

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**RESOLUTION NO. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) entered an employment agreement with Mark Zabaneh on September 16, 2013 (Employment Agreement) to serve as the TJPA's Senior Program Manager, which provides for certain salary and benefits, and certain assigned duties; and

WHEREAS, On April 22, 2016, the TJPA Board of Directors appointed Mark Zabaneh to the position of Interim Executive Director of the agency effective May 1, 2016; and

WHEREAS, During the term of Mr. Zabaneh's service as Interim Executive Director, his scope of duties and responsibilities will change and increase, and a commensurate change in compensation is appropriate; now, therefore, be it

RESOLVED, That the TJPA Board of Directors does hereby authorize the Board Chair to execute an amendment to the Employment Agreement with Mark Zabaneh for the position of Interim Executive Director, in substantially the form enclosed, effective May 1, 2016, and take such other actions as a reasonable and necessary to implement the amended contract.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 12, 2016.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

## **EMPLOYMENT AGREEMENT AMENDMENT**

THIS EMPLOYMENT AGREEMENT AMENDMENT (Amendment) is made by and between TRANSBAY JOINT POWERS AUTHORITY (TJPA or Employer), a California Joint Powers Authority, and Mark Zabaneh (the Employee).

WHEREAS, Employer entered an employment agreement with Employee on September 16, 2013 (Employment Agreement) to serve as the TJPA's Senior Program Manager, which provides for certain salary and benefits, as described in Exhibit A to the Agreement, and certain assigned duties, as described in Exhibit B to the Agreement; and

WHEREAS, At its April 22, 2016 meeting, the TJPA Board of Directors appointed the Employee to the position of Interim Executive Director effective May 1, 2016; and

WHEREAS, During the term of Employee's service as Interim Executive Director, his scope of duties and responsibilities will change and increase, and a commensurate change in compensation is appropriate.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Employee agree to modify certain provisions of the Employment Agreement as follows:

### **Sections 2, 3, 4, & 6 are modified as follows:**

All references to "Executive Director" shall be replaced by "Board of Directors".

### **Exhibit A – Salary and Benefits – at Section 1.1 is replaced in its entirety as follows:**

#### **1.1 Compensation**

Commencing May 1, 2016, Employee, acting as the Interim Executive Director for the Transbay Joint Powers Authority, shall be paid an hourly rate of \$125.52 payable in twice monthly increments (1<sup>st</sup> to the 15<sup>th</sup> of each month, and 16<sup>th</sup> to the end of the month) for such time as Employee fills such position. If Employee is asked to resume acting as Senior Program Manager for the Transbay Joint Powers Authority, Employee shall be paid at an hourly rate of at least \$104.46 plus any annual adjustment that would otherwise have been applied to such rate pursuant to Section 1.2 of the Employment Agreement during the period when Employee served as Interim Executive Director.

**Exhibit B – Assigned Duties is modified to add the following:**

While acting as the Transbay Joint Powers Authority’s Interim Executive Director, Employee will perform the duties in the attached Interim Executive Director job description. The TJPA Board of Directors may assign Employee other duties in support of TJPA programs and policies, not yet delineated.

###

Unless modified by the above, all other provisions of the Employment Agreement remain in full force and effect, including but not limited to, the at-will nature of the employment relationship.

**ACKNOWLEDGMENT AND AGREEMENT TO THE TERMS SET FORTH ABOVE**

DATED: \_\_\_\_\_

by: \_\_\_\_\_  
Greg Harper  
Chair, TJPA Board of Directors

DATED: \_\_\_\_\_

by: \_\_\_\_\_  
Mark Zabaneh  
Interim Executive Director

**Right to Consult Counsel.** The Employee has had the right to seek counsel and the Employee has been advised to consult independent counsel concerning this Amendment to the Employment Agreement, and the effects of the Amendment.

DATED: \_\_\_\_\_

by: \_\_\_\_\_  
Mark Zabaneh  
Interim Executive Director

**EXHIBIT B**

**Interim Executive Director – Assigned Duties**

Under the direction and supervision of the Transbay Joint Powers Authority (TJPA) Board, Employee will work as the TJPA Executive Director. As the chief executive officer, Employee shall effectively and responsibly supervise, direct, and administer the business of the TJPA pursuant to the TJPA By-laws. Subject to the TJPA By-laws, resolutions, regulations, policies and procedures, and in accordance with applicable law, Employee shall:

1. Organize and reorganize the TJPA administrative, professional and technical staff in a manner which, in the Employee's best judgment, best serves the TJPA;
2. Hire, terminate, assign, select, and reassign personnel;
3. Select, supervise, and manage contractors and contracts of the TJPA, subject to applicable TJPA rules and policies;
4. Develop and recommend, and upon TJPA approval, implement the policies, goals, and objectives of the TJPA;
5. Developer and implement the capital, maintenance, and operational programs and projects of the TJPA;
6. Administer the budget of the TJPA.



TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan • Executive Director

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (Agreement) made this 16th day of September 2013, by and between TRANSBAY JOINT POWERS AUTHORITY (TJPA or Employer), a California Joint Powers Authority and Mark Zabaneh (the Employee).

### RECITALS

TJPA is a public Joint Powers Authority organized under the laws of the State of California.

TJPA wishes to enter into an at-will employment relationship with the Employee subject to certain terms and conditions hereinafter set forth and the Employee has indicated agreement to such employment.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants as hereinafter set forth, the parties hereto agree as follows:

**Section 1. Employment.** TJPA hereby employs the Employee and the Employee hereby accepts employment with TJPA on the terms and conditions set forth in this Agreement and **Exhibit A** to this Agreement. It is agreed and understood that Employee's employment is at-will.

### **Section 2. Term.**

A. This Agreement shall commence on the date indicated above, and shall terminate as set forth herein. This contract shall renew automatically on July 1 of each year unless either party gives the other notice prior to that date of a desire to renegotiate any term or of nonrenewal.

B. Notwithstanding anything to the contrary herein, this is an at-will employment, and this Agreement may be terminated by mutual agreement of the parties, or unilaterally by either party upon one days' written notice to the other party. Employee shall endeavor to give at least 10 days notice of intent to vacate the position, although this calls for good faith only, and any failure to do so would not be a breach of this contract.

C. Subject to the provisions for termination as hereinafter provided, the Employee shall be employed by TJPA at the pleasure of the TJPA Executive Director (hereinafter the Executive Director). Employee's employment is at will and is subject to termination at any time at the sole discretion of the Executive Director. Employee understands and acknowledges that employee's engagement under this Agreement is in an "at-will" capacity. Employee has those rights under any personnel rules which TJPA may adopt which are applicable to "at-will" employees, including rules regarding those statutory

rights which are applicable to all employees. Employee may terminate this Agreement and employee's relationship with TJPA at any time upon 10 working days' e-mail notice. Except as expressly indicated in this section, Employee's "at-will" relationship with TJPA cannot be altered by practice, or by oral or written statement, except as provided below. Nothing in this Agreement shall be construed as requiring cause for termination or conferring property rights on Employee. This Agreement supersedes all prior agreements and practices related to Employee's work on behalf of TJPA. The only way in which Employee's at-will relationship with TJPA may be altered is by a written instrument signed by Employee and the Executive Director, which instrument specifically refers to this agreement and this section.

**Section 3. Compensation and Performance Review.** For all services rendered by the Employee pursuant to this Agreement, TJPA shall pay the Employee salary and benefits as set forth in **Exhibit A**. The Employee's performance and compensation generally are reviewed at least annually by the Executive Director of TJPA or designee. In addition, TJPA has a cost of living increase based on the CPI ending 10/31 of each year for the San Francisco Bay Area Clerical and Urban Wage Earners. TJPA does not participate in the Social Security system.

**Section 4. Duties.** The Employee is engaged to perform services and specific duties as assigned by the Executive Director, or designated representative. Employee's assigned duties commencing on the date specified in Exhibit A, are shown on **Exhibit B** hereto.

**Section 5. Compliance with Laws.** The Employee shall follow all laws pertaining to employment as well as comply with all federal, state, city, and TJPA laws, statutes, ordinances, rules, regulations, policies, and the orders and decrees of any courts, administrative bodies, or tribunals affecting the performance of this Agreement.

**Section 6. Exclusive Service.** The Employee shall devote his/her time and attention during work hours to rendering services on behalf of TJPA only if working full-time for TJPA. Employment or paid work outside this Agreement must be pre-approved by the Executive Director.

**Section 7. Arbitration.** Any disputes concerning the parties' rights and responsibilities in this employment relationship, including, but not limited to this Agreement, and any claims concerning discrimination, harassment, wrongful discharge, a tort, breach of contract, breach of the covenant of good faith and fair dealing, any alleged unlawful or wrongful act which might arise under federal, state, and/or local constitutions, statutes and regulations shall be submitted to binding arbitration. Such binding arbitration shall be governed by the terms of Title 9 of the California Code of Civil Procedure (§1280 et seq.). Any arbitration proceedings shall be private and confidential to the extent permitted by law.

Employee and TJPA shall jointly attempt to agree on an arbitrator. If Employee and TJPA fail to agree upon an arbitrator within 14 calendar days of a timely request for arbitration, the parties shall jointly request the State Mediation and Conciliation Service



to supply them with a list of seven names of persons experienced in hearing disputes involving public sector employment. Each party shall strike one name from the list until one name remains and that person shall be the arbitrator. The first party to strike shall be determined by lot. Both parties shall bear their own attorneys' fees but the arbitrator's costs shall be borne by TJPA. Any party seeking a copy of the transcript of the arbitration shall pay the costs of preparation of the transcript.

All disputes must be submitted in writing to the other party for arbitration within one year of the incident giving rise to the dispute or be barred as untimely.

**Section 8. Non-Assignable.** This Agreement shall not be assignable.

**Section 9. Notices.** Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested; (c) by facsimile, (d) by email or (e) by a commercial courier that guarantees delivery and provides a receipt, and shall be addressed as follows:

TJPA: Nila Gonzales, Chief of Staff  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Email: [ngonzales@transbaycenter.org](mailto:ngonzales@transbaycenter.org)

Employee Name: Mark Zabaneh

**Section 10. Construction.** This Agreement shall be governed by the laws of the State of California. The waiver by any party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This instrument contains the entire agreement of the parties concerning employment and supersedes any previous written, oral or implied contracts. This Agreement may not be changed except by written agreement duly executed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, heirs, and personal representatives.

**Section 11. Conflict of Interest.** Employee covenants that she/he has no interest in, nor shall acquire any interest directly or indirectly, which will conflict in any manner or degree with the subject matter of this Agreement or performance of services hereunder. Employee shall file an annual disclosure of economic interest (Form 700) if so required, and shall also file disclosure of economic interest on leaving employment.

**Section 12. Severability.** Each provision of this Agreement shall be considered severable, and if for any reason any provision is determined to be invalid, such invalidity shall not impair or otherwise affect the validity of the other provisions of this Agreement. Moreover, the parties agree to replace the invalid provisions with a substitute provision that will satisfy the intent of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first hereinabove set forth.

DATED: 9/4 2013

TRANSBAY JOINT POWERS  
AUTHORITY

by:   
Executive Director

DATED: 9/5 2013

by:   
Employee

**Right to Consult Counsel.** The Employee has had the right to seek counsel, and the Employee has been advised to consult independent counsel concerning this Agreement, and the effects of the Agreement.

DATED: 9/5 2013

by:   
Employee



## **EXHIBIT A Salary and Benefits**

### **1. Salary**

#### **1.1 Compensation**

Commencing September 16, 2013 (the effective date of employment), Employee, acting as the Senior Program Manager for the Transbay Joint Powers Authority, shall be paid an hourly rate of \$98.25 payable in twice monthly increments (1<sup>st</sup> to the 15<sup>th</sup> of each month, and 16<sup>th</sup> to the end of the month). Such compensation may change if Employee's duties are changed or to reflect compensation adjustments as deemed appropriate by the Executive Director.

#### **1.2 Cost of Living Adjustment**

The employee's salary will be adjusted annually (only upwards if warranted by the index), effective December 1 by the San Francisco Bay Area Consumer Price Index, for Urban Wage Earners and Clerical Workers. The index change will be used for the 12 months ending October 31.

#### **1.3 Full-time Status**

Employee is full-time and works 40 hours per week (or 2080 hours per year).

### **2. Overtime and Absences**

#### **2.1 Overtime**

Employee is exempt from overtime compensation.

#### **2.2 Absences**

Employee must follow the absence reporting procedures as determined by their immediate supervisor.

### **3. Holidays**

#### **3.1 Actual Holidays**

Employee shall receive 10 eight-hour paid holidays per calendar year.

1	January 1	New Year's Day
2	Third Monday in January	Martin Luther King, Jr. Day
3	Third Monday in February	President's Day
4	Last Monday in May	Memorial Day
5	July 4	Independence Day
6	First Monday in September	Labor Day
7	November 11	Veterans Day
8	Fourth Thursday in November	Thanksgiving Day
9	Fourth Friday in November	Day after Thanksgiving
10	December 25	Christmas Day

**3.2 Holidays Falling on a Weekend Day**

If any of the listed holidays falls on a Saturday, the Friday preceding shall be celebrated as a holiday; if the holiday falls on a Sunday, the following Monday shall be celebrated as the holiday.

**4. Administrative Leave**

**4.1 Hours and First Year Allocation**

Employee shall receive 40 hours of paid Administrative Leave per calendar year. Administrative Leave shall be prorated based on the effective date of employment during a calendar year. For calendar year ending December 31, 2013, 12 hours of administrative leave will be available.

**4.2 Unused Administrative Leave**

Unused Administrative Leave time is not paid out at the end of the year or upon separation from employment.

**4.3 Requesting Leave**

Paid Administrative leave shall be arranged at least 2 weeks in advance of the leave desired.

**5. Vacation**

**5.1 Entitlement**

Employee shall accrue vacation at the accrual rate of .0462 hours per regular standard hours in paid status, excluding overtime hours, for a maximum of 12 days per year. Vacation can be used with the advance approval of the employee's immediate supervisor.

**5.2 Accrual**

Employee shall not be allowed to have an accumulation of more than 2 years vacation accrual by December 15<sup>th</sup> of each calendar year. Vacation accrued in excess of the maximum allowed will be paid out each year by monetary payment at the employee's current rate of pay during the month of December.

**6. Other Leaves**

**6.1 Sick Leave Accrual**

Employee shall accrue sick leave credit at the rate of .0462 hours per regular standard hour in paid status, excluding overtime, for a maximum of 96 hours per year. Employee will not be compensated for unused sick leave upon separation from employment.

**6.2 Family Sick Leave**

Employee is entitled to use sick leave for the care of the employee's ill or injured immediate family member (mother, father, spouse, child, domestic partner as defined in California law) for up to half of the employee's annual sick leave accrual. Such leave for this purpose will be deducted from the employee's sick leave balance.

**6.3 Bereavement Leave**

In case of death within the immediate family, Employee shall be entitled to remain absent from duty with pay in order to attend the funeral or memorial service for a maximum of 3 (preferably consecutive) workdays.

**6.4 Family Definition for Bereavement Leave**

For the purpose of this Bereavement Leave Section, immediate family is defined as husband, wife, domestic partner as defined by the State of California, father, mother, grandfather, grandmother, sister, brother, son, daughter and such other persons whose relationship to employee is essentially similar to the aforesaid relationships. Such bereavement leave shall not be charged against any leave balances or as leave without pay. If additional leave is needed any accrued available leave or leave without pay for a reasonable period of time may be used. Extended leave taken to care for an ill family member may be subject to various local, state and/or federal rules.

**6.5 Family Care Leave and Pregnancy Disability Leave**

Family Care Leave and Pregnancy Disability Leave are granted in accordance with the Federal and State law as adopted in Employer's Family Care Leave Policy and Pregnancy Disability Leave Policy.

**6.6 Jury Duty**

Employee may be absent from duty with full pay per jury assignment if summoned to jury duty. Employee must remit within 15 days, all fees received, except those specifically allowed for mileage and expenses.

**7. Health and Welfare Plans**

**7.1 Medical Plan**

Pursuant to the TJPA's Medical Plan, employer shall contribute up to \$625 per month for employee only, up to \$1250 per month for employee plus 1 dependent, and up to \$1535 per month for employee plus 2 or more dependents for calendar year 2013. Employees who can provide proof of existing medical coverage as indicated in 7.2 below will receive a benefit in lieu of the employer's contribution for medical insurance. Medical plans are based on the terms and conditions of the contract with the medical plan provider.

**7.2 Alternate Medical Benefit Program**

Employees who can provide proof of existing medical coverage from another source will receive a benefit in lieu of the Employer's contribution for medical insurance. Proof of coverage can be a letter from the provider, a copy of an insurance card, or any other such document as approved by the Executive Director. The amount of the benefit is set at the applicable employee single rate of \$625 per month, effective January 1, 2013.

**7.3 Dental Plan**

Employer shall contribute the premium cost for employees to participate in the dental plan to provide for dental care for qualified employees and their eligible dependents. Employees have a one-time opportunity at employment to decide to participate in the dental plan. The Dental plan is based on the terms and conditions of the contract with the plan provider.

**7.4 Vision Care Plan**

Employer shall provide a Vision Care Plan for employees and shall pay the monthly premium amount for qualified employees and their eligible dependents. Employees have a one-time opportunity at employment to

decide to participate in the vision plan. The vision plan is based on the terms and conditions of the contract with the plan provider.

**7.5 Short- and Long-term Disability**

Employee shall be provided short- and long-term disability insurances at no cost to the employee, and plan components are based on the terms and conditions of the contract with the provider.

**7.6 Life Insurance**

Employee shall receive employer-paid life insurance premiums in the amount of one times regular salary to the nearest thousand to a maximum of \$250,000.00. The plan is based on the terms and conditions of the contract with the plan provider.

**8. Retirement**

**8.1 Public Employees Retirement System**

The Agency is a member of the California Public Employees' Retirement System (CalPERS). The Agency has adopted the voluntary salary reduction option offered by Section 414(h)(2) of the Internal Revenue Service Code and the Public Employees' Retirement System.

**8.2 Retirement Formula**

**CalPERS "Classic" Members:** 2% @ 55 formula with single highest year formula; agency pays employee contribution pursuant to Government Code Section 20691. **CalPERS "New" Members:** 2% @ 62 formula with three highest years average formula; employee pays employee contribution. The Agency's PERS contract provides the option of allowing service credit for accrued sick leave for employees who retire with a PERS retirement benefit.

**8.3 PERS Eligibility**

All full-time employees, as well as employees who work more than 20 hours per week on average or more than 960 hours in a fiscal year shall be enrolled in PERS.

**8.4 Deferred Compensation Plan**

TJPA has a 457 plan for employees to participate.

**8.5 Social Security Participation**

Employer does not participate in social security.

**8.6 Matching Contributions**

The Employer will contribute to a 401(a) plan a match of the employee's contribution to a 457 deferred contribution plan up to an additional 2 percent of the employee's base annual salary. The match will be a one-for-one match, i.e. the employer will match each dollar of the employee's contribution up to 2 percent for each payperiod in which the employee contributes.

**8.7 Retiree Medical Insurance Reimbursement**

For employees who have met CalPERS retirement requirements and so retire from TJPA employment, TJPA will pay the minimum PEMHCA (Public Employees' Medical and Hospital Care Act) monthly retiree health contribution if the retiree is active in a health plan at the time of retirement.

**9. Legally Required Benefits**

The Employer follows all legally mandated requirements, including providing Medicare, workers' compensation, and following California Domestic Partnership laws, and any other such laws as is required.

**10. Rules, Regulations, and Policies**

Employment is subject to the rules set forth in the TJPA's personnel policies and rules which can be found in the Employee Handbook.

**11. Transit Allowance**

Employee may receive a transit allowance. Employees driving vehicles while on duty must follow the TJPA's policy on equipment and vehicle use. Employee shall receive a monthly transportation allowance equivalent to the cost of a monthly SF MUNI-only Fast Pass. Fast Pass amounts are adjusted periodically.

**12. Cell Phone Allowance**

Employee shall receive a monthly allowance to cover all costs associated with the use and maintenance of the employee's cell phone of \$50.00 per month. All work use of electronic devices must follow the TJPA's policy on information and electronic systems and equipment and vehicle use.

**EXHIBIT B**  
**Assigned Duties**

Employee will act as the Transbay Joint Powers Authority's Senior Program Manager. Employee may be assigned other duties in support of TJPA programs and policies, not yet delineated. In that role, the employee will:

- Perform the functions as assigned.
- Be reasonably available to perform the services during the normal work week, as agreed upon.
- Meet regularly and as often as necessary for the purpose of consulting about the scope of work performed.

OTHER DUTIES – see attached job description



## **Senior Program Manager**

### **Essential Duties:**

- Overseeing all aspects of the work of the various technical consultants, including the Program Management/Program Control team and design consultants, to ensure an orderly development of the design and contract documents on time and within budget, and in accordance with the highest standards of quality control and assurance.
- Asserting strong and consistent leadership over the Program to ensure that the various consultants engaged in the Program work in concert with one another and in accordance with TJPA requirements.
- Ensuring that appropriate quality control and quality assurance procedures are in effect at all times.
- Evaluating ongoing design work and recommending timely changes or additions to consultant or subconsultant staffs as necessary to ensure a high quality finished product.
- Working effectively with stakeholders and member agencies to quickly resolve design, construction, and other technical matters.
- Serving as advisor to the Executive Director and/or TJPA Staff on technical matters.
- Performing special assignments as required by the Executive Director.
- Reviewing and commenting upon proposed consultant contracts; ensuring that consultants comply with the terms of their respective executed contracts.
- Anticipating problems and crafting mitigation measures.
- Managing the design of complex engineering projects, ensuring that all relevant local, State and Federal codes, standards and project requirements are met; planning and developing budgets and staff for a wide variety of engineering activities.
- Planning, organizing and overseeing the administration and management of construction contracts; reviewing, evaluating and making recommendations for and/or approving contracts, contract modifications, specifications, related documents, and the settlement of claims.
- Writing, and/or reviewing and approving reports, memos, recommendations, routine correspondence and other documents.