

**TRANSBAY PROJECT
CONSTRUCTION MANAGEMENT AND OVERSIGHT SERVICES
INTERGOVERNMENTAL AGREEMENT**

This Transbay Project Construction Management and Oversight Services Intergovernmental Agreement (this “Agreement”) dated as of _____, 2016, is between the Transbay Joint Powers Authority, a joint powers authority (“TJPA”) and the City and County of San Francisco, a municipal corporation and charter city and county (“City”), acting through its Department of Public Works (“SF Public Works”) (each individually a “Party” and, collectively, the “Parties”).

RECITALS

This Agreement is made with reference to the following facts and circumstances:

- A. The TJPA is a joint powers agency comprised of the City, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, and the State of California Department of Transportation (ex officio). The TJPA is responsible for the financing, design, development, construction, and operation of the Transbay Transit Center Program (the “Transbay Project”). In particular, the Transbay Project includes (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including open space on the roof of the Transit Center, a bus ramp, a bus storage facility, and the Train Box component of the rail extension (“Phase 1”); (2) the extension of Caltrain rail tracks from their current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center to accommodate Caltrain and California High Speed Rail (“Phase 2”); and (3) in coordination with the Office of Community Investment and Infrastructure, the successor to the former Redevelopment Agency, certain transit infrastructure activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area.
- B. As provided in Section 6 of the Joint Powers Agreement establishing the TJPA and Article XII of the TJPA’s Bylaws, the TJPA designated the City as the “Administrator” for the TJPA, authorizing the City to provide necessary administrative services for the TJPA under an administrative services agreement. In doing so, the members of the TJPA acknowledged that appointing the City as the administrator may present conflicts of interest, and they expressly waived any liability on the part of the City arising out of any such conflict of interest.
- C. In 2001, the TJPA entered an Administrative Services Agreement with the City, confirming the terms under which the TJPA may request that the City in its capacity as Administrator for the TJPA assist the TJPA, in cooperation with consultants and contractors to the TJPA, to advance the Transbay Project. Under that agreement, the City has from time to time provided such assistance to TJPA staff, consultants, and contractors, including through two previous intergovernmental agreements that the TJPA approved in 2007 and 2008 with SF Public Works.

- D. On January 13, 2015, under the Mello-Roos Community Facilities Act of 1982, as amended (the “Mello-Roos Act”), Government Code section 53311 et seq., the City and County of San Francisco Community Facilities District No. 2014-1 (the “CFD”) was formed. SF Public Works has ultimate responsibility for managing certain of the facilities that will be constructed under the CFD. Under the Mello-Roos Act, the City and the TJPA executed a Joint Community Facilities Agreement (the “JCFA”) to provide for financing design and construction of certain facilities of the Transbay Project by the City through the CFD. On June 30, 2015, the City and the TJPA entered a binding memorandum of understanding to define the City’s “project management oversight” role regarding the facilities to be constructed under the CFD as described in the JCFA (the “2015 SF Public Works MOU”).
- E. On November 12, 2015, the TJPA Board of Directors (sometimes “TJPA Board” or “Board”) adopted Resolution No. 15-043, adding a new Section 9.6(g) of the Bylaws of the TJPA, to provide as follows: “Construction of the Transbay Terminal Project. Notwithstanding the provisions of subsection (c), the Board may designate a person or entity to oversee all aspects of construction of the Transbay Project (including design and project controls related to construction), who shall take direction from and report directly to the Board and who shall also inform the Executive Director of such actions. Without limiting the foregoing, the Board may authorize the Authority to enter into an agreement with the City's Department of Public Works to perform this function.”
- F. Consistent with TJPA Bylaws Section 9.6(g), on March 10, 2016, the TJPA Board of Directors adopted Resolution No. 16-006 giving SF Public Works exclusive authority, subject to TJPA Board supervision, to oversee all aspects of construction of the Transbay Project, including, without limitation, design and project controls related to construction of the Transbay Project, which shall include the facilities identified in the JCFA, for the purpose of meeting the TJPA Board’s approved program budget and schedule for Phase 1. The Resolution provides that this authority includes the supervision and direction of the contractors and the TJPA engineer employees directly overseeing construction as it relates to all aspects of construction of the Transbay Project. The Resolution further provides that SF Public Works shall take direction from and report directly to the TJPA Board on all aspects of construction of the Transbay Project, and shall have a mutual responsibility with the TJPA’s Executive Director to work closely and collaboratively together and to keep each informed of any significant actions taken.
- G. In furtherance of the TJPA Board Resolution described immediately above as well as Section 6 of the TJPA’s Joint Powers Agreement, Article XII of the TJPA’s Bylaws, the Administrative Services Agreement, and the JCFA, the TJPA wishes to obtain additional construction management and oversight services of SF Public Works, and the City, through SF Public Works, is willing to perform this construction management and oversight work, on the terms and conditions more particularly described in this Agreement.
- H. In 2015, the Metropolitan Transportation Commission (“MTC”) conducted a cost and risk review of Phase 1 of the Transbay Project. As a result of that review, MTC

recommended a Phase 1 budget increase to \$2.259 billion. While the TJPA has identified federal, state and local funding sources of approximately \$2.012 billion, there are still unidentified funding needs to close the gap. In light of such short-term funding needs and at the TJPA's request, the City, subject to approval of the City's Board of Supervisors, is willing to execute and deliver lease revenue commercial paper certificates of participation and direct placement revolving certificates of participation, in the maximum amount of \$260,000,000 (the "Interim Financing"), which includes the estimated cost of issuance and the financing. To facilitate the City's execution and delivery of the Interim Financing, and subject to approval by the Metropolitan Transportation Commission, the MTC would hold as an investment up to \$100 million of such commercial paper certificates. It is expected that the indebtedness under the Interim Financing, which is an obligation of the City's General Fund, will be repaid in part from an allocation of a portion of the CFD special taxes generated in the Transbay Redevelopment Project Area, and an allocation of a portion of the property tax increment that will be derived from the Transbay Redevelopment Project will pay on-going debt service on the outstanding balance, as and when such funds are available. The TJPA would be expected to secure a long-term take-out of the Interim Financing when TJPA's net tax increment revenue stream matures.

- I. In connection with the Interim Financing, representatives of the City, the TJPA and MTC will participate in a Cost Review Committee (the "Committee") to help ensure financial oversight of the TJPA's budget and certain expenditures, as provided in a separate agreement entitled the Transbay Project Cost Oversight Agreement (the "Cost Oversight Agreement") between the TJPA, the City and MTC.
- J. Notwithstanding the construction management and oversight role of SF Public Works under this Agreement and the role of the Committee under the Cost Oversight Agreement, the TJPA, through its Board of Directors, retains ultimate supervision and responsibility for the Transbay Project, including, without limitation, the financing, design, development, construction, and operation of the Transbay Transit Center.

AGREEMENT

ACCORDINGLY, in consideration of the public benefits and other matters described in the foregoing recitals, the obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the TJPA and the City agree as follows:

1. CONSTRUCTION MANAGEMENT AND OVERSIGHT SERVICES

A. **Scope of Services.** The City, through SF Public Works, shall exercise exclusive authority, subject to TJPA Board supervision, TJPA Board adopted policies and procedures, the terms and conditions of this Agreement, and all applicable Federal, State and local laws, to oversee all aspects of construction of Phase 1 of the Transbay Project, including, without limitation, design and project controls related to construction of the Transbay Transit Center (the "Services"). By way of clarification and not limitation, the Services encompass the supervision and direction of the contractors and the TJPA employees who are involved with construction of

Phase 1 of the Transbay Project, as well as certain SF Public Works staff providing assistance to the City PM (such as TJPA contractors and staff and SF Public Works staff referred to collectively as the “TJPA Construction Team”), as reflected in the Organization Chart attached as Attachment A (the “Organizational Chart”). Again, by way of clarification and not limitation, the Services further include the day-to-day management and control of the following related to Phase 1 of the Transbay Project: construction schedule and construction budget; approval of any change orders; negotiation of any contracts relating to the scope of the design, construction and construction support of the Transbay Project, or any amendments to those contracts; conformity of construction with design criteria; conformity of construction to approved plans and specifications; and efficient and effective implementation of construction.

More particularly, the Services provided by SF Public Works shall include but are not limited to:

(i) in coordination with TJPA’s Chief Financial Officer, consistent with TJPA policies and procedures and consistent with the Cost Oversight Agreement, review and approve proposed and actual disbursements and expenditures of TJPA funds for construction of Phase 1 of the Transbay Project, including, but not limited to, proposed change orders;

(ii) separate from its role under the 2015 SF Public Works MOU, inspect Phase 1 Transbay Project facilities as needed during, at and following the completion of construction;

(iii) review, direct and approve changes in scope, schedule or design needed to manage the Phase 1 Transbay Project construction within the approved Program budget. Review proposed and accepted value engineering proposals, construction schedules, schedule recovery strategies, and contract documents (including both processes and requirements) for Phase 1 of the Transbay Project;

(iv) in coordination with the TJPA’s legal counsel, review and manage any threatened or pending construction claims or litigation relating to Phase 1 of the Transbay Project (it being expressly recognized that because of the City construction management and oversight services under this Agreement, the City’s access to confidential and privileged information of the TJPA does not waive the TJPA’s attorney work product and attorney-client communication privileges);

(v) in coordination with TJPA’s Chief Financial Officer and consistent with the JCFA, review and approve all TJPA requisitions on TJPA’s 82.6% allocation percentage of the special tax proceeds under the CFD and bond funds secured by the CFD special tax proceeds to the extent such requisitions are related to Phase 1 of the Transbay Project;

(vi) attend and manage construction meetings with the TJPA Construction Team;

(vii) review and manage correspondence with contractors or other third parties relating to matters within the scope of services under this Agreement;

(ix) manage compliance with the existing Quality Assurance and Quality Control program for Phase 1 of the Transbay Project; and

(x) review and approve construction permits required to be issued by the TJPA, including night noise permits, for Phase 1 of the Transbay Project.

B. City PM. SF Public Works senior staff member Ronald Alameida is designated as the Director of Design and Construction and the Project Manager (the “City PM”) for SF Public Works’ performance of the Services under this Agreement. The City PM shall supervise and direct the TJPA Construction Team. The City PM may be supported by additional SF Public Works employees and TJPA staff, as needed, as determined by the City PM, in consultation with the TJPA Executive Director and consistent with the Budget (as defined below). Upon prior notice to and approval by the TJPA Board, the SF Public Works Director may change the designation of the City PM. The line of authority and shared resources under this Agreement is reflected in the Organizational Chart. Notwithstanding these lines of authority, the Parties acknowledge that regular communication among the TJPA Construction Team and the TJPA’s staff, consultants, and contractors is essential to the effective operation of the TJPA, and furtherance of the objectives of this Agreement.

C. Supervision. The City PM shall take direction from and report directly to the TJPA Board regarding the scope of Services. The TJPA Board shall supervise the Services through the City PM consistent with the Organizational Chart, and not through other SF Public Works staff. The City PM shall be the sole representative from the City authorized to give direction to the TJPA Construction Team on matters relating to the Services.

D. Roles and Responsibilities of City PM and TJPA Executive Director and Coordination. Unless otherwise directed by the TJPA Board, the City PM shall assume the same roles and responsibilities as the TJPA’s Executive Director for purposes of providing the Services, and shall be bound to the same laws, regulations, policies, procedures, restrictions, and requirements as the TJPA’s Executive Director during the performance of the Services.

E. Coordination. The City PM and the TJPA’s Executive Director shall work closely and collaboratively together and keep each other informed of any significant actions pending or taken that could materially affect the provisions of Services. The City PM and TJPA Executive Director shall each promptly upon request provide the other with any information or documents appropriate to perform their functions for the TJPA.

F. Standard of Performance. SF Public Works shall perform all Services required under this Agreement in conformance with the standards observed by a competent practitioner of the profession in which SF Public Works staff assigned to the TJPA Construction Team are engaged in the geographical area in which they practice their profession. SF Public Works’ work product under this Agreement shall conform to the standard of quality normally observed by a person performing services similar to those Services SF Public Works is expected to perform under this Agreement.

G. Assignment of Personnel. SF Public Works shall assign only competent personnel to perform the Services under this Agreement.

H. **Time.** SF Public Works shall devote such time to the performance of the Services under this Agreement as may be reasonably necessary to meet the standard of performance provided in subsection (F) above and to satisfy SF Public Works' obligations under this Agreement.

I. **Ownership of Records.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that SF Public Works prepares for the TJPA under this Agreement or obtains as a result of the Services it performs under this Agreement and that relate to the matters covered under this Agreement, shall be the property of the TJPA.

2. TERM OF AGREEMENT AND TERMINATION

A. **Term.** The term of this Agreement shall begin as of January 4, 2016 (the "Commencement Date"), once it is executed, delivered and approved by the TJPA Board and the City's Board of Supervisors and Mayor, and continue until the successful completion of construction for Phase 1 of the Transbay Project, as evidenced by the issuance of a certificate of final completion for the Transbay Transit Center, including the bus ramp and bus storage facility projects, unless earlier terminated as provided below.

B. **Termination.** Either the City or the TJPA Board may terminate this Agreement, with or without cause, upon 30 days written notice to the other Party; provided, however, the TJPA Board may terminate this Agreement only for cause, after affording SF Public Works written notice and an opportunity to cure, for so long as the Interim Financing is outstanding, unless the TJPA Board shall have taken steps to the satisfaction of the City's Controller to ensure that payment for the Interim Financing is fully discharged. The TJPA Board has the discretion to determine whether any of the Services are satisfactory to the TJPA, which determination shall be made reasonably and in good faith. If the TJPA Board determines that any of the Services are not satisfactory, the TJPA Board may, subject to the limitation above regarding the Interim Financing and in any event following a duly noticed public hearing at which the TJPA Board considers action, (i) terminate this Agreement by giving the 30-days advance written notice to the City or (ii) change the scope of Services by removing specific tasks or activities from this Agreement, following consultation with SF Public Works regarding such changes and any corresponding change in compensation, and provided this right of TJPA shall not limit SF Public Works' right to terminate this Agreement by giving 30-days written notice to the TJPA should SF Public Works not wish to agree to such changes. Upon receipt of notice of termination by either Party, SF Public Works shall cease performing the Services on the termination date specified in the written notice. The compensation payable to the City shall cover only the period for which SF Public Works has performed Services under this Agreement. Upon any termination of this Agreement, neither Party shall have any further obligations except as provided in this Section and Section 8G of this Agreement.

3. COMPENSATION

The total compensation provided by the TJPA to the City under this Agreement shall not exceed \$1,465,403 in calendar year 2016, \$1,488,835 in calendar year 2017, and \$1,537,223 in

calendar year 2018, for an aggregate total of \$4,491,461 (“Budget”); to the extent the TJPA requests that the City provide services after calendar year 2018, the Parties would be required to reach agreement on an appropriate budget for the TJPA Board’s consideration and approval, in its sole discretion. The City shall be compensated for Services provided under this Agreement through any eligible funding source within the TJPA Board-approved Phase 1 Program budget. The TJPA shall compensate the City for Services rendered beginning on the Commencement Date, in accordance with the payment provisions in Attachment B. The City shall submit monthly invoices to the TJPA for Services provided, and the TJPA shall pay the City promptly for all Services appropriately performed under this Agreement.

4. RELATIONSHIP OF PARTIES

A. **Independent Contractor.** The relationship of SF Public Works to the TJPA is that of an independent contractor and all persons working for or under the direction of SF Public Works are its agents or employees and not agents or employees of the TJPA. The TJPA and SF Public Works shall, at all times, treat all persons working for or under the direction of SF Public Works as agents and employees of SF Public Works, and not as agents or employees of the TJPA.

B. **Employees and Subcontractors.** SF Public Works shall provide the Services through employees of SF Public Works qualified to perform such services. The City PM will consult with the TJPA Board on an as-needed basis to assure that the Services are being provided in a professional manner and meet the objectives of the TJPA. Upon prior approval by the TJPA Board and consistent with the Budget, the City PM may retain as-needed specialty consultants to help resolve disputes related to proposed change orders or to scheduling or quality control issues. TJPA shall reimburse the City for all costs associated with the retention of any such consultants consistent with the Budget.

C. **SF Public Works Employee Salary and Benefits.** The City shall, at its sole expense, provide for the salary and any and all benefits of any City employees on the TJPA Construction Team, including such benefits as workers’ compensation, disability insurance, vacation pay, sick pay, or retirement benefits; costs to obtain and maintain all licenses necessary for performing the construction services; and shall pay any and all taxes incurred as a result of the employees’ compensation and benefits, including estimated taxes, FICA, and other employment taxes.

D. **TJPA Employee Salary and Benefits.** The TJPA shall, at its sole expense, provide for the salary and any and all benefits of any TJPA employees working with SF Public Works on the Services under this Agreement, including such benefits as workers’ compensation, disability insurance, vacation pay, sick pay, or retirement benefits; costs to obtain and maintain all licenses necessary for performing the construction services; and shall pay any and all taxes incurred as a result of the employees’ compensation and benefits, including estimated taxes, FICA, and other employment taxes.

5. INSURANCE REQUIREMENTS

A. **Self-Insurance.** SF Public Works, as a department of the City, is self-insured, including for workers' compensation, employers' liability, commercial general liability, automobile liability, and professional liability. If at any time during the term of this Agreement the City plans to cease to be self-insured for any of these possible claims, the City shall provide advance notice to the TJPA and the Parties will negotiate appropriate insurance arrangements before any such change in coverage. If the Parties fail to reach agreement on the terms of insurance policies or policy endorsements required, either Party may terminate this Agreement in accordance with the termination provisions of Section 2B of this Agreement.

B. **Additional Insured Endorsements by TJPA.** TJPA's Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed in the following manner:

(i) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

6. MUTUAL INDEMNIFICATION

A. The TJPA

The TJPA shall defend, indemnify, and hold the City, its officers, employees and agents, harmless from and against any and all liabilities, losses, expenses, attorneys' fees and costs, or claims for injury or damages (collectively, "Claims"), either (a) arising out of the TJPA's performance of this Agreement, but only in proportion to and to the extent such Claims are caused by or result from the negligent or intentional acts or omissions of TJPA, its officers, agents or employees, or (b) relating to conditions existing on or before the Commencement Date or actions that occurred on or before the Commencement Date.

B. The City

The City shall defend, indemnify, and hold the TJPA, its officers, employees and agents, harmless from and against any and all Claims arising out of City's performance of this Agreement, but only in proportion to and to the extent such Claims are caused by or result from the negligent or intentional acts or omissions of City, its officers, agents or employees (including the City PM and any other City employees or City retained consultants that are members of the TJPA Construction Team), occurring during the term of this Agreement.

7. CONFLICTS OF INTEREST AND WAIVER OF LIABILITY

A. **Acknowledgement of Filing Obligations.** The City acknowledges that its officers and employees who may provide services under this Agreement are subject to state and

local conflict of interest laws, including the Political Reform Act (Section 87100 et seq. of the California Government Code) and the San Francisco Governmental Ethics Ordinance (Article III, Section 2 of the Campaign and Governmental Conduct Code). The City also acknowledges that certain officers and employees, as listed in Campaign and Governmental Conduct Code Section 3.1-252, have a continuing obligation to annually file the California Fair Political Practices Commission Form 700 (also referred to as the Statement of Economic Interests).

B. SF Public Works Director. The TJPA acknowledges that the SF Public Works Director, who serves as one of the San Francisco Mayor's appointees to the TJPA Board, has not participated and will not participate in the TJPA Board's approval of this Agreement, but that once this Agreement is approved by the TJPA, the SF Public Works Director may supervise the City PM and other SF Public Works staff on the TJPA Construction Team and, thus, indirectly, the work performed under this Agreement, and act as a member of the TJPA Board with regard to matters that are the subject of this Agreement.

C. Waiver of Liability. Consistent with the acknowledgement and waiver by the members of the TJPA regarding the City's role as the administrator of the TJPA (as described in Recital B), the TJPA acknowledges that SF Public Works' role under this Agreement may present similar issues, the TJPA accepts that the TJPA Board retains ultimate responsibility for financing, design, development, construction, and operation of the Transbay Project, including supervising SF Public Works under this Agreement and, except as specifically provided in Sections 5 and 6 above regarding the self-insurance and indemnification obligations of the City, the TJPA waives any liability of the part of the City under this Agreement.

8. GENERAL

A. Compliance with Applicable Laws. SF Public Works shall comply with all laws, regulations, policies, procedures, restrictions, and requirements applicable to the performance of the Services, including, but not limited to: the Conflict of Interest Code of the TJPA, provided nothing in such Code as applicable to SF Public Works staff shall affect their ability to perform their City jobs.

B. Confidentiality. SF Public Works acknowledges that the TJPA may provide City PM and other SF Public Works staff on the TJPA Construction Team access to information and documents in the course of their provision of the Services which the TJPA deems confidential or otherwise exempt from disclosure without the TJPA's express consent. The City PM and SF Public Works staff on the TJPA Construction Team shall preserve the confidentiality of such information and documents and shall not disclose the same without the TJPA's express consent, except either (i) to City staff as necessary to the performance of the Services, or (ii) as required by law. If required under the terms of any federal grant agreements or laws to protect sensitive security information regarding critical infrastructure, City employees who need access to such information as a result of SF Public Work's provision of Services shall, before obtaining such information, sign the same non-disclosure agreements as TJPA staff are required to sign.

C. Non-Assignment by the City. This Agreement is not assignable by the City either in whole or in part without the prior written consent of the TJPA.

D. **Amendments.** This Agreement may be amended or modified only by written agreement signed by both Parties.

E. **Severability.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be given effect to the fullest extent reasonably possible.

F. **Relationship to Other Agreements.** This Agreement is intended to be separate from and consistent with SF Public Works' role relating to the CFD under the 2015 SF Public Works MOU, and should be interpreted accordingly. To the extent there is any conflict between this Agreement and the 2007 Intergovernmental Agreement or the 2008 Intergovernmental Agreement, this Agreement shall control.

G. **Survival of Obligations.** Notwithstanding anything in this Agreement to the contrary, if this Agreement is terminated, neither Party shall have any further obligations under this Agreement except as provided in Section 3 (Termination) and the Parties' respective indemnification obligations under Section 6 shall also survive. If this Agreement terminates, the 2015 SF Public Works MOU, as well as the 2007 and 2008 Intergovernmental Agreements, shall remain in full force and effect, unless the Parties act, separately from the termination of this Agreement, to terminate or modify any of those agreements.

H. **Successors and Assigns.** Subject to the restrictions on assignment under Section 8C above, this Agreement shall inure to the benefit of and bind the respective successors and assigns of the TJPA and the City. This Agreement is for the exclusive benefit of the Parties and not for the benefit of any other person or entity and shall not be deemed to have conferred any rights, express or implied, upon any other person or entity.

I. **Interpretation of Agreement.**

i. **Attachments.** Whenever an "Exhibit" or "Attachment" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated in this Agreement by reference.

ii. **Captions.** Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The title of this Agreement, and the captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such title and captions shall not define or limit the scope or intent of any provision of this Agreement.

iii. **Words of Inclusion.** The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

iv. **References.** Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be

deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

v. **Recitals.** In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

J. **Cooperation.** In connection with this Agreement, the Parties shall deal with one another in good faith and reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, each of the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement.

K. **Entire Agreement.** This Agreement (including the Attachments) contain all the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding by either Party and no court or other body shall consider those drafts in interpreting this Agreement.

L. **Notices.** All notices required by this Agreement shall be given to the TJPA and the City in writing, by first-class mail, postage prepaid, addressed as follows:

TJPA: Chair of the Board of Directors
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

City: Ronald Alameida
Director of Design and Construction and Transbay Transit
Program Project Manager
Department of Public Works
City and County of San Francisco
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

with a copy to: Edgar A. Lopez, AIA
City Architect & Deputy Director
Building Design & Construction
San Francisco Public Works
City and County of San Francisco

30 Van Ness Ave, 4th Floor
San Francisco, CA 94102

Every notice given to a Party under to the terms of this Agreement must state (or must be accompanied by a cover letter that states) substantially the following:

- (i) the Section of this Agreement to which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond;
- (iii) if approval is being requested, shall be clearly marked “Request for Approval under the Transbay Project Construction Management and Oversight Services Intergovernmental Agreement”; and
- (iv) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons.

M. **Non-Waiver.** Any delay or failure by either Party to exercise any of its respective rights or remedies under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

N. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[signatures continued on following page]

O. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Greg Harper, Chair of the Board of Directors

APPROVED AS TO FORM:

By: _____
TJPA Legal Counsel

DEPARTMENT OF PUBLIC WORKS

By: _____
Edgar Lopez, Deputy Director

Approved by Board of Supervisors Resolution
No. _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By _____
Deputy City Attorney

ATTACHMENT A
TRANSBAY PROJECT
SF PUBLIC WORKS CONSTRUCTION MANAGEMENT AND OVERSIGHT
ORGANIZATION CHART

ATTACHMENT B
TRANSBAY PROJECT
**COMPENSATION TO SF PUBLIC WORKS FOR CONSTRUCTION MANAGEMENT
AND OVERSIGHT SERVICES**

The TJPA agrees to compensate SF Public Works under this Agreement for time and materials in the amount and manner set forth below.

A. **Billing Rates.** SF Public Works shall be paid for services at its hourly billing rates. The hourly billing rate that SF Public Works staff charges for its services shall cover fully salary and benefits, as well as rolled up administrative costs.

As of the date of this Agreement, the hourly billing rate for SF Public Works staff who are anticipated to work provide services under this Agreement is as follows:

Project Manager (PM4)	\$282.42
Principal Analyst	\$157.59
Project Manager (PM3)	\$253.25

SF Public Works may adjust those hourly billing rates from time to time during the term of this Agreement based on any applicable changes in salary and benefits, as well as administrative costs, upon at least 30 days prior written notice to the TJPA describing the change.

B. **Reimbursement for Costs.** In addition to the charges for services set forth in Paragraph A above, the TJPA shall reimburse SF Public Works for its reasonable actual out-of-pocket expenses incurred in the course of rendering such services. Reimbursement for costs related to consultants must be approved in advance by the TJPA Board.

C. **Budget for Services.** SF Public Works shall use efficient and cost-effective means in rendering services and incurring any reimbursable costs. The Parties acknowledge that the TJPA Board authorizes this Agreement with the expectation that the compensation to SF Public Works will be consistent with the Board's approved Phase 1 Program budget; thus the Budget authorized under this Agreement is expected to be cost-neutral under that Program budget. The total compensation provided by the TJPA to the City under this Agreement shall not exceed \$1,465,403 in calendar year 2016, \$1,488,835 in calendar year 2017, and \$1,537,223 in calendar year 2018, for an aggregate total of \$4,491,461 ("Budget"). If SF Public Works anticipates that the cost for its services will exceed such amount and/or result in a net cost to the TJPA, SF Public Works shall obtain the prior approval of the TJPA Board for such anticipated excess cost.

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

RESOLUTION NO. _____

WHEREAS, The Transbay Joint Powers Authority (“TJPA”) is a joint powers agency comprised of the City and County of San Francisco (the “City”), the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, and the State of California Department of Transportation (ex officio). The TJPA is responsible for the financing, design, development, construction, and operation of the Transbay Transit Center Program (the “Transbay Project”); and

WHEREAS, The Transbay Project includes (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including open space on the roof of the Transit Center, a bus ramp, a bus storage facility, and the Train Box component of the rail extension (“Phase 1”); (2) the extension of Caltrain rail tracks from their current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center to accommodate Caltrain and California High Speed Rail (“Phase 2”); and (3) in coordination with the Office of Community Investment and Infrastructure, the successor to the former Redevelopment Agency, certain transit infrastructure activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area; and

WHEREAS, As provided in Section 6 of the Joint Powers Agreement establishing the TJPA and Article XII of the TJPA’s Bylaws, the TJPA designated the City as the “Administrator” for the TJPA, authorizing the City to provide necessary administrative services for the TJPA under an administrative services agreement. In doing so, the members of the TJPA acknowledged that appointing the City as the administrator may present conflicts of interest, and they expressly waived any liability on the part of the City arising out of any such conflict of interest; and

WHEREAS, In 2001, the TJPA entered an Administrative Services Agreement with the City, confirming the terms under which the TJPA may request that the City in its capacity as Administrator for the TJPA assist the TJPA, in cooperation with consultants and contractors to the TJPA, to advance the Transbay Project. Under that agreement, the City has from time to time provided such assistance to TJPA staff, consultants, and contractors, including through two previous intergovernmental agreements that the TJPA approved in 2007 and 2008 with SF Public Works; and

WHEREAS, On November 12, 2015, the TJPA Board of Directors (sometimes “TJPA Board” or “Board”) adopted Resolution No. 15-043, adding a new Section 9.6(g) of the Bylaws of the TJPA, to provide as follows: “Construction of the Transbay Terminal Project. Notwithstanding the provisions of subsection (c), the Board may designate a person or entity to oversee all aspects of construction of the Transbay Project (including design and project controls related to construction), who shall take direction from and report directly to the Board and who shall also inform the Executive Director of such actions. Without limiting the foregoing, the

Board may authorize the Authority to enter into an agreement with the City's Department of Public Works to perform this function.”; and

WHEREAS, Consistent with TJPA Bylaws Section 9.6(g), on March 10, 2016, the TJPA Board of Directors adopted Resolution No. 16-006 giving SF Public Works exclusive authority, subject to TJPA Board supervision, to oversee all aspects of construction of the Transbay Project, including, without limitation, design and project controls related to construction of the Transbay Project for the purpose of meeting the TJPA Board’s approved program budget and schedule for Phase 1; and

WHEREAS, In furtherance of the TJPA Board Resolution No. 15-043 and 16-006, as well as Section 6 of the TJPA’s Joint Powers Agreement, Article XII of the TJPA’s Bylaws, and the Administrative Services Agreement, the TJPA wishes to obtain construction management and oversight services of SF Public Works for Phase 1 of the Transbay Project, and the City, through SF Public Works, is willing to perform this construction management and oversight work, on the terms and conditions more particularly described in a Transbay Project Construction Management and Oversight Services Intergovernmental Agreement (“Services Agreement”);

WHEREAS, SF Public Works has presented a budget to provide the services described in the Services Agreement over three years (2016 through 2018) in an aggregate amount not to exceed \$4,491,461.00; now, therefore, be it

RESOLVED, That the Board approves the Services Agreement and authorizes Board Chair Gregory Harper to execute the Services Agreement, in substantially the form on file with the Board Secretary, and to execute any and all documents and to take any and all actions, which he deems necessary or advisable to consummate the lawful execution of or the performance of the Services Agreement; and be it

FURTHER RESOLVED, That the Board approves transfers within the Phase 1 Program Budget from Program Reserve to Programwide Construction Management as well as any fiscal year 2015-16 budget amendment necessary to accomplish the terms of the Services Agreement.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 22, 2016.

Secretary, Transbay Joint Powers Authority