL CONTRACTOR.....	6
2.14	DRAWING SET AND DOCUMENTS.....	6
2.15	PROJECT MANAGER	7
2.16	REQUEST FOR PROPOSALS	7
2.17	SERVICES.....	7
2.18	STRUCTURAL STEEL FIXED BUDGET LIMIT	7
2.19	TJPA	7
2.20	TJPA CONSULTANTS	7
3	STANDARD OF PERFORMANCE	8
4	CONSULTANT'S SERVICES / GENERAL PROVISIONS.....	8
4.1	CONSULTING SERVICES	8
4.2	DESIGNATION OF KEY EMPLOYEES.....	9
4.3	COORDINATION OF DESIGN TEAM.....	9
4.4	COORDINATION WITH TJPA DURING PHASE 1	9

4.5	TJPA COST CHANGE CONTROL PROCEDURE DURING PHASE 1	10
4.6	COST ESTIMATING.....	11
4.7	CODE COMPLIANCE.....	11
4.8	MEETINGS WITH TJPA AND OTHERS.....	12
5	CONSULTANT’S SERVICES	12
6	NOT USED	12
7	ADDITIONAL SERVICES.....	12
8	COMPENSATION	13
8.1	BASIC SERVICES.....	13
8.2	ADDITIONAL SERVICES.....	14
8.3	REIMBURSABLE EXPENSES.....	14
8.4	PAYMENT SCHEDULE AND INVOICES	15
8.5	WITHHOLDING OF PAYMENT	17
8.6	DISALLOWANCE.....	17
8.7	PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK.....	17
9	TJPA’S RESPONSIBILITIES	18
9.1	APPROVALS	18
9.2	BIDS	18
9.3	BUILDING INSPECTORS	18
9.4	DEFICIENCIES.....	18
9.5	FEES	18
9.6	PROJECT DATA	18
9.7	PROJECT MANAGER	18
9.8	RESPOND TO SUBMITTALS	18
9.9	TESTS AND INSPECTIONS.....	19
10	DOCUMENTS AND OWNERSHIP OF DOCUMENTS.....	19
11	TERMINATION OF AGREEMENT	20
11.1	BY EITHER PARTY.....	20
11.2	BY TJPA.....	20
11.3	CONDITIONS OF TERMINATION	20
12	INSURANCE.....	21
12.1	COVERAGES	21
12.2	ENDORSEMENTS	22
12.3	CERTIFICATES OF INSURANCE.....	22

12.4	OTHER COVERAGES	23
13	INDEMNIFICATION	23
13.1	GENERALLY	23
13.2	LIMITATIONS.....	23
13.3	COPYRIGHT INFRINGEMENT.....	24
14	MODIFICATIONS	24
15	INDEPENDENT CONSULTANT.....	24
16	AUDIT AND INSPECTION OF RECORDS	24
17	SUBCONSULTANTS.....	25
18	TAXES	25
19	PROPRIETARY INFORMATION OF THE TJPA.....	26
20	ADMINISTRATIVE REMEDY FOR DISPUTES	26
21	SEVERABILITY	27
22	ENTIRE AGREEMENT	27
23	NOTICES	27
24	GUARANTEED MAXIMUM COSTS.....	27
25	LIABILITY OF THE TJPA	28
26	QUALIFIED PERSONNEL	28
27	RESPONSIBILITY FOR EQUIPMENT.....	29
28	OWNERSHIP OF EQUIPMENT	29
29	ASSIGNMENT BY CONSULTANT	29
30	SUCCESSORS AND ASSIGNS.....	29
31	NON-WAIVER OF RIGHTS	30
32	COMPLIANCE WITH LAWS.....	30
33	COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT	30
34	AGREEMENT MADE IN CALIFORNIA; VENUE.....	30
35	SUBMITTING FALSE CLAIMS.....	30
36	INCIDENTAL AND CONSEQUENTIAL DAMAGES.....	31

37	OTHER AGREEMENTS BETWEEN THE TJPA AND THE CONSULTANT	31
38	WORKS FOR HIRE.....	31
39	CONSTRUCTION.....	32
40	SOLE BENEFIT	32
41	NONDISCRIMINATION	32
	41.1 CONSULTANT SHALL NOT DISCRIMINATE	32
	41.2 SUBCONTRACTS.....	32
	41.3 NONDISCRIMINATION IN BENEFITS.....	33
	41.4 CONDITION TO CONTRACT	33
	41.5 INCORPORATION OF ADMINISTRATIVE CODE PROVISIONS BY REFERENCE.....	33
42	DISADVANTAGED BUSINESS ENTERPRISE	34
43	REQUIRING MINIMUM COMPENSATION FOR EMPLOYEES	34
44	REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES.....	38
45	FIRST SOURCE HIRING PROGRAM.....	39
46	MACBRIDE PRINCIPLES—NORTHERN IRELAND.....	41
47	DRUG-FREE WORKPLACE POLICY.....	41
48	SUNSHINE ORDINANCE	41
49	NONDISCLOSURE OF PRIVATE INFORMATION	42
50	LIMITATIONS ON CONTRIBUTIONS.....	43
51	PROHIBITING USE OF TJPA FUNDS FOR POLITICAL ACTIVITY.....	43
52	RESOURCE CONSERVATION.....	44
53	TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN	44
54	PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC	44
55	GRAFFITI REMOVAL	44
56	USDOT REQUIREMENTS.....	45
57	PROMPT PAYMENT TO SUBCONSULTANTS.....	45
58	CERTIFICATION OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION	46
59	EFFECTIVE DATE OF THE AGREEMENT	47

60 QUALITY MANAGEMENT SYSTEM 47

61 INTERN MENTORING PROGRAM 47

PROFESSIONAL SERVICES AGREEMENT 1

APPENDIX A 1

SERVICES 1

APPENDIXES

A. SERVICES

B. FEES

C. KEY EMPLOYEES AND CONSULTANTS

D. USDOT REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS

AGREEMENT BETWEEN
THE TRANSBAY JOINT POWERS AUTHORITY
AND
CAST CONNEX CORPORATION (“AGREEMENT”)

THIS AGREEMENT is made and entered into by and between the Transbay Joint Powers Authority (the “TJPA”), a public entity, and Cast Connex Corporation (the “CONSULTANT”).

WHEREAS, the TJPA desires that the CONSULTANT render professional services in connection with the engineering and fabrication administration for architecturally exposed structural cast steel nodes (“Nodes”) for the Transbay Transit Center Project; and

WHEREAS, the CONSULTANT represents that it possesses the requisite professional expertise, experience and resources to render said services in accordance with the terms of this Agreement; and

WHEREAS, TJPA and CONSULTANT intend that this Agreement comply with the regulations of the United States Department of Transportation (“USDOT”); and

WHEREAS, on June 14, 2012, the TJPA Board of Directors (the “Board”) adopted Resolution No. _____, which authorized the Executive Director to execute this Agreement.

NOW, THEREFORE, the TJPA and the CONSULTANT agree as follows:

1 THE PROJECT

1.1 DESCRIPTION

The TJPA does hereby engage the CONSULTANT to perform, under the terms and conditions in this Agreement, professional engineering and fabrication administrative services for the Nodes as specified in Appendix A (“Basic Services”) for the Transbay Transit Center Project (the “Project”). Requirements governing the CONSULTANT’s provision of Services are set forth in Request for Proposals No. 12-01, Architecturally Exposed Structural Cast Steel Nodes Engineering and Administrative Services, incorporated by reference as if attached here in full, to the extent not inconsistent with this Agreement.

1.1.1 AGREEMENT – NOVATION

As described more fully in Appendix A, CONSULTANT will develop specifications, prepare bid documents and provide bid assistance to TJPA related to the fabrication and supply of the Nodes. Upon completion of Phase 1, it is anticipated that this Agreement will be novated to the Project CM/GC, and subsequently to a selected fabricator, for CONSULTANT's performance of Phase 2 and Phase 3 of its Services, as such phases are described more fully in Appendix A.

CONSULTANT agrees that TJPA may novate this Agreement to the Project CM/GC and that, in turn, the CM/GC may novate the Agreement to any fabricator selected for the Nodes. Notwithstanding any novation, CONSULTANT's duties and obligations to TJPA under this Agreement shall survive and continue as to Services provided prior to any novation by TJPA.

- 1.1.1.1 In the event of a novation, the parties to whom the novation is made shall be substituted to the rights and obligations of TJPA for the Services to be rendered after the Agreement is novated.

1.2 NOT USED

1.3 SCHEDULE OF SERVICES

- 1.3.1 Time is of the essence with this Agreement with respect to the CONSULTANT's performance of its Services and with respect to all Project schedules in which a definite time for performance by the CONSULTANT is specified. The parties acknowledge that delay is one of the greatest causes of waste and increased expense in any construction project. The CONSULTANT shall act diligently in anticipating and performing its services in a manner so as to not delay the prosecution of any services or work with respect to the Project.

- 1.3.2 The term of this Agreement shall be four (4) years following the Effective Date of the Agreement. The Effective Date shall be when the Chief Financial Officer has certified the availability of funds for the first notice to proceed (NTP), and CONSULTANT has been notified in writing to begin Services via an NTP. The

TJPA may extend the term of this Agreement by not more than two (2) years upon the written mutual agreement of the parties. Included within Appendix A is a schedule for the Basic Services indicating the times and sequences required for the completion of the Basic Services. This schedule may be revised in TJPA's reasonable discretion. Within fifteen (15) days of the CONSULTANT's receipt of an NTP from the TJPA, the CONSULTANT shall submit for TJPA approval a progress Schedule for its Services consistent with Appendix A. The Schedule for Services shall be in the form of a progress Gantt (schedule bar) chart indicating phases, tasks, durations and times, and sequences of key activities, and TJPA and other required reviews and approvals as related to the services in this Agreement, but excluding detailed construction schedules. Upon approval of the Schedule for Services by the TJPA, the CONSULTANT shall be bound by the schedule as a baseline schedule, and on a monthly basis submit an updated Schedule for Services and performance report with its invoice indicating actual progress compared to the baseline Schedule for Services.

1.3.3 Should the CONSULTANT be required to perform Services beyond the Schedule for Services, due to no fault of the CONSULTANT, the CONSULTANT will be entitled to compensation for additional costs incurred but will be obligated to provide complete and accurate documentation of all actual increased cost of performance of the Services. In the event that the construction is delayed beyond the scheduled completion date due to the fault of the CONSULTANT, as determined by the TJPA in its sole discretion, then the CONSULTANT shall continue to provide Services in accordance with this Agreement through the actual completion of construction at no additional charge to the TJPA; CONSULTANT may submit any disputed amounts as a claim.

1.3.4 The CONSULTANT shall receive written authorization from the TJPA prior to proceeding with each Phase described in Appendix A.

1.4 PROGRAM

The Transbay Transit Center Program is comprised of two large projects: (1) the Transit Center Project comprises the Transbay Transit Center building, Temporary Terminal, Bus Storage facility, Bus Ramps, and auxiliary features; (2) the Downtown Rail Extension (DTX) Project

comprises the extension of Caltrain through a tunnel from the existing terminus at Fourth and King streets into the lower level of Transbay Transit Center. The Transbay Transit Center Program is generally described and set forth in the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/ Environmental Impact Report dated March 2004, which is incorporated here by reference as if fully set forth. The Transbay Transit Center Program is described in a series of documents prepared by the TJPA. It is the responsibility of the CONSULTANT to request, review, and incorporate requirements for the Project that may be established in such referenced documents.

2 DEFINITIONS

For all purposes of this Agreement, the following definitions shall apply:

2.1 ADDITIONAL SERVICES

shall mean the services that the TJPA, in writing, authorizes the CONSULTANT to perform which are in addition to the services included within its Basic Services, as specified in Appendix A.

2.2 ADVISE

shall mean “make recommendations to.”

2.3 APPROPRIATE AUTHORITIES

shall mean any private, local, municipal, county, state, regional or federal authority or agency having jurisdiction of any kind over the Project. This term is intended to include those agencies and authorities that may require information or the filing of plans, specifications, etc., in connection with the Project on either a voluntary or non-voluntary basis. This term includes, but is not limited to, the San Francisco Department of Public Works, the San Francisco Municipal Transportation Agency, the San Francisco Department of Building Inspection, any of the transit agencies operating or planning to operate at the Transbay Transit Center, and other entities as the TJPA may direct.

2.4 AUTHORIZATION

shall be the direction of the TJPA properly executed by the Executive Director or designee of the TJPA and certified by the Chief Financial Officer of the TJPA for the specific funding of this Agreement or any modification thereof and other written approvals by the TJPA. If this Agreement is novated, an authorization for

unperformed Services shall come from the party to whom the Agreement has been novated.

2.5 BASIC SERVICES

shall mean the Services described in Appendix A that the CONSULTANT is required to provide for the Lump Sum Fee set forth in Appendix B, including all incidental and auxiliary services necessary to provide the specified deliverables.

2.6 CHIEF FINANCIAL OFFICER

shall mean the Chief Financial Officer of the TJPA.

2.7 CITY

shall mean the City and County of San Francisco, a municipal corporation, within whose jurisdiction the Project resides.

2.8 CONSULTANT

shall mean Cast Connex Corporation serving as the Prime Consultant under contract with the TJPA for the Nodes engineering and administration professional services.

2.9 CONSULTANT PROJECT PRINCIPAL-IN-CHARGE

shall mean the CONSULTANT's project manager, empowered by the CONSULTANT to represent and make decisions and commit the resources of its entire consultant team, whose responsibility is to direct, coordinate and control the entire team in its efforts to successfully prepare and complete the Services described herein, regardless of any other key persons provided.

2.10 CONTRACT DOCUMENTS

shall include the Project construction contract and all documents designated in the construction contract as part of the construction contract, including working drawings (plans), specifications, addenda, general conditions and special and/or supplementary general conditions of the contract.

2.11 CONSTRUCTION DOCUMENTS

shall include working drawings including CONSULTANT's shop drawings, specifications, general conditions and special and/or supplementary general conditions, information for bidders, accepted bid proposals, and addenda

developed to set forth in detail all aspects of the design, function and construction of the Project.

2.12 CONSTRUCTION MANAGER

shall mean the Construction Manager retained directly by the TJPA for the purpose of assisting the TJPA in the areas of oversight and management of the Construction Manager/General Contractor, estimating value engineering and negotiating changes to the contract, bidding of contracts, field inspection, and the like, or TJPA forces designated to provide these services.

2.13 CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)

shall mean the prime construction general contractor retained by the TJPA to provide pre-construction services, to bid trade work, and to perform, coordinate, and oversee construction of the Project.

2.14 DRAWING SET AND DOCUMENTS

shall mean the required submission of shop drawings and specifications by the CONSULTANT to the TJPA. The CONSULTANT shall provide ten (10) full size and ten (10) half size plotted or printed sets of drawings, and one (1) reproducible set of drawings and specifications as well as ten (10) copies of CADD files, reports, schedules and other written documents on compact disc.

2.14.1 CADD drawings shall be provided in AutoCAD R2004 or more recent version as determined by the TJPA, and corresponding pen files and image files, or other computer drawing and drafting software approved by the TJPA.

2.14.2 Written documents, spreadsheets and cost estimates shall be provided in Microsoft Office Suite 2007 (Word and Excel).

2.14.3 Schedules shall be provided in Microsoft Project 2007.

2.14.4 Audiovisual presentations shall be provided in Microsoft PowerPoint 2007.

2.14.5 Image files shall be provided in their original size in JPG, GIF, PIC, TIF, or BMP format. These images shall be made available on any storage format selected by the TJPA.

2.14.6 Renderings shall be provided in Adobe Photoshop 7.0 and 3D Studio VIZ, or other software approved by the TJPA.

2.14.7 Presentation boards shall be mounted on 3/8-inch or 1/4-inch Gatorboard.

2.15 PROJECT MANAGER

shall mean the TJPA personnel or consultant project manager designated by the TJPA Executive Director to represent the TJPA in all matters pertaining to the Project.

2.16 REQUEST FOR PROPOSALS

shall mean the TJPA's request for proposals (RFP) for professional design-related services for this Project. All requirements of the RFP and the representations made in the CONSULTANT's responsive proposal that are not in conflict with provisions of this contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the proposal's representatives, this Agreement shall control except where the RFP or the responsive proposal's representatives impose greater obligations on CONSULTANT.

2.17 SERVICES

shall mean all of the Basic Services required to be provided by the CONSULTANT and such Additional Services as may be authorized as provided herein.

2.18 STRUCTURAL STEEL FIXED BUDGET LIMIT

shall mean the TJPA's budget for bid and award of all structural steel for the complete construction of the Project, including the cost of the Services.

2.19 TJPA

shall mean the Transbay Joint Powers Authority or its designee.

2.20 TJPA CONSULTANTS

are consultants under direct contract with the TJPA such as program managers, construction managers, consultants and engineers, and financial, legal, community relations, and other consultants. Communication by the CONSULTANT with TJPA Consultants shall be through the Project Manager only, unless CONSULTANT is authorized by the TJPA to do otherwise. When authorized by the TJPA to make such direct communication, the TJPA Project Manager shall be copied promptly on all such communication. If such authorized communication is

oral, then the CONSULTANT shall provide the TJPA with written confirmation of the same.

3 STANDARD OF PERFORMANCE

The CONSULTANT's obligation is to perform all of its Services in accordance with generally accepted standards of professional practice related to the design and construction administration of projects of similar size and complexity in the San Francisco Bay Area and with the TJPA's established Quality Management System (Article 60).

4 CONSULTANT'S SERVICES / GENERAL PROVISIONS

As part of its Services, the CONSULTANT shall perform and provide, in addition to what is explicitly required by Appendix A or any authorization for Additional Services, such incidental or auxiliary services as necessary for the proper provision of the CONSULTANT's deliverables and the complete and comprehensive design of the Project.

4.1 CONSULTING SERVICES

Without limitation to the Basic Services described in Appendix A, the CONSULTANT shall provide the following consulting services as part its Basic Services under this Agreement:

- 4.1.1 Consult with authorized employees, agents and/or representatives and consultants of the TJPA relative to the design, scheduling, bidding, award, supply of structural steel and construction of the Project.
- 4.1.2 Provide consultation and advice to the TJPA as to the necessity and manner of providing or obtaining services related to the structure.
- 4.1.3 Review Project design documents furnished to the CONSULTANT and advise the TJPA whether such design documents are sufficient for purposes of developing the Drawing Set and Documents and whether additional data is necessary before the CONSULTANT can proceed.
- 4.1.4 Contract for or employ, at CONSULTANT's expense within the Basic Services fee, CONSULTANT's employees and CONSULTANT's consultants as may be necessary or required including, but not limited to, mechanical, civil, electrical, plumbing and/or structural engineers; cost estimator; and other special designers and services as may be necessary for a completed Drawing Set and Documents for the fabrication of the Nodes; all parties shall be licensed by the State of California

if so required. The CONSULTANT shall submit for approval by the TJPA any changes in the subconsultants listed in Appendix C.

4.2 DESIGNATION OF KEY EMPLOYEES

The CONSULTANT shall provide as Key Employees a Consultant Project Principal-in-Charge as Project Manager and qualified professional executive staff in structural steel connection design and engineering, seismic design and engineering, structural steel fabrication, structural and architectural coordination, specifications and compliance, and 3-D modeling and design. The Key Employees of the CONSULTANT who shall, so long as their respective performances continue to be acceptable to the TJPA, remain in charge of the CONSULTANT services for the Project. Any changes in assignment or replacement of the CONSULTANT's Key Employees or of any other of the CONSULTANT's consultants listed in Appendix C, whether as a result of death, disability, termination of employment or otherwise, may be done only with the prior written consent of the TJPA, which consent may be given or withheld in the sole, subjective (but not arbitrary) discretion of the TJPA.

4.3 COORDINATION OF DESIGN TEAM

The CONSULTANT shall coordinate its work with the work of all TJPA consultants and suppliers to produce comprehensive, complete, and coordinated shop drawings and specifications for the fabrication of the Nodes for the Project.

4.4 COORDINATION WITH TJPA DURING PHASE 1

4.4.1 During Phase 1, the CONSULTANT and key members of its design team shall meet regularly with the Project Manager, TJPA staff and consultants, CM/GC, and others as directed and determined by the Project Manager at reasonable frequencies so as to keep the design and bidding on the desired track and schedule. The design team includes the CONSULTANT's Key Employees and consultants assigned to work on this Project as described in Article 4.2 of this Agreement.

4.4.2 The CONSULTANT shall use the Constructware software employed by the TJPA, and fully participate in the TJPA's effort to develop for this Project electronic files of all correspondence with related attachments. The TJPA will provide the software license and train the CONSULTANT in use of the software.

4.4.3 The CONSULTANT shall assist the TJPA Project Manager in developing Requests for Qualifications and Invitations for Bid from contractors that may need to be retained by the CONSULTANT or TJPA during the course of the Project.

4.4.4 The CONSULTANT shall cooperate and coordinate its work with the CM/GC and the other members of the Project design team. The TJPA's retention of the CM/GC is solely for the TJPA's benefit and shall not operate to reduce the CONSULTANT's responsibilities hereunder. Communication by the CONSULTANT with the CM/GC may be direct. However, with respect to any written communication, the TJPA shall promptly be copied; with respect to any oral communication, the TJPA shall promptly receive confirmation in writing. In no event shall the CONSULTANT issue any communication directing changes that impact time, cost or quality (including, but not limited to, substitutions) for the Project without express written authorization from the TJPA.

4.5 TJPA COST CHANGE CONTROL PROCEDURE DURING PHASE 1

4.5.1 The CONSULTANT shall cooperate with the TJPA to control changes that would affect the cost of the Project during the design, bid or construction phases of the Project. During Phase 1, the CONSULTANT shall comply with a cost change control procedure as established by the TJPA for the Project. The purposes of the procedure are:

- (a) To assure that the TJPA requirements for the Project are met,
- (b) To assure that estimated construction costs are understood as the design is developed, and remain within the TJPA Structural Steel Fixed Budget Limit,
- (c) To assure that all proposed changes to the design properly analyze cost effects,
- (d) To avoid unnecessary redesign work, and
- (e) To avoid unnecessary additional costs to the TJPA.

4.5.2 The CONSULTANT shall fully inform the TJPA of any proposed changes to its deliverables recommended by the CONSULTANT, or to the scope of the Project requested by the TJPA or other stakeholders, that would affect the estimated (added or decreased) construction cost for the Project. The CONSULTANT shall review with the TJPA the benefits as well as costs of the proposed changes, including the potential effect to TJPA operating costs for the Project. The CONSULTANT shall complete a Design Change Request Form provided by the TJPA providing a summary of the proposed change, and attach such other analyses as may be appropriate for TJPA consideration. Should the recommended change

increase the estimated cost of the Project, the CONSULTANT shall cooperate with the TJPA to identify other changes to the Project that could reduce cost and offset the recommended increased cost, for approval by the TJPA.

- 4.5.3 No change shall be incorporated into the CONSULTANT's deliverables unless it has been first approved by the TJPA as documented by a completed and signed Design Change Request Form.
- 4.5.4 The CONSULTANT shall maintain a Change Log of all recommended, pending, approved, and incorporated changes, and submit the Change Log to the TJPA monthly throughout Phase 1.
- 4.5.5 TJPA approval of any change shall not entitle the CONSULTANT to a change in CONSULTANT's compensation, unless approved in writing by the TJPA.

4.6 COST ESTIMATING

- 4.6.1 As part of its performance related to the Drawing Set and Documents, the TJPA or its designee may request the CONSULTANT to provide estimating Services relating to the design, fabrication and construction costs for the Nodes to the responsible party developing the Probable Opinion of Construction Cost (cost estimate). The cost estimating shall be prepared following ASTM UNIFORMAT II standards, broken down to UNIFORMAT Level III. It shall contain a quantity take-off and unit pricing, consistent with the level of design completion, together with a statement of assumptions regarding design contingencies and exclusions.
- 4.6.2 During the process of Phase 1, the CONSULTANT shall update the cost estimate relating to the Nodes, changing the format to the CSI/MASTERFORMAT 2004, and according to the CSI 50 Division classifications.
- 4.6.3 The CONSULTANT shall prepare a new final estimate for producing all Nodes based on the 100% complete Construction Documents issued for bidding, and considering the Structural Steel Fixed Budget Limit for the Project.

4.7 CODE COMPLIANCE

The CONSULTANT shall comply with requirements of all applicable statutes, codes, regulations, and current written interpretation thereof published and in effect during the CONSULTANT's Services. In the event of changes in such statutes, codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably

anticipated by the CONSULTANT and which result in a substantive change to the Construction Documents, the CONSULTANT shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. The CONSULTANT shall be responsible, however, to identify, analyze and report to the TJPA pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code to adopt provisions of the International Building Code and other amendments.

4.8 MEETINGS WITH TJPA AND OTHERS

As requested, the CONSULTANT shall attend meetings concerning the Project with the TJPA Board and staff, and others as requested, including the following:

- 4.8.1 TJPA Board and staff of the TJPA: The purpose of these meetings will be to assist the Project Manager to present design concepts, solicit comments and answer questions, and report on the progress of the Project.
- 4.8.2 Department of Building Inspection: Attend meetings to coordinate and obtain comments and approvals.
- 4.8.3 Partnering: If implemented at the discretion of the TJPA, meet as reasonably required by the partnering program developed by the TJPA through the design and construction phases.
- 4.8.4 State Authorities: Attend meetings to review design issues, receive and respond to comments, obtain approvals as required.

5 CONSULTANT'S SERVICES

Upon execution of the Agreement, the TJPA will issue a separate NTP authorizing the CONSULTANT to perform each phase of the Basic Services specified in Appendix A for the Project.

6 NOT USED

7 ADDITIONAL SERVICES

As defined in Article 2.1 above, Additional Services are services not specified or required in the Agreement as Basic Services. The TJPA shall not compensate the CONSULTANT for any Additional Services without providing prior written authorization. The written authorization to

perform Additional Services must include a statement describing the services as Additional Services. In the event the TJPA believes certain services to be part of Basic Services which the CONSULTANT contends are Additional Services, the CONSULTANT shall not perform such services until (a) the CONSULTANT provides the TJPA with written notice of the contention with factual support and (b) the TJPA then instructs the CONSULTANT in writing to proceed, in which case the issue with respect to whether the services are Additional Services shall be determined pursuant to the terms of this Agreement.

8 COMPENSATION

8.1 BASIC SERVICES

8.1.1 The CONSULTANT shall be compensated the Lump Sum fee amount of \$1.2 million for the Basic Services as defined in Appendix A. As Basic Services are performed, CONSULTANT shall be compensated on a percentage of completion basis and shall not exceed the maximum fee amount set forth in the NTP for each Phase of Services. CONSULTANT's monthly progress payment invoice shall include an updated Schedule of Services and performance report covering the invoiced period of performance. In no event shall the total compensation under this Agreement exceed One Million Two Hundred Thousand United States Dollars, (USD\$1,200,000.00) for the CONSULTANT's Basic Services. The breakdown of the CONSULTANT's fees appears in Appendix B, Fees.

8.1.2 In no event shall the TJPA be liable for interest or late charges for any late payments.

8.1.3 The TJPA's payment obligation hereunder shall not at any time exceed the amount certified by the Chief Financial Officer for the purpose and period stated in such certification, or the maximum price set forth in an NTP with respect to the work covered under that NTP for any given Phase of Services.

8.1.4 Except as may be provided by laws governing emergency procedures, officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the CONSULTANT for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 5, unless the changed scope is authorized by written amendment and approved as required by law.

8.1.5 Officers and employees of the TJPA are not authorized to offer or promise, nor is the TJPA required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract or NTP is certified without certification of the additional amount by the Chief Financial Officer.

8.1.6 The Chief Financial Officer is not authorized to make payments on any contract or NTP for which funds have not been certified as available in the budget or by supplemental appropriation.

8.2 ADDITIONAL SERVICES

As defined in Article 2.1 above, Additional Services are services not specified or required in the Agreement as Basic Services. The CONSULTANT shall be compensated for Additional Services at the rates specified in Appendix B. The TJPA shall not compensate the CONSULTANT for Additional Services unless such services are authorized in writing prior to the performance by the CONSULTANT. The CONSULTANT shall monitor and separately account for TJPA-approved Additional Services.

8.3 REIMBURSABLE EXPENSES

8.3.1 Only the actual costs incurred by the CONSULTANT shall be allowed and invoiced as Reimbursable Expenses. The CONSULTANT shall not be entitled to payment of any Reimbursable Expenses without prior written authorization from the TJPA. There shall be no mark-ups of any kind allowed on costs reimbursed under Article 8.3.

8.3.2 Reimbursable Expenses shall include reproduction costs beyond those required under Articles 4 and 5 of this Agreement.

8.3.3 Renderings, computer-animated presentations and presentation models requested and approved in writing in advance by the TJPA required under Articles 4 and 5 of this Agreement are considered a part of the Basic Services Fee and are not Reimbursable Expenses.

8.3.4 The following items are considered normal project costs, a part of the Basic Services Fee, and are not Reimbursable Expenses:

(a) phone calls, faxes, mail, express mail, courier delivery or overnight delivery service charges, or other communications charges between members of the CONSULTANT's design team, regardless of location; regional phone calls and

faxes for all area codes having any geographical land area within 100 miles of San Francisco even though its outlying boundary exceeds the 100 mile limitation; (b) Internet gateways, FTP sites or data file transfer or research services; (c) travel of any kind; (d) in-house coordination materials among the CONSULTANT's team and subconsultants, including photocopy and drawing materials, messenger services; (e) presentation material, reproductions, as required by Articles 4 and 5 of this Agreement, all CADD and other computer-related time and expenses in support of those items specifically listed in Articles 4 and 5 of this Agreement; and (f) food and beverage charges of any kind unless approved in writing in advance by the TJPA. Entertainment charges are not allowed under any circumstances.

8.4 PAYMENT SCHEDULE AND INVOICES

- 8.4.1 As Services are performed, the CONSULTANT will submit invoices based upon a percentage of completion no more than once each month for both Basic Services and Additional Services authorized by the TJPA. Each invoice shall include an updated Schedule of Services, progress report and Small Business Enterprises (SBE)/Disadvantaged Business Enterprise (DBE) Progress Payment Report in the form provided by the TJPA. Invoices submitted without the updated schedule, progress report and SBE/DBE progress payment report will not be processed for payment by the TJPA.
- 8.4.2 All invoices submitted to the TJPA for Services performed under this Agreement shall identify the percentage of completion of the phased work and the amount of payment for each major work element, and shall be in accordance with the TJPA-approved Form of Invoice.
- 8.4.3 For Additional Services, the CONSULTANT shall furnish copies of timesheets for its personnel and invoices submitted by subconsultants to substantiate billings together with the percentage and cost of work completed by any DBE and SBE subconsultants. Hourly work shall be invoiced by number of hours worked multiplied by the billing rate identified in Appendix B.
- 8.4.4 The CONSULTANT shall receive compensation for only those Additional Services authorized in writing by the TJPA in advance of the CONSULTANT's performance of the work, and in accordance with the rate schedule in Appendix B.

- 8.4.5 CONSULTANT represents that the hourly rates in Appendix B are the best rates given to any client of the CONSULTANT under similar circumstances. CONSULTANT may adjust such hourly rates on an annual basis in accordance with the United States Cost and Pricing Index, subject to the consent of TJPA.
- 8.4.6 There shall be no mark-ups by the CONSULTANT for the cost of professional consultants retained by the CONSULTANT in the performance of its Services. No mark-ups of any kind shall be allowed for Reimbursable Expenses as defined in this Agreement, invoiced by or to the CONSULTANT that were incurred for either Basic Services or Additional Services.
- 8.4.7 Alternatively, a lump sum or guaranteed maximum fee for Additional Services may be authorized by the TJPA prior to commencement of work on these services.
- 8.4.8 If during the course of construction, the TJPA determines at its sole discretion that modifications to Construction Documents or Contract Documents are required due to errors or omissions on the part of the CONSULTANT or its subconsultants, the CONSULTANT shall not be entitled to additional compensation for the cost of developing, correcting, preparing or reproducing the necessary revised deliverables, nor shall the CONSULTANT be compensated for the cost of extra design work made necessary by errors or omissions of the CONSULTANT or its subconsultants.
- 8.4.9 No deductions shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages or other sums withheld from payments to the CONSULTANT on account of costs, delays or damages other than those for which the CONSULTANT has caused or for which it is responsible.
- 8.4.10 Payments of authorized Reimbursable Expenses shall be made monthly upon presentation by the CONSULTANT of an itemized statement of actual expenses incurred with a detailed cost breakout and supporting invoices and copies of original receipts.
- 8.4.11 Subject to the provisions of Article 11.3.1. below, if the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the CONSULTANT shall be compensated for services satisfactorily performed prior to receipt of written notice from the TJPA of such suspension or abandonment. If

the Project is resumed after being suspended for more than one hundred eighty (180) days, the CONSULTANT's compensation for the remainder of the Services to be provided for the Project shall be subject to renegotiation with the intent of providing an equitable adjustment.

8.4.12 The TJPA shall make payment to the CONSULTANT at the following address:

Cast Connex Corporation
203 College Street, Suite 301A
Toronto, Ontario Canada M5T-1P9

The TJPA shall make a good faith effort to pay undisputed amounts within 45 days of receiving a proper invoice from the CONSULTANT. However, in no event shall the TJPA be liable for interest or late charges for any late payments.

8.5 WITHHOLDING OF PAYMENT

The TJPA may reasonably withhold payment to the CONSULTANT, pending resolution, in an amount equal to questioned, disputed or disapproved amounts or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the TJPA in connection with the CONSULTANT's negligent errors, or omissions or breaches of this Agreement. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed. The TJPA shall endeavor to issue payments of undisputed amounts to the CONSULTANT within forty-five (45) days following the receipt of complete and accurate invoices.

8.6 DISALLOWANCE

In the event the CONSULTANT claims or receives payment from the TJPA for a service, including progress payment, reimbursement for which is later disallowed by the TJPA, the CONSULTANT shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to the CONSULTANT.

8.7 PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The issuance of any payment by the TJPA, or the receipt thereof by the CONSULTANT, shall in no way lessen the liability of the CONSULTANT to correct unsatisfactory work although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made.

9 TJPA'S RESPONSIBILITIES

The TJPA shall:

9.1 APPROVALS

Obtain approvals from Appropriate Authorities, as defined herein, with the assistance of the CONSULTANT, and promptly render decisions, when appropriate.

9.2 BIDS

Advertise and receive bids for the construction of the Project either directly or through the Project CM/GC.

9.3 BUILDING INSPECTORS

Provide building inspectors for the construction phase.

9.4 DEFICIENCIES

Promptly notify the CONSULTANT in writing of known deficiencies in materials or workmanship discovered within eleven (11) months from submission of the final punch list.

9.5 FEES

Pay all fees required to secure building permits.

9.6 PROJECT DATA

Furnish any reasonably requested project data to the CONSULTANT, at the TJPA's expense. CONSULTANT shall be entitled to rely upon the accuracy and completeness of the provided data, except that CONSULTANT may not rely upon and must question in writing to the TJPA any information that appears incorrect based upon CONSULTANT's experience, expertise or knowledge of the Project.

9.7 PROJECT MANAGER

Designate a Project Manager who shall coordinate his or her duties with the CONSULTANT as provided herein.

9.8 RESPOND TO SUBMITTALS

Review and respond in writing within ten (10) working days of submittals by the CONSULTANT.

9.9 TESTS AND INSPECTIONS

Furnish tests and inspections as required during the fabrication and construction phase for structural, mechanical, chemical and other laboratory tests, inspections, special inspections and reports specified by the CONSULTANT in the Construction Documents.

10 DOCUMENTS AND OWNERSHIP OF DOCUMENTS

- 10.1 All documents, electronic, written or graphic, including Drawing Sets, CADD files and other computer files prepared by the CONSULTANT shall be made and remain the property of the TJPA, including all intellectual property rights to all documents, provided, however, that the CONSULTANT shall be entitled to one reproducible copy thereof and CADD files, made at the CONSULTANT's expense. As part of its Services, CONSULTANT shall provide the TJPA with one licensed copy of software that will allow the TJPA to view the electronic CADD files prepared by the CONSULTANT or its subconsultants. Additionally, the CONSULTANT shall provide technical specifications for any computer hardware required to use the provided software and files.
- 10.2 All presentation drawings, models, films and videos, simulations or other presentation materials shall be and remain the property of the TJPA.
- 10.3 Should the TJPA or any other person, firm or legal entity under the authority and control of the TJPA, without the CONSULTANT's participation, use, reuse, or modify the CONSULTANT's drawings, specifications or other documents prepared under this Agreement, the TJPA agrees to notify the CONSULTANT of said intended use. The CONSULTANT shall not be responsible for any loss, costs or expenses incurred by any party arising out of such use, reuse or modification of the CONSULTANT's drawings, specifications, and other documents.
- 10.4 The TJPA acknowledges that in using magnetic media data may be lost in translation from one format to another, or that electronic data may be altered, whether inadvertently or otherwise, and that there is a risk that errors or omissions may appear in any subsequent output as a result of software/hardware failure.

11 TERMINATION OF AGREEMENT

11.1 BY EITHER PARTY

Either party may terminate this Agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (a) not fewer than ten (10) calendar days' written notice (delivery by certified mail, return receipt requested) of its intent to terminate; and (b) an opportunity for consultation and to rectify failures of obligations within thirty (30) days of consultation with the terminating party before termination becomes effective.

11.2 BY TJPA

The TJPA may terminate this Agreement, in whole or in part, in writing, for its sole convenience (including without limitation for legal or financial reasons, changes in the work or program requirements, etc.) and the CONSULTANT is given (a) ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of the TJPA's intent to terminate; and (b) an opportunity for consultation with the TJPA before termination becomes effective.

11.3 CONDITIONS OF TERMINATION

11.3.1 (a) If the TJPA terminates this Agreement for convenience, an equitable adjustment in the compensation provided for in this Agreement shall be made on account of Services satisfactorily performed, plus reasonable termination expenses, but no amount shall be allowed for unperformed Services or anticipated markup or profit on unperformed services. (b) In the event of default by the CONSULTANT, any payment otherwise due to the CONSULTANT at the time of termination will be reduced to the extent of any damages or costs the TJPA incurs because of the default. This reduction shall be without limitation on any other remedies of TJPA.

11.3.2 Upon receipt of a termination action under Article 11.1 or 11.2, the CONSULTANT shall (a) promptly discontinue all Services affected (unless the notice directs otherwise); and (b) deliver or otherwise make available to the TJPA all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the CONSULTANT and its consultants may have accumulated in performing this Agreement, whether completed or in progress.

- 11.3.3 Upon termination under Articles 11.1. or 11.2, the TJPA may take over the work and prosecute the same to completion by agreement with another party, with TJPA forces or otherwise. The TJPA may be free to engage another CONSULTANT or to utilize such drawings, plans, specifications and other work prepared by the CONSULTANT for the Project.
- 11.3.4 If, after termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the TJPA. In such an event, an adjustment of the fee shall be made pursuant to Article 11.3.1(a).

12 INSURANCE

12.1 COVERAGES

The CONSULTANT will maintain in force, during the full term of the Agreement, and for as long as the TJPA faces exposure from the activities pursuant to this Agreement, insurance by an insurance company or companies admitted in the State of California with a rating of A-, VI or better or companies otherwise acceptable to the TJPA. Coverage shall be as follows:

- 12.1.1 Workers' compensation with employers' liability not less than \$1,000,000 each accident.
- 12.1.2 Commercial general liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate, including contractual liability, and completed operations coverages.
- 12.1.3 Commercial automobile liability insurance with limits not less than \$1,000,000 per accident combined single limit bodily injury and property damage, including owned, non-owned and hired auto coverages, as applicable. (Such coverages may be provided through the automobile rental agency utilized by the CONSULTANT.)
- 12.1.4 General liability and automotive liability insurance policies shall provide or be endorsed to provide the following:
- (a) Policies shall include as Additional Insureds the TJPA, its members, directors, officers, agents and employees.

- (b) Such policies shall be primary insurance to and shall not require contribution with any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement. The CONSULTANT shall be responsible for all deductible amounts.
- (c) Such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not increase the insurer's limits of liability.

12.1.5 CONSULTANT's professional liability insurance, as follows:

- (a) From the effective date of this Agreement, the CONSULTANT shall maintain practice insurance covering its negligent acts, errors or omissions, with limits not less than \$2,000,000 per claim and in the aggregate. The deductible amount shall not exceed \$1,000.

12.2 ENDORSEMENTS

All policies shall be endorsed to provide thirty (30) days' advance written notice to the TJPA of cancellation, non-renewal or reduction in coverage, mailed to the address in Article 23.

12.3 CERTIFICATES OF INSURANCE

Certificates of insurance, in form and with insurers satisfactory to the TJPA, evidencing all coverages specified above, shall be furnished to the TJPA prior to award and before commencing any operations under this Agreement. Upon the written request of the TJPA, CONSULTANT shall promptly provide to TJPA copies of those portions of the policies containing information necessary for TJPA to make a claim. In the event such proof of insurance is not delivered as required or in the event such insurance is canceled at any time and no replacement coverage is provided, TJPA has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this Agreement and to pay the premium. Any premium so paid by the TJPA shall be charged to and promptly paid by CONSULTANT or deducted from sums due CONSULTANT at TJPA option. CONSULTANT and TJPA agree that any actual or alleged failure of TJPA to inform CONSULTANT of noncompliance with any insurance requirement in no way imposes any additional obligations on TJPA nor does it waive any rights of TJPA in this or any other regard.

12.4 OTHER COVERAGES

Any coverages for which the CONSULTANT proposes to self-insure any portion of the risk, or any intention to operate vehicles other than automobiles (e.g., boats, aircraft) shall require prior TJPA approval of the appropriate insurance to be agreed upon.

13 INDEMNIFICATION

13.1 GENERALLY

To the fullest extent permitted by law, CONSULTANT shall assume the defense of (with legal counsel subject to approval of the TJPA), indemnify and save harmless the TJPA, its members, directors, officers, and employees (collectively “Indemnitees”), from and against any and all claim, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the CONSULTANT or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the breach of contract, negligence, recklessness, or willful misconduct of the CONSULTANT, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, “Liabilities”).

13.2 LIMITATIONS

- 13.2.1 No insurance policy covering the CONSULTANT’s performance under this Agreement shall operate to limit the CONSULTANT’s liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.
- 13.2.2 The CONSULTANT assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the consultants of any Indemnitee.
- 13.2.3 The CONSULTANT’s indemnification obligations of claims involving “Professional Liability” (claims involving acts, errors or omissions in the rendering of professional services) and “Economic Loss Only” (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent arising from the CONSULTANT’s negligence, recklessness, willful misconduct, breach of contract or other breach of duty.

13.3 COPYRIGHT INFRINGEMENT

CONSULTANT shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its members, directors, officers, or employees of articles or services to be supplied in the performance of CONSULTANT's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement shall be considered a material breach of contract, if not the basis for indemnification under the law.

14 MODIFICATIONS

The CONSULTANT shall do no work in addition to or beyond the scope of the Services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and bearing the Chief Financial Officer's certification that funds are available for additional work.

15 INDEPENDENT CONSULTANT

The CONSULTANT shall be deemed at all times an independent consultant and shall be wholly responsible for the manner in which it performs the service required of it by the terms of this Agreement. The CONSULTANT shall be liable for any act or acts of its own, of its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between the TJPA and the CONSULTANT or its agents and employees.

16 AUDIT AND INSPECTION OF RECORDS

16.1 The CONSULTANT agrees to maintain and make available to the TJPA accurate books and accounting records relative to its activities under this Agreement. The CONSULTANT will permit the TJPA to audit, examine and make excerpts and transcripts from such books and records and to make audits of all invoices, materials, payrolls, records or personnel and other data related to Reimbursable Expenses and Additional Services provided on an hourly basis, whether funded in whole or in part under this Agreement.

16.2 The CONSULTANT shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

- 16.3 A clause similar to this shall be included in all sub-agreements between the CONSULTANT and subconsultants giving the TJPA the same rights against the subconsultants. Canceled checks of payments to subconsultants must be maintained by the CONSULTANT and made available to the TJPA upon request.
- 16.4 The TJPA may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.

17 SUBCONSULTANTS

- 17.1 The CONSULTANT is permitted to subcontract portions of the services to be performed under this Agreement only after the prior written approval by the TJPA. The CONSULTANT shall be responsible for its subconsultants and their subconsultants throughout the course of the work to be performed under this Agreement. Execution of this Agreement shall constitute approval of the firms and individuals listed in Appendix B as subconsultants and/or subconsultants on this Project.
- 17.2 Substitutions may be made for any consultants listed on Appendix C for (a) failure to perform to a reasonable level of professional competence, (b) inability to provide sufficient staff to meet the Project requirements and schedules, or (c) unwillingness to negotiate reasonable contract terms or compensation.
- 17.3 The TJPA will reserve the right to request specific consultants with specific expertise to be added to the team to provide Services or Additional Services if the TJPA determines that specific expertise is lacking in the project team or if the TJPA believes it is in the TJPA's best interest to assign a particular subconsultant to the CONSULTANT.
- 17.4 Substitutions of DBE and SBE firms shall be made on an equal basis upon written request and recommendation by the CONSULTANT and written approval by the TJPA. The CONSULTANT shall hold harmless, indemnify and defend the TJPA from any claim that may arise out of any approval of substitutions.

18 TAXES

All taxes levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be borne by the CONSULTANT. The CONSULTANT is to provide a San Francisco Business Tax Registration Certification or Exemption in order to certify this Agreement.

19 PROPRIETARY INFORMATION OF THE TJPA

The CONSULTANT understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, the CONSULTANT may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain proprietary details, the disclosure of which to third parties would be damaging to the TJPA. The CONSULTANT agrees that all such information disclosed by the TJPA to the CONSULTANT shall be held in confidence and used only in the performance of the Agreement. The CONSULTANT shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

20 ADMINISTRATIVE REMEDY FOR DISPUTES

- 20.1 The parties shall attempt in good faith to resolve by negotiating any disagreements between them concerning the interpretation of this Agreement.
- 20.2 For any dispute arising out of this Agreement, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days after the determination of the dispute. The party receiving a notice of dispute shall submit a written response within fourteen (14) days after delivery of the notice. The notice and response shall contain the following: (i) a statement of the party's position and a summary of the arguments supporting that position, and (ii) any evidence supporting the party's position; relevant documents should be attached. The TJPA's Executive Director shall issue a written decision as to all disputes related to the Phase 1 Services. The decision of the Executive Director shall be administratively final and conclusive as to Phase 1 issues.
- 20.3 The status of any dispute notwithstanding, the CONSULTANT shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written directions of the TJPA. If the dispute is resolved in the CONSULTANT's favor, the CONSULTANT shall be compensated for actual, documented extra costs incurred in complying with the TJPA's interpretation or direction.
- 20.4 If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party, however, shall be entitled to legal fees or costs for matters resolved under this Article.

21 SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

22 ENTIRE AGREEMENT

All of the Agreement between the parties is included herein and no warranties expressed or implied, representations, promises, or statements have been made by either party unless endorsed hereon in writing, and no change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Agreement.

23 NOTICES

Any notice may be served effectively upon the TJPA or the CONSULTANT by delivering it in writing or by depositing the written notice with the United States Postal Service with postage fully prepaid and addressed to the party to receive the notice, at the respective addresses set forth below. In addition, any notice may be served effectively by delivering or mailing it, as in this Article provided, addressed to any other place or places at the TJPA or the CONSULTANT, by written notice served upon the other, from time to time may designate.

TJPA'S ADDRESS:

Transbay Joint Powers Authority
Attention: Maria Ayerdi-Kaplan,
Executive Director
201 Mission St., Suite 2100
San Francisco, CA 94105

CONSULTANT'S ADDRESS:

Cast Connex Corporation
Attention: Carlos de Oliveira,
President and Chief Executive Officer
203 College Street, Suite 301A
Toronto, Ontario Canada M5T-1P9

24 GUARANTEED MAXIMUM COSTS

- 24.1 The TJPA's obligation hereunder shall not at any time exceed the amount certified by the Chief Financial Officer for the purpose and period stated in such certification.
- 24.2 Except as may be provided by TJPA Board resolutions governing emergency conditions, the TJPA and its employees and officers are not authorized to request the CONSULTANT to perform services or to provide materials, equipment and supplies that would result in the CONSULTANT performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement unless the Agreement is amended in writing

and approved as required by law to authorize the Additional Services, materials, equipment or supplies. The TJPA is not required to reimburse the CONSULTANT for services, materials, equipment or supplies that are provided by the CONSULTANT which are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement and which were not approved by a written amendment to the Agreement having been lawfully executed by the TJPA.

- 24.3 The TJPA and its employees and officers are not authorized to offer or promise to the CONSULTANT additional funding for the Agreement which would exceed the maximum amount of funding provided for in the Agreement for the CONSULTANT's performance. Additional funding for the Agreement in excess of the maximum provided in the Agreement shall require lawful approval and certification by the Chief Financial Officer of the TJPA. The TJPA is not required to honor any offered or promised additional funding for an agreement which exceeds the maximum provided in the Agreement unless such additional funding has received the lawful approval and certification of the Chief Financial Officer.
- 24.4 The Chief Financial Officer is not authorized to issue payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

25 LIABILITY OF THE TJPA

The TJPA's obligations under this Agreement shall be limited to the payment of the compensation provided for in Article 8 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the TJPA be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed under this Agreement.

26 QUALIFIED PERSONNEL

Services under this Agreement shall be performed only by qualified and competent personnel properly licensed as required by the State of California, and under the supervision of and in the employment of the CONSULTANT or its subconsultants. The CONSULTANT's Key Personnel and subconsultants shall all be licensed by the State of California in their respective professional fields as consultants and engineers. The CONSULTANT will conform to the TJPA's reasonable

requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at the TJPA's request, and shall be supervised by the CONSULTANT.

27 RESPONSIBILITY FOR EQUIPMENT

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the CONSULTANT, or by any of its employees, even though such equipment may be furnished, rented or loaned to the CONSULTANT by the TJPA. The acceptance or use of such equipment by the CONSULTANT or any of its employees shall be construed to mean that the CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the TJPA from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the CONSULTANT, its employees, TJPA employees or third parties, or to property belonging to any of the above.

28 OWNERSHIP OF EQUIPMENT

Any equipment, vehicles, computer programs (software licenses and media), and the like, purchased by the CONSULTANT or its subconsultants in connection with services to be performed under this Agreement shall become property of and will be transmitted to the TJPA at the conclusion of the CONSULTANT's services under the Agreement.

29 ASSIGNMENT BY CONSULTANT

The services to be performed by the CONSULTANT are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by the CONSULTANT unless approved by written instrument executed and approved in the same manner as this Agreement; the CONSULTANT, partners of any Joint Venture or Association that the CONSULTANT may establish for the project, or any of the CONSULTANT's subconsultants may change their business names, provided such change does not decrease their obligation or liability under this Agreement.

30 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the TJPA and the CONSULTANT and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due thereunder may be assigned by the CONSULTANT without the prior written consent and approval of the TJPA.

31 NON-WAIVER OF RIGHTS

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32 COMPLIANCE WITH LAWS

The CONSULTANT shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the TJPA and of all state and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

33 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

The CONSULTANT acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a CONSULTANT, must be accessible to persons with disabilities. The CONSULTANT shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The CONSULTANT agrees not to discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the CONSULTANT, its employees, agents or assigns will constitute a material breach of this Agreement.

34 AGREEMENT MADE IN CALIFORNIA; VENUE

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco or as provided by Code of Civil Procedure Section 394; the venue for litigation in a county other than San Francisco pursuant to Section 394 will be Alameda County or San Mateo County.

35 SUBMITTING FALSE CLAIMS

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any contractor, subconsultant or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages that the TJPA sustains because of the false claim. A contractor, subconsultant or consultant who submits a false claim shall also be liable to the TJPA for the

costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the TJPA for a civil penalty of up to \$10,000 for each false claim. A contractor, subconsultant or consultant will be deemed to have submitted a false claim to the TJPA if the contractor, subconsultant or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

36 INCIDENTAL AND CONSEQUENTIAL DAMAGES

The CONSULTANT shall be responsible for all damages, including incidental and consequential damages, resulting from the CONSULTANT's breach of contract, recklessness, willful misconduct, or negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the TJPA may have under applicable law.

37 OTHER AGREEMENTS BETWEEN THE TJPA AND THE CONSULTANT

Through its execution of this Agreement, the CONSULTANT certifies that neither it nor any of its employees has any interest, however remote, in any other Agreement with the TJPA, whether or not such Agreement is with CONSULTANT's respective firms, affiliate firms or through separate employment, except as expressly itemized below. The CONSULTANT understands and agrees that failure to disclose such information may result in termination of this Agreement for cause.

38 WORKS FOR HIRE

If, in connection with services performed under this Agreement, the CONSULTANT or its subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audio tapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the TJPA. If it is ever determined that any works created by the CONSULTANT or its subconsultants under this

Agreement are not works for hire under U.S. law, the CONSULTANT hereby assigns all copyrights to such works to the TJPA. The TJPA hereby grants to the CONSULTANT a free license to use such works solely for the purpose of marketing, i.e., to document the CONSULTANT's experience and capabilities, and to use or reuse details which are not unique to the design of the Project. With respect to any other use or purpose, the CONSULTANT must obtain the prior express written permission of the TJPA.

39 CONSTRUCTION

All Article captions are for reference only and shall not be considered in construing this Agreement.

40 SOLE BENEFIT

This Agreement is intended for the sole benefit of the TJPA and the CONSULTANT, and is not intended to create any third-party rights or benefits.

41 NONDISCRIMINATION

41.1 CONSULTANT SHALL NOT DISCRIMINATE

In the performance of this Agreement, CONSULTANT agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status against any employee of any City or TJPA employee working with, or applicant for employment with, CONSULTANT in any of CONSULTANT's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by CONSULTANT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department of Transportation (DOT)-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate.

41.2 SUBCONTRACTS

CONSULTANT shall incorporate by reference in all subcontracts the provisions of Article 41.1 above, and Sections 12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subconsultants to comply with such provisions. CONSULTANT's

failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

41.3 NONDISCRIMINATION IN BENEFITS

CONSULTANT does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

41.4 CONDITION TO CONTRACT

As a condition to this Agreement, CONSULTANT shall execute the “S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

41.5 INCORPORATION OF ADMINISTRATIVE CODE PROVISIONS BY REFERENCE

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Article by reference and made a part of this Agreement as though fully set forth herein. CONSULTANT shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, CONSULTANT understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against CONSULTANT and/or deducted from any payments due CONSULTANT.

42 DISADVANTAGED AND SMALL BUSINESS ENTERPRISES

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

Pursuant to the monitoring requirements outlined in the TJPA's DBE Program (49 CFR 26.37) and the TJPA's SBE Program, the CONSULTANT will be required to update and submit the TJPA's "Bidders/Proposers Information Request Form," regardless of DBE/SBE participation. Upon award of the Agreement, regardless of DBE/SBE participation, the CONSULTANT shall submit the TJPA's "Progress Payment Report" with every invoice request, a "Subcontractor Payment Declaration" following payment to any subconsultant, and a "Final Expenditure Report" with the completion of the contract.

43 REQUIRING MINIMUM COMPENSATION FOR EMPLOYEES

CONSULTANT agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the City's Website at: <http://www.sfgsa.org/index.aspx?page=403>. Capitalized terms used in this Article and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, CONSULTANT agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, CONSULTANT shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time-off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, CONSULTANT shall pay a minimum of \$12.06 an hour effective January 1, 2012, and for the remainder of the term of this Agreement, provided, however, that consultants that are Nonprofit Corporations or public entities shall pay a minimum of \$11.03 an hour for the term of this Agreement.

(b) CONSULTANT shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to CONSULTANT's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) CONSULTANT understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by CONSULTANT of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.

(d) If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, CONSULTANT fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, CONSULTANT fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(i) The right to charge CONSULTANT an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(ii) The right to set off all or any portion of the amount described in Subsection (d)(i) of this Article against amounts due to CONSULTANT under this Agreement;

(iii) The right to terminate this Agreement in whole or in part;

(iv) In the event of a breach by CONSULTANT of the covenant referred to in Subsection (b) of this Article, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(v) The right to bar CONSULTANT from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by

the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) CONSULTANT represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) CONSULTANT shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the CONSULTANT from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) CONSULTANT shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subconsultants.

(h) The CONSULTANT shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

(i) The TJPA may conduct random audits of CONSULTANT. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of CONSULTANT every two (2) years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by CONSULTANT shall require the subconsultant to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Article. A subcontract means an agreement between the CONSULTANT and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. CONSULTANT shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subconsultant of the obligations

under the MCO and has imposed the requirements of the MCO on the subconsultant through the provisions of the subcontract. It is CONSULTANT's obligation to ensure that any subconsultants of any tier under this Agreement comply with the requirements of the MCO. If any subconsultant under this Agreement fails to comply, TJPA may pursue any of the remedies set forth in this Article against CONSULTANT.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of Subsections (a) and (b) of this Article, and may pursue the following remedies in the event of a breach by CONSULTANT of Subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. CONSULTANT understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (i) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (ii) in the event of a breach by CONSULTANT of Subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (iii) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against CONSULTANT arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. CONSULTANT also understands that the MCO provides that if CONSULTANT prevails in any such action, CONSULTANT may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If CONSULTANT is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the TJPA for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but CONSULTANT later enters into an agreement or agreements that cause CONSULTANT to exceed that amount in a fiscal year, CONSULTANT shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the CONSULTANT and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

The CONSULTANT is a Canadian Corporation and is in compliance with Canadian statute for the provision of employee health care benefits. Accordingly, the CONSULTANT is exempt from health care requirements herein which conflict with the governing laws of Canada. However, any CONSULTANT subcontract entered into with a company incorporated in the United States shall require that subconsultant to comply with the requirements of the Health Care Accountability Ordinance (HCAO) as set forth in San Francisco Administrative Code Chapter 12Q and shall contain contractual obligations substantially the same as those set forth in this Article.

CONSULTANT shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subconsultant of the obligations under the HCAO and has imposed the requirements of the HCAO on subconsultant through the subcontract.

CONSULTANT shall be responsible for its subconsultants' compliance with this Article. If a subconsultant fails to comply, the TJPA may pursue the remedies set forth in this Article against CONSULTANT based on the subconsultant's failure to comply, provided that TJPA has first provided CONSULTANT with notice and an opportunity to obtain a cure of the violation.

CONSULTANT agrees to enforce compliance by contractually binding each subconsultant incorporated in the United States to the provisions of the HCAO, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the City's website at <http://www.sfgsa.org/index.aspx?page=407>. Capitalized terms used in this Article and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subconsultant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If subconsultant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the subconsultant is a small business as defined in Section 12Q.3 (e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) CONSULTANT's failure to contractually enforce United States subconsultant's compliance with the HCAO shall constitute a material breach of this Agreement. TJPA shall notify CONSULTANT if such a breach has occurred. If, within thirty (30) days after receiving

TJPA's written notice of a breach of this Agreement for subconsultant's violation of the HCAO, CONSULTANT fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, CONSULTANT fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to TJPA.

(d) NOT USED

(e) CONSULTANT shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying TJPA with regard to such subconsultant's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) CONSULTANT represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) CONSULTANT and its subconsultants incorporated in the United States shall keep themselves informed of the current requirements of the HCAO.

(h) CONSULTANT shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subconsultants and Subtenants, as applicable.

(i) CONSULTANT shall ensure TJPA's access to the records of subconsultants incorporated in the United States records pertaining to compliance with HCAO after receiving a written request from TJPA to do so and being provided at least five (5) business days to respond.

(j) TJPA may conduct random audits of CONSULTANT to ascertain its compliance with HCAO. CONSULTANT agrees to cooperate with TJPA when it conducts such audits.

45 FIRST SOURCE HIRING PROGRAM

(a) Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Article by reference and made a part of this Agreement as though fully set forth herein.

CONSULTANT shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Article and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) First Source Hiring Agreement

(i) CONSULTANT will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time;

(ii) CONSULTANT will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;

(iii) CONSULTANT agrees to use good faith efforts to comply with the First Source hiring requirements. A CONSULTANT may establish its good faith efforts by filling (a) its first available Entry Level Position with a job applicant referred through the First Source Program; and (b) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the CONSULTANT's employment records.

(c) Hiring Decisions

CONSULTANT shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) Exceptions

Upon application by Employer, the First Source Hiring Administration (FSHA) may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(f) Subcontracts

Any subcontract entered into by CONSULTANT shall require the subconsultant to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Article.

46 MACBRIDE PRINCIPLES—NORTHERN IRELAND

Pursuant to San Francisco Administrative Code Section 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of CONSULTANT acknowledges and agrees that he or she has read and understood this Article.

47 DRUG-FREE WORKPLACE POLICY

CONSULTANT acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TJPA premises. CONSULTANT agrees that any violation of this prohibition by the CONSULTANT, its employees, agents or assigns shall be deemed a material breach of contract.

48 SUNSHINE ORDINANCE

In accordance with San Francisco Administrative Code Section 67.24(e), Contracts, Bids and Proposals, CONSULTANT's bids, responses to requests for proposals and all other records of

communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

49 NONDISCLOSURE OF PRIVATE INFORMATION

As of March 5, 2005, CONSULTANT agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code, the Nondisclosure of Private Information Ordinance, including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Article and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, CONSULTANT agrees to all of the following:

(a) Neither CONSULTANT nor any of its subconsultants shall disclose Private Information obtained from the TJPA in the performance of this Agreement to any other subconsultant, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) The CONSULTANT received advance written approval from the TJPA to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the TJPA shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that (i) could be used to identify an individual, including without limitation, name, address, social security number, medical

information, financial information, date and location of birth, and names of relatives; or (ii) the law forbids any person from disclosing.

(d) Any failure of CONSULTANT to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate this Agreement, debar CONSULTANT, or bring a false claim action against CONSULTANT.

50 LIMITATIONS ON CONTRIBUTIONS

Through execution of this Agreement, CONSULTANT acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services or for the furnishing of any material, supplies or equipment to the TJPA, whenever such transaction would require approval by a TJPA elective officer of the board on which that TJPA elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (a) the termination of negotiations for such contract or (b) three months after the date the contract is approved by the TJPA elective officer or the board on which that TJPA elective officer serves.

51 PROHIBITING USE OF TJPA FUNDS FOR POLITICAL ACTIVITY

No funds appropriated by the TJPA for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of TJPA funds will cooperate in audits conducted by the Chief Financial Officer to verify that no TJPA funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, CONSULTANT may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. CONSULTANT agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event CONSULTANT violates the provisions of this Article, the TJPA may, in addition to any other rights or remedies available hereunder (a) terminate this Agreement, and (b) prohibit CONSULTANT from bidding on or receiving any new TJPA

contract for a period of two (2) years. The Chief Financial Officer will not consider CONSULTANT's use of profit as a violation of this Article.

52 RESOURCE CONSERVATION

Chapter 5 of the San Francisco Environment Code, Resource Conservation, is incorporated herein by reference. Failure by CONSULTANT to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

53 TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

Pursuant to Section 804(b) of the San Francisco Environment Code, the City and County of San Francisco urges consultants not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

54 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

CONSULTANT may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. CONSULTANT may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude CONSULTANT from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

55 GRAFFITI REMOVAL

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti

and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County of San Francisco and its residents, and to prevent the further spread of graffiti.

CONSULTANT shall remove all graffiti from any real property owned or leased by CONSULTANT in the City and County of San Francisco within forty eight (48) hours of the earlier of CONSULTANT's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Article is not intended to require a CONSULTANT to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include (a) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (b) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.).

56 USDOT REQUIREMENTS

The provisions contained in "USDOT Requirements for Professional Services Contracts," included as Appendix D, are incorporated into this Agreement and CONSULTANT agrees to abide by such provisions. Such provisions shall be supplementary to the provisions in this Agreement and interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT terms and conditions and any other terms and conditions of this Agreement, the USDOT terms and conditions shall take precedence.

57 PROMPT PAYMENT TO SUBCONSULTANTS

No later than ten (10) working days from the date of CONSULTANT's receipt of progress payments by the TJPA, the CONSULTANT shall pay any subconsultants, if any, for work that

has been satisfactorily performed by said subconsultants in accordance with the provision in Section 7108.5 of the California Business and Professions Code. The ten (10) days is applicable unless a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the CONSULTANT or violating subconsultant 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 thirty (30) days of receipt of each payment may take place only for good cause and with the TJPA's prior written approval. Failure to provide such evidence shall be cause for the TJPA to suspend future progress payments to consultants. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment, or nonpayment by the CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant. Within thirty (30) days of satisfactory completion of all work required of the subconsultants, CONSULTANT shall release any retention withheld to the subconsultants.

If the CONSULTANT does not pay its subconsultants as required under the above paragraph, it shall pay interest to the subconsultants at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

58 CERTIFICATION OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Chief Financial Officer, and the amount of TJPA's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to TJPA at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

The TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or Program costs. TJPA budget decisions are subject to the discretion of the TJPA Board. CONSULTANT's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS ARTICLE CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

59 EFFECTIVE DATE OF THE AGREEMENT

This Agreement shall become effective upon full execution, following approval of this Agreement by TJPA Board by resolution, and when the Chief Financial Officer has certified to the availability of funds for the first work order or NTP and CONSULTANT has been notified in writing via an NTP.

60 QUALITY MANAGEMENT SYSTEM

The TJPA has established a Quality Management System (QMS) for the Project that requires that all Project work is planned, designed, and constructed with the highest regard for quality, and which includes requirements established by the FTA for quality assurance and quality control applicable to the Project. Within fifteen (15) days of NTP, the CONSULTANT shall submit to the TJPA its quality assurance plan specific to the Project for approval by the TJPA. Such plan will comply with the Project QMS. The CONSULTANT shall comply with all requirements of the QMS, shall maintain quality records and provide such records to the TJPA as required by the TJPA, shall submit to and cooperate in audits by the TJPA of the CONSULTANT's and its subconsultants' performance and delivery of services, and shall take corrective actions to correct deficiencies in the quality of CONSULTANT's performance and delivery of services and its design products.

61 INTERN MENTORING PROGRAM

The CONSULTANT shall cooperate with the TJPA to encourage young student participation in architectural and engineering careers, enlightening and motivating students toward professional careers in architecture, engineering, construction management, and related professional services. On an annual basis, the CONSULTANT shall report on its endeavors to promote professional services careers to students.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in San Francisco, California on this _____ day of _____, 2012.

TJPA

CONSULTANT

Maria Ayerdi-Kaplan
Executive Director

By _____
Name: Carlos de Oliveira
Title: President and Chief Executive Officer

ATTEST:

Nila Gonzales
Board Secretary
Resolution No.: _____
Adopted: _____

APPROVED AS TO FORM:

By _____
TJPA Legal Counsel

PROFESSIONAL SERVICES AGREEMENT

APPENDIX A

SERVICES

1. Basic Services

1.1. Phase 1: Preparation of Bid Documents.

1.1.1 Structural and Architectural Workshop(s).

The CONSULTANT shall meet with the TJPA's structural engineer of record (SER) to discuss the overall structural philosophy for the building and the structural intent for each node type. Clarify the assumptions made by the SER with respect to the mechanical properties of the cast steel grade(s). Discuss SER finite element stress analysis and modeling assumptions. Secure computer models of nodes as currently contemplated (if available). Meet with the TJPA design team to ascertain the overall architectural intent and identify architecturally significant aspects/features/faces of each node type; confirm viewing distances, steel coatings/finishes, AESS Category, and determine appropriate casting surface requirements.

1.1.2 Specifications.

The CONSULTANT shall develop complete and detailed casting manufacturing specifications, and review and revise as necessary structural steel specification sections dealing with casting handling and integration with conventional structural steel elements and framing.

1.1.3 Dimensional Design and Modeling.

The CONSULTANT shall develop 3D centerline model of all steel framing relevant to the cast steel nodes to form the basis for all casting models. The CONSULTANT shall produce a 3D model of a representative configuration of each node type, integrating SER and architectural requirements with castability constraints. The CONSULTANT shall carry out preliminary foundry analysis to confirm directional solidification can be promoted with

reasonable feeding provisions – if not, pad castings internally as necessary and iterate on foundry analysis.

1.1.4 Drafting.

The CONSULTANT shall prepare bid set casting drawings showing casting production-level detail for each archetype node, including full interior and exterior dimensioning, tolerancing, machining requirements, allowable riser contact surfaces, suggested parting lines, and any other information relevant to the manufacture of the castings.

1.1.5 Production Forecasting and Scheduling.

The CONSULTANT shall engage in discussions with potential foundry producers to ascertain their current backlogs and their estimated production time for the particular node types they are capable of producing. Simultaneously, and in conjunction with the TJPA's Construction Manager/General Contractor ("CM/GC"), develop a schedule to outline "Required at Fabricator Dates" for every casting in the project. Evaluating foundry capacity and required delivery dates together, the CONSULTANT shall develop a realistic required delivery window for every casting to form part of the Steel Casting bid requirements.

1.1.6 Phase 1 Deliverables.

The CONSULTANT shall provide the following Phase 1 Deliverables:

- Casting specifications
- Amendments/Additions to Structural Steel Specifications
- Detailed drawings of the representative configuration of each node type
- 3-dimensional computer models of the representative configuration of each node type
- Required production schedule

1.1.7 Submission Deadline for Phase 1 Deliverables is August 29, 2012.

1.2. Phase 2. Preparation of Final Manufacturing Documents.

1.2.1 Advisory Role to the TJPA and the CM/GC During the Foundry Selection Process.

As requested by the TJPA, the CONSULTANT shall support the TJPA during its review of bid submissions to assist in the selection of appropriately qualified foundries.

1.2.2 Coordination with Successful Foundries.

The CONSULTANT shall coordinate the final design of each casting type with the selected foundry producer (as foundry processes vary between organizations).

1.2.3 Coordination with Successful Steel Fabricator.

The CONSULTANT shall coordinate joint details between castings and attaching structural steel elements, lifting considerations for the steel castings and temporary erection attachments.

1.2.4 3-Dimensional Modeling.

The CONSULTANT shall produce a unique 3D model for every node of a unique geometry, following the design fundamentals (structural/ architectural/foundry) developed for each node archetype during Phase 1 of work.

1.2.5 Drafting.

The CONSULTANT shall prepare final, production-level casting drawings for every node of a unique geometry.

1.2.6 Phase 2 Deliverables.

The CONSULTANT shall provide the following Phase 2 Deliverables:

- Final, production-level casting drawings for every node of a unique geometry
- 3-dimensional computer model for every node of a unique geometry

The CONSULTANT will issue final drawings for TJPA approval in succession based on the schedule requirements (i.e., by grid line based on construction commencing on a

specific grid line and progressing away from the line in two directions), and are herein suggesting a target for completion of all drawings and models by the submission deadline identified in item 1.2.7.

1.2.7 Submission Deadline for Phase 2 Deliverables is April 1, 2013.

1.3. Phase 3: Construction Administration.

The CONSULTANT shall provide the following Phase 3 Services:

- a. Review and approve proposed foundry rigging configurations—propose changes where necessary to minimize riser removal and reshaping of architecturally critical surfaces on the cast components.
- b. Review WPS/PQR submissions made by the fabricator in relation to welded joints at casting-to-structural steel interfaces (formal approval of the same to be made by the SER).
- c. Casting production progress tracking and reporting—reallocation of foundry production capacity as may be necessary to meet the production schedule
- d. Inspection and approval of First Article castings.
- e. Intermittent foundry visits during production.
- f. Review all third-party non-destructive casting examination reports for conformance with specifications, including:
 - Dimensional reports
 - Chemical analysis and physical test reports
 - RT, UT, MT, Weld Repair reports
- g. Intermittently visit the shop of the steel fabricator during related fitting and fabrication operations, and perform occasional site visits during related structural steel erection.

2. Additional Services

Additional Services shall be those services required to be performed by CONSULTANT at the direction of the TJPA which are not included in the Basic Services specified in Paragraph 1 as more fully defined in Article 8.2.

PROFESSIONAL SERVICES AGREEMENT

APPENDIX B

FEES

This Appendix B sets forth the method for calculating amounts to be invoiced by the CONSULTANT for Services rendered under this Agreement. CONSULTANT represents that all amounts invoiced under this Agreement shall be made in good faith for the Services performed and shall conform to the schedule per phase set forth in Appendix A. CONSULTANT acknowledges and agrees that all information in the updated Schedule for Services and progress reports submitted with each monthly progress payment invoice supporting the amounts invoiced and any other requests to the TJPA for payment or approval may be subject to investigation as a false claim, as provided in Article 8 of this Agreement.

The CONSULTANT shall perform the Basic Services specified in Appendix A for a lump sum value of One Million Two Hundred Thousand United States Dollars (\$1,200,000.00 USD). This lump sum value is broken down into the following maximum lump sum amounts per phase, as described in Appendix A.

Phase 1. Preparation of Bid Documents:	\$240,000.00 USD
Phase 2. Preparation of Final Manufacturing Documents: (Final progress payment contingent upon TJPA approval of all Final Manufacturing Documents)	\$660,000.00 USD
Phase 3. Construction Administration:	<u>\$300,000.00 USD</u>
Total Fee	\$1,200,000.00 USD

In the event that the TJPA requests Additional Services to be performed on a time and materials basis, the following hourly rates shall apply. Such hourly rates shall include all CONSULTANT overhead, fringe benefits, taxes, profit and non-reimbursable related costs specified in Article 8.3.4. All hourly rates shown are in United States Dollars.

Principal-in-Charge:	\$300.00/hr.
Senior Engineer/Designer/Contract Administrator:	\$225.00/hr.
Intermediate Engineer/Designer/Contract Administrator:	\$175.00/hr.
Junior Engineer/Designer/Contract Administrator:	\$115.00/hr.
3-D Modeling:	\$175.00/hr.
Drafting:	\$125.00/hr.
Administration/Clerical:	\$95.00/hr.

PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

DESIGNATION OF KEY EMPLOYEES AND CONSULTANTS

This Appendix C identifies CONSULTANT's Key Employees as that term is defined in Article 4.2, Designation of Key Employees, and subconsultants identified in Article 26, Qualified Personnel.

1. The CONSULTANT's Key Employees as defined in Article 4.2 are:

Carlos de Oliveira	Principal-in-Charge
Michael Gilmor	Senior Engineer/Designer/Contract Administrator
Michael Gray	Intermediate Engineer/Designer/Contract Administrator
Tarana Haque	Junior Engineer/Designer/Contract Administrator

2. The CONSULTANT's subconsultants referenced in Article 26 are:

None

APPENDIX D

USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

The USDOT's requirements for agreements between the TJPA and a third party are summarized below. Certain USDOT provisions described below may not be applicable to all agreements with the TJPA. The italicized text is intended to assist the Contractor in understanding which Federal requirements may be applicable to an agreement. The USDOT and the TJPA have sole discretion to apply any particular provision described below.

These provisions supplement the provisions in the Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT requirements and any other terms and conditions of the Agreement, in the TJPA's sole determination, the USDOT requirements shall take precedence.

The following provisions (1-12) apply to all Agreements (excluding micropurchases—purchases of \$3,000.00 or less).

1. DEFINITIONS

****** *The Definitions apply to all Agreements.*

- (a). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by FTA or FRA.
- (b). **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the TJPA is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- (c). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.
- (d). **Federal Cooperative Agreement** means the instrument by which FRA or FTA awards Federal assistance to the TJPA to support a particular Project, and in which FRA or FTA takes an active role or retains substantial control
- (e). **Federal Grant Agreement** means the instrument by which FTA or FRA awards Federal assistance to the TJPA to support a particular Project, and in which FTA or FRA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304.
- (f). **FRA** is the acronym for the Federal Railroad Administration, one of the operating administrations of the U.S. DOT.
- (g.) **FRA Directive** includes any FRA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FRA's programs, application processing procedures, and Project management guidelines.

- (h). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (i). **FTA Directive** includes any FTA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines, including the Master Agreement between FTA and the TJPA.
- (j). **Government** means the United States of America and any executive department thereof.
- (k). **Project** means the Transbay Transit Center Program, which will extend Caltrain to Transbay Terminal and replace Transbay Terminal with the new Transbay Transit Center Building. Total project consists of three major components: a new, multi-modal Transbay Transit Center (TTC) on the site of the present Transbay Terminal; the extension of Caltrain commuter rail from its current SF terminus at 4th and Townsend St. to a new underground terminus under a proposed new TTC; and the establishment of a Redevelopment Area with related development projects, including transit-oriented development on publicly owned land in the vicinity of the new multi-modal TTC.
- (l). **Recipient** means the TJPA.
- (m). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (n). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA or FRA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (o). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (p). **U.S.DOT Directives** means any U.S. DOT regulation, policy, procedure, directive, circular, notice, order or guidance providing information about U.S.DOT's programs, application processing procedures, and Project management guidelines.

2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

** *This requirement applies to all Agreements.*

The TJPA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the TJPA, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the Agreement.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

****** *This provision applies to all Agreements.*

- (a). The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions under the Agreement. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA- or FRA-assisted Project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (b). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA or FRA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

4. ACCESS TO DOCUMENTS

****** *This requirement applies to all Agreements. FRA requires the inclusion of these requirements in Subcontracts over \$100,000.*

****** *Please be aware that the requirements in the Agreement regarding audit and inspection of records may require the Contractor to maintain files relating to this Agreement for a longer period of time than described in the requirement below. Please also be aware that, as described in the Agreement, the TJPA follows the provisions of the City and County of San Francisco Sunshine Ordinance regarding responses to public requests for certain bid documents. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). Where the TJPA is considered a "local government" and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the TJPA, the FTA or FRA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement ("Documents") for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA or FRA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor's Documents and construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.
- (b). Where the TJPA is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the TJPA, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.

- (c). The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions, as reasonably needed, of any Documents.
- (d). The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the TJPA, the FTA or FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

5. FEDERAL CHANGES

** *This requirement applies to all Agreements.*

Contractor shall at all times comply with all applicable federal laws and regulations, and all FTA Directives, FRA Directives and U.S. DOT Directives applicable to the Project, as they may be amended or promulgated from time to time during the term of this Agreement. It is Contractor's responsibility to be aware of any amendments or changes to such federal requirements and directives. Contractor's failure to so comply shall constitute a material breach of this Agreement.

6. CIVIL RIGHTS REQUIREMENT

** *This requirement applies to all Agreements.*

** *Please be aware that the requirements in the Agreement regarding nondiscrimination are broader than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21; and U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR parts 27 and 37.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
 - (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

7. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

** *The specific provisions checked below apply to this Agreement.*

- (a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The TJPA's Anticipated DBE Participation Level for each Federal Fiscal Year is published on the TJPA website by August 1 of each year.

A separate Agreement goal of _____ percent DBE participation has been established for this Agreement.

A separate Agreement goal **has not** been established for this Agreement.

- (b). The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR Section 26.13[b]).

- (c). (*Checked box is applicable to this Agreement.*)

(If a separate Agreement goal has been established, use the following)

The Contractor was required to document sufficient DBE participation to meet the separate Agreement goal established for this Agreement or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53.

(If no separate Agreement goal has been established, use the following)

The Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- (d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.
- (e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

8. AMERICANS WITH DISABILITIES ACT

** *This requirement applies to all Agreements.*

The Consultant agrees that all facilities constructed under this Agreement will be designed to meet the applicable Accessibility Guidelines for Transportation Facilities set out as appendix A to 49 CFR Part 37.

9. INCORPORATION OF U.S. DEPARTMENT OF TRANSPORTATION TERMS

** *This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

10. FLY AMERICA REQUIREMENTS

** *This provision applies to all Agreements that involve the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the

extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

- (b). The Contractor shall submit the “Fly America Certification” if the regulation is applicable to the particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

11. CARGO PREFERENCE REQUIREMENTS

****** *This provision applies to all Agreements involving equipment, materials, or commodities which may be transported by ocean vessels.*

The Contractor agrees to:

- (a). use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;
- (b). furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the TJPA (through the Contractor in the case of a subcontractor's bill-of-landing).

12. ENERGY CONSERVATION REQUIREMENTS

****** *This provision applies to all Agreements.*

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6201 *et seq.*

The following provision (13) applies to Agreements exceeding \$10,000.

13. RECYCLED PRODUCTS

****** *This provision applies to all Agreements to procure \$10,000 or more of any one item designated by the EPA under 40 CFR Part 247, Subpart B in a single fiscal year, and to all Agreements to procure any items designated in 40 CFR Part 247, Subpart B where the TJPA or the Contractor has used Federal funds to procure \$10,000 or more of any one item in the previous fiscal year.*

****** *Please be aware that the requirements in the Agreement regarding resource conservation may be more restrictive than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

The Contractor agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Section 6962 et seq.), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in 40 CFR Part 247, Subpart B.

The following provision (14) applies to Agreements exceeding \$25,000.

14. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

****** *This requirement applies to all Agreements and Subcontracts greater than or equal to \$25,000, and to any Agreement for auditing services at any dollar value.*

- (a). This Agreement is a “covered transaction” for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180 , and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

The following provisions (15-16) apply to Agreements exceeding \$50,000.

15. CLEAN AIR

****** *This provision applies to all Agreements greater than \$50,000 and to subcontracts greater than \$50,000.*

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.
- (b) The Contractor also agrees to include these requirements in each subcontract exceeding \$50,000.

16. CLEAN WATER REQUIREMENTS

****** *This provision applies to all Agreements greater than \$50,000.*

- (a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the TJPA and

understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.

- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

The following provisions (17-20) apply to Agreements exceeding \$100,000.

17. BUY AMERICA REQUIREMENTS

****** *This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods or rolling stock of any value if funded by FRA, and valued at more than \$100,000 if funded by FTA.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 5323(j), 49 CFR Part 661, and 49 U.S.C. 24405, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA- and FRA-funded projects, such as the Transbay Transit Center Program that is the subject of this Agreement, are produced in the United States, unless a waiver has been granted by FTA, FRA, or the product is subject to a general waiver. General waivers, when FTA funds are used, are listed in 49 CFR Section 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR Section 661.11 when FTA funds are used, and 49 CFR 24405(a) when FRA funds are used.
- (b). The Contractor shall submit the “Buy America Certification” at the time of bid/offer if the regulation is applicable to the particular agreement. The Prime Contractor is responsible for ensuring that lower tier subcontractors are in compliance.

18. BREACHES AND DISPUTE RESOLUTION

****** *This requirement applies to all Agreements in excess of \$100,000.*

- (a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties

mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.

- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. LOBBYING

** *This provision applies to the following types of Agreements, if the Agreement is equal to or greater than \$100,000: construction, architectural and engineering; acquisition of rolling stock; professional services; operational services; and Turnkey.*

** *Please be aware that the requirements in the Agreement regarding limitations on contributions may be more restrictive than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). The contractor shall submit the "New Restrictions on Lobbying Certification" if the regulation is applicable to the particular agreement.
- (b). (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;
- (2). If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form- LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. Such forms are forwarded from tier to tier up to the TJPA.

20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

** *This requirement applies to Agreements and Subcontracts for construction over \$100,000, and to non-construction Agreements valued at more than \$100,000 that employ "laborers or mechanics on a public work," as defined by 42 U.S.C. Section 3701.*

- (a). **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (b). **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (c). **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

The following provisions (21-23) apply to Construction Agreements.

21. SEISMIC SAFETY REQUIREMENTS

****** *This provision applies only to Agreements for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building that is the subject of this Agreement will be designed and constructed in accordance with the standards for Seismic Safety required in U.S. DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance with such regulations to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Agreement, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

22. BONDING REQUIREMENTS

****** *This provision applies to Agreements for construction or facility improvements. For those Agreements or Subcontracts exceeding \$100,000, however, USDOT may accept the bonding policy and requirements of the TJPA, provided that the TJPA's bonding policy and requirements meet the minimum requirements as follows:*

- (a). *A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.*
- (b). *A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.*

- (c). *A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.*

TJPA requirements regarding payment bonds are more stringent than USDOT amounts stated below. The TJPA requires a payment bond on the part of the Contractor for 100 percent of the Agreement price.

(1). Bid Bond Requirements (Construction)

(a). Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.

(b). Rights Reserved

In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

It is also understood and agreed that if a bidder should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of the TJPA, shall refuse or be unable to enter into this Agreement, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or refuse or be unable to furnish adequate and acceptable insurance, it shall forfeit its bid security to the extent of TJPA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the TJPA) shall prove inadequate to fully recompense the TJPA for the damages occasioned by default, then a bidder agrees to indemnify the TJPA and pay over to the TJPA the difference between the bid security and the TJPA's total damages, so as to make the TJPA whole.

A bidder understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

(2). Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a). Performance Bonds

1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may

secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b). **Payment Bonds**

1. The penal amount of the payment bonds shall equal:
 - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
 - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
 - (iii) \$2.5 Million if the Agreement price is more than \$5 Million.
2. If the original Agreement price is \$5 Million or less, the TJPA may require additional protection, as required by subparagraph 1, if the Agreement price is increased.

(3). **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor also may be required to obtain performance and payment bonds when necessary to protect the TJPA's interest.

(a). The following situations may warrant a performance bond:

1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).
2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Agreements are for dismantling, demolition, or removal of improvements.

(b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.

(d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
 - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
 - (iii) \$2.5 Million if the Agreement price is increased.

(4). **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.

(5). **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.

(6). **Warranty of the Work and Maintenance Bonds**

(a). The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b). The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

23. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

** *This requirement applies to any Agreement for construction greater than \$2,000. "Construction," for purposes of this requirement, includes "actual construction, alteration and/or repair, including painting and decorating." (29 CFR Section 5.5[a]).*

(a). **Minimum Wages**

(1). All laborers and mechanics employed or working upon the site of the work that is the subject of this Agreement (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act [29 CFR Part 3]), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of

the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for

fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(b). **Withholding** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c). **Payrolls and Basic Records**

(1). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2). (A). The Contractor shall submit weekly for each week in which any Agreement work is performed a copy of all payrolls to the TJPA for transmission

to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B). Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify the following:

- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

(C). The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D). The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

- (3). The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

(d). **Apprentices and Trainees**

- (1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered

with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage

determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- (g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j). **Certification of Eligibility**
 - (1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
 - (2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
- (3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.