

**STAFF REPORT FOR CALENDAR ITEM NO.: 10  
FOR THE MEETING OF: June 8, 2017**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute a Professional Services Agreement for the Transbay Transit Center (Transit Center) with G4S Secure Integration LLC (G4S) in the amount of \$5,606,664, to provide the Physical Security Information Management (PSIM) system and the Emergency Communication System/Mass Notification System (ECS/MNS) and Integration Services (Services).

**EXPLANATION:**

The PSIM system and ECS/MNS will provide premier safety and security management systems for the Transit Center. Comparable systems are in use at the San Francisco International Airport and San Francisco Municipal Transportation Agency.

The PSIM system will monitor, aggregate and correlate large quantities of safety and security data from multiple devices and sensors throughout the Transit Center. In the event of an incident or anomaly, the PSIM system will digitally present the relevant information, along with a customized incident response checklist, to TJPA security staff. This ability, unique to PSIM systems, will ensure a rapid and consistent response to incidents and anomalies. The PSIM system will act as a ‘force multiplier’, correlating data and displaying the results to an operator in an intuitive format. This will reduce security costs by ensuring the most efficient use of the Center’s security personnel.

The PSIM software will have these key capabilities:

- a. Collect data from various safety and security devices and systems
- b. Analyze and correlate the data, events, and alarms to identify actual incidents and their level of priority
- c. Rapidly present the relevant situational information in a simple, intuitive format for an operator to verify situations
- d. Provide standard operating procedures (SOPs)—step-by-step instructions based on best practices and an organization’s policies—and tools needed to resolve incidents
- e. Track all the information and steps for compliance reporting, training, and, when needed, in-depth investigative analysis
- f. Create an audit trail, monitoring how each operator interacts with the systems, tracking any manual changes to security systems and calculating reaction times for each event

To assist the TJPA with the protection of life and prevention of injuries, the ECS/MNS will coordinate and convey real-time information and instructions on necessary and appropriate response actions to passengers and personnel in the Transit Center during emergency events. The ECS/MNS will use intelligible voice communications along with emergency radio communications, visible signals, short message service (SMS) texts, graphics (digital displays), and wireless communication methods.

As the PSIM-ECS/MNS and integration provider, G4S will provide design-build and programming services, including furnishing all equipment, labor, materials, testing, and commissioning, as well as integrating the PSIM system and the ECS/MNS with various existing sub-systems. Existing subsystems include but are not limited to the fire management system, public address system, message board display system, Rooftop Park beacon/flashing light system, distributed antenna system, and building-wide IP-based communication network infrastructure.

G4S was selected following a competitive procurement process. The TJPA issued Request for Proposals (RFP) 17-04 PSIM System and ECS/MNS and Integration Services on September 13, 2016. The RFP was sent to PSIM and ECS/MNS integrators and firms with experience providing similar services, as well as the contacts on the TJPA’s contract opportunities mailing list. Three responsive proposals were received on November 10, 2016, from the following firms:

- ARES Security Corporation
- Edge360 LLC
- G4S Secure Integration LLC

A selection committee composed of the TJPA Engineering Manager, subject matter experts from the TJPA’s Program Management/Program Controls consultant, the Transit Center design team, deputies from the San Francisco Sheriff’s Department, and a staff member from the San Francisco International Airport, determined that the three respondents fell into a competitive range and would be invited to interview.

Interviews were conducted on December 1, 2016. The selection committee’s final scoring is shown below.

<b>Firm</b>	<b>Panelist A</b>	<b>Panelist B</b>	<b>Panelist C</b>	<b>Panelist D</b>	<b>Panelist E</b>	<b>Panelist F</b>	<b>Total Score</b>
ARES Security	79	97.5	115.5	122	112	94	620
Edge360	103	106	112.5	124	113	102	660.5
<b>G4S</b>	<b>97.5</b>	<b>103</b>	<b>118.5</b>	<b>132</b>	<b>117</b>	<b>116</b>	<b>684</b>

Four alternates were included in the RFP, which are summarized in the following paragraphs.

**Alternate No. 1 – Location of Back-Up ECS/MNS Autonomous Control Unit (ACU)**

In lieu of a specification requirement to locate the back-up ACU off-site, locate the backup ACU (arranged to mimic primary ACU) in the backup Security Operations Center.

**Alternate No. 2 – Security Vulnerability Protection**

In addition to the system interconnection password protections, provide necessary software upgrades such that the ECS/MNS is able to pass security vulnerability and web security vulnerability scans.

**Alternate No. 3 – Extended Warranty: Inspection, Testing and Maintenance – Two Years**

At the conclusion of the specified one-year warranty period, provide inspection, testing and

maintenance of the ECS/MNS head-end equipment and remote integration modules along with detailed testing of the programmed system sequence of operation every six months over the next two years.

Alternate No. 4 – Public Address System Operator Microphone Adjacent to Local Operator Consoles

In lieu of providing an ECS/MNS vendor-supplied operator microphone (for live voice announcement capability) at each local operator console as outlined in the specifications, provide a public-address system operator-controlled microphone at the local operator console locations. The public-address microphone shall be provided with the necessary equipment to manually transmit live voice announcements to selected public address speaker zones (on a floor-by-floor basis, stair-by-stair basis) from the location of the ECS/MNS local operator console workstations.

A summary of the cost proposals from the three firms is provided in the table below.

	<b>ARES Security</b>	<b>Edge360</b>	<b>G4S</b>
ECS/MNS	\$2,851,694	\$3,314,832	\$2,927,101
PSIM	\$2,172,513	\$4,161,856	\$1,983,330
ARES Program Mgmt.	\$907,228	n/a	n/a
ARES Scenarios Cost	\$1,305,396	n/a	n/a
<b>TOTAL BASE</b>	<b>\$7,236,831</b>	<b>\$7,476,688</b>	<b>\$4,910,431</b>
<b>ECS/MNS Alternates</b>			
1. Location of backup ACU	included in base	included in base	\$667,075
2. Security Protection	included in base	included in base	included in base
3. Extended Warranty	\$929,918	\$1,006,821	\$1,120,490
4. Public Address Microphone	included in base	included in base	\$29,158
Subtotal	\$929,918	\$1,006,821	\$1,816,723
<b>GRAND TOTAL</b>	<b>\$8,166,749</b>	<b>\$8,483,509</b>	<b>\$6,727,154</b>

While all firms are well qualified to provide the scope of services, the selection committee determined that GS4's proposed services will provide the greatest benefit to the Program. The selection committee's report is attached.

During negotiations, G4S proposed adding consulting, testing and inspection services to coordinate with the San Francisco Fire Department in order to ensure that the systems meet the NFPA UL listing requirements. They also proposed alternative, lower cost ECS/MNS vendors. G4S-TJPA negotiations resulted in the following items being included in the final proposal, at a cost of \$5,606,664.

- PSIM & ECS/MNS
- Location of backup ACU

- Security Protection
- Public Address Microphone
- NFPA Consulting/Updates
- Preventive Maintenance (1 year)

G4S is a systems integrator with over 25 years of experience in the design, construction, and maintenance of stand-alone and integrated communication networks and electronic security systems. G4S is currently working on the TG10.4, Electrical, Communications, Security, and Integrated Networks (Electrical) trade subcontract for the Transit Center project, providing security systems (access control, intercom, and intrusion detection) that will be incorporated into the PSIM system.

The G4S team consists of CNL Software (CNL) to provide the PSIM system; Alertus/Everbridge for the ECS/MNS; and Fisk Electric, who will install conduit, cabling, and equipment racks for the systems. G4S and CNL previously teamed to provide security and PSIM system services for the Washington State Department of Transportation ferry system. G4S shall act as a systems integrator providing a complete and functioning PSIM system and ECS/MNS. CNL is a global provider of PSIM software and has developed effective PSIM solutions for the London Underground and the British Transport Police, who supervise the mass transit system in Britain. Alertus provides in-house notification devices and has completed projects for the United States House and Representatives and UCSF. Everbridge provides Distributed Recipient Mass Notification Systems and has completed projects for the City, 911 services and the National Weather Service. Fisk Electric is the TG10.4 (Electrical) trade subcontractor for the Transit Center.

The TJPA's budget for the Design and Implementation Services is \$6 million. The work is anticipated to be funded by TIFIA loan and City Financing proceeds.

**RECOMMENDATION:**

Staff recommends that the TJPA Board of Directors authorize the Executive Director to execute a Professional Services Agreement with G4S Secure Integration LLC in the amount of \$5,606,664 for Design and Implementation.

**ENCLOSURES:**

1. Resolution
2. Professional Services Agreement
3. Selection Committee Report

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires a physical security information management (PSIM) system and an emergency communication system/mass notification system (ECS/MNS) to support the safety and security management systems of the Transbay Transit Center; and

WHEREAS, On September 13, 2016, the TJPA issued Request for Proposals (RFP) 17-04 Physical Security Information Management (PSIM) System and Emergency Communication System/Mass Notification System (ECS/MNS) and Integration Services; and

WHEREAS, On November 10, 2016, the TJPA received three responsive proposals in response to the RFP, a selection committee convened to evaluate the proposals for technical merit, and three firms were shortlisted and invited to interview; and

WHEREAS, The selection committee scored G4S Secure Integration LLC as the highest-ranked respondent and determined that the firm is well qualified to provide the scope of services; and

WHEREAS, Staff conducted additional due diligence and held discussions with G4S and negotiated a Professional Services Agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Professional Services Agreement with G4S Secure Integration LLC in the amount of \$5,606,664 for Design and Implementation Services.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 8, 2017.

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

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the 8th day of June 2017, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and G4S ("Contractor").

### Recitals

A. The TJPA requires Emergency Communication System/Mass Notification System (ECS/MNS) and Physical Security Information Management (PSIM) System and Integration services ("Services") for the Transbay Transit Center Program ("Program").

B. The Contractor submitted a written proposal ("Proposal") in response to the TJPA's Request for Proposals ("RFP"). Based on that Proposal, the TJPA's selection committee determined the Contractor to be the highest-ranked respondent to the RFP and the TJPA invited the Contractor for exclusive negotiations. This Agreement is the product of those negotiations.

C. The Contractor represents and warrants that it is qualified to perform the Services required by this Agreement as set forth in Appendix A ("Scope of Services").

D. The TJPA and the Contractor intend that this Agreement comply with the regulations of the United States Department of Transportation ("USDOT") and certain contracting requirements of the City and County of San Francisco (the "City").

E. On June 8, 2017, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_ authorizing the TJPA's Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

### 1. 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. The amount of the 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 the 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 fiscal year 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. The TJPA's budget decisions are subject to the discretion of the TJPA Board of Directors. The Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

### 2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for two years from the Effective Date of the Agreement, as described in Section 3 below, provided that (i) the TJPA shall have the right to extend this Agreement for an additional year by providing to the Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned

upon the written agreement of the Contractor and the approval of such extension by resolution adopted by the TJPA Board of Directors.

### **3. Effective Date of Agreement**

This Agreement shall become effective when the Chief Financial Officer has certified to the availability of funds for the first notice to proceed ("NTP") and the Contractor has been notified in writing via an NTP.

### **4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services listed in Appendix A, Scope of Services, attached hereto and incorporated by reference as though fully set forth within. Each NTP shall relate to a specified part of the services, and a not-to-exceed maximum price under that NTP. No NTP can be amended, except in writing and signed by an authorized representative of the TJPA.

### **5. Compensation**

All work under this Agreement shall be compensated on an hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement for (1) design and implementation services exceed Five Million, Six Hundred and Six Thousand, Six Hundred and Sixty-Three dollars and Ninety-Two cents (\$5,606,663.92); and (2) annual reoccurring maintenance services (extended services), if such extended services are requested by the TJPA, exceed Two Hundred and Seventy-Five Thousand Dollars (\$275,000.00) per year. The breakdown of the Contractor's fees appears in Appendix B, "Fees".

Hourly rates for services are to remain fixed during the entire contract period, including any option periods, except for reasonable cost of living increases.

No charges shall be incurred under this Agreement nor shall any payments become due to the Contractor until the Services required under this Agreement are received from Contractor and approved by the Executive Director as being in accordance with this Agreement. The TJPA may withhold payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

### **6. Guaranteed Maximum Costs**

a. 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, or the maximum price set forth in an NTP with respect to the work covered under that NTP.

b. 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 Contractor 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.

c. 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.

d. 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.

## **7. Payment**

Invoices furnished by the Contractor under this Agreement must be in a form acceptable to the TJPA and must include a unique invoice number. Invoices shall include the first and last day of a calendar month and be submitted within thirty (30) days of the end of said calendar month. Contractor must submit required DBE Progress Payment Reports with every invoice. All amounts paid to the Contractor shall be subject to audit by the TJPA.

The TJPA shall endeavor to pay timely submitted and properly supported invoices within forty-five (45) days of receipt and in any event, no later than sixty (60) days after receipt by the TJPA.

The TJPA shall make payment to the Contractor at the address specified in the Section entitled "Notices to the Parties".

## **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the Contractor, subcontractor 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; or (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.

## **9. Disallowance**

If Contractor claims or receives payment from the TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Contractor 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 Contractor under this Agreement or any other Agreement.

By executing this Agreement, the Contractor certifies that the Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

## **10. Taxes**

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor.

## **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by the TJPA, or the receipt thereof by the Contractor, shall in no way



lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made.

## **12. Qualified Personnel**

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Contractor are shown in Appendix B attached hereto, and shall not be changed or substituted without the prior written consent of the TJPA, but all personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## **13. 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 Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by the TJPA.

## **14. Independent Contractor, Payment of Taxes and Other Expenses**

### **a. Independent Contractor**

The Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

Any terms in this Agreement referring to direction from the TJPA shall be construed as providing for direction as to policy and the result of the Contractor's work only, and not as to the means by which such a result is obtained.

### **b. Payment of Taxes and Other Expenses**

Should the TJPA, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Contractor which can be applied against this liability). The TJPA shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by the

Contractor for the TJPA, upon notification of such fact by the TJPA, the Contractor shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to the Contractor under this Agreement (again, offsetting any amounts already paid by the Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, The Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the TJPA's financial liability so that the TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Contractor was not an employee.

## **15. Insurance**

a. Without in any way limiting the Contractor's other indemnification obligations under this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages.

(1) If required under California law, Worker's Compensation, in statutory amounts, with Employers' liability limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and

(3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the TJPA, its members, directors, officers, agents, and employees.

(2) 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.

c. Contractor shall provide thirty (30) days' advance written notice to the TJPA of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled "Notices to the Parties".

d. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a

general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payment originating after such lapse shall not be processed until the TJPA receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the TJPA may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, the Contractor shall do the following: (a) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon TJPA request. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Contractor under this Agreement.

## **16. Indemnification**

Contractor shall indemnify and save harmless the TJPA and its officers, directors, agents and employees from, and if requested shall defend them against, any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or loss of or damage to property, arising directly or indirectly from the Contractor's performance of this Agreement, including, but not limited to, the Contractor's use of facilities or equipment provided by the TJPA or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the TJPA, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the TJPA and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the TJPA's costs of investigating any claims against the TJPA.

In addition to the Contractor's obligation to indemnify the TJPA, the Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the TJPA from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the Contractor by the TJPA and continues at all times thereafter. The Contractor shall have the exclusive right to select and retain attorneys to defend against such indemnified claims (subject to the reasonable approval of the TJPA) and the TJPA shall cooperate with the Contractor and its attorneys, at no cost to the TJPA.

The Contractor shall indemnify and hold the TJPA harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the TJPA, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

## **17. Mutual Waiver of Consequential Damages**

The parties hereby waive, as against each other, any claims for incidental, special, exemplary or consequential damages; provided, however, that the foregoing waiver shall not apply to:

(1) All fines, levies, fees or expenses imposed by a governmental authority against the TJPA as a result of the Contractor's act or omission or failure to comply with any applicable laws;

(2) All damages, losses and costs arising from any third party claim for which the Contractor is required to indemnify the TJPA under this Agreement; and

(3) All damages, losses and costs to the extent covered by insurance proceeds recovered from an insurance provider pursuant to insurance maintained by the Contractor in accordance with the insurance requirements set forth under this Agreement or which could have been recovered through insurance which Contractor was required to maintain in accordance with the insurance requirements under this Agreement but failed to so maintain.

Consequential damages recoverable under Sections (1), (2) and (3), above, are not subject to the Contractor's limitation of liability set forth in Article 18.

## **18. Limitation of Liability**

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in the Section of this Agreement entitled "Compensation". 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 in connection with this Agreement.

The TJPA agrees to limit Contractor's liability to the TJPA on the Project, due to the Contractor's breach of this Agreement or negligent acts, errors or omissions in performing the Work, such that the total aggregate liability of the Contractor to the TJPA shall not exceed the greater of: (i) the available insurance proceeds from any applicable insurance policy maintained by Contractor or that should have been maintained by the Contractor under the terms of this Agreement but which Contractor failed to so maintain; or (ii) \$12,650,000. This limitation of liability shall not apply to liabilities arising from the fraud, gross negligence or willful misconduct of Contractor or its subcontractors."

## **19. Reserved**

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement.

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: Payment; Submitting False Claims, Monetary Penalties; Taxes; Insurance; Proprietary or Confidential Information of TJPA; Protection of Private Information; Assignment; Drug-Free Workplace; Compliance With Laws; USDOT Requirements.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from TJPA to Contractor.

(3) The Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of the Contractor or of any substantial part of the Contractor's property, or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of the Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (c) ordering the dissolution, winding-up or liquidation of the Contractor.

(5) The TJPA fails to make payment in accordance with Articles 5 and 7 of this Agreement.

b. On and after any Event of Default as set forth in a.(1) through a.(4), above, the TJPA shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, the TJPA shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any Event of Default; the Contractor shall pay to the TJPA on demand all costs and expenses incurred by the TJPA in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The TJPA shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between the TJPA and the Contractor all damages, losses, costs or expenses incurred by the TJPA as a result of such Event of Default and any liquidated damages due from the Contractor pursuant to the terms of this Agreement or any other agreement.

c. On or after an Event of Default under Section a.(5), above, the Contractor may provide written notice to the TJPA of such failure to pay.

(1) If, after sixty (60) days of receipt of said written notice by the TJPA, the payment identified in the Contractor's written notice remains outstanding and no good faith basis exists for the absence of payment by the TJPA, the Contractor may suspend the performance of the Work under this Agreement; and

(2) If, after ninety (90) days of receipt of said written notice by the TJPA, the payment identified in the Contractor's written notice remains outstanding and no good faith basis exists for the absence of payment by the TJPA, the Contractor may terminate this Agreement.

If a suspension of the Work has occurred in accordance with Subsection (1) above, the Contractor shall resume the performance of the Work within three (3) business days of receiving any outstanding payment from the TJPA.

d. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. The TJPA shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience when it is in the TJPA's best interest, which best interest shall be determined at the TJPA's sole discretion. The TJPA shall exercise this option by giving the Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, the Contractor shall commence and perform, with diligence, all actions necessary on the part of the Contractor to effect the termination of this Agreement on the date specified by the TJPA and to minimize the liability of the Contractor and the TJPA to third parties as a result of termination. All such actions shall be subject to the prior approval of the TJPA. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the TJPA.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At the TJPA's direction, assigning to the TJPA any or all of the Contractor's right, title and interest under the orders and subcontracts terminated. Upon such assignment, the TJPA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to the TJPA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that the TJPA designates to be completed prior to the date of termination specified by the TJPA.

(7) Taking such action as may be necessary, or as the TJPA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of the Contractor and in which the TJPA has or may acquire an interest.

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to the TJPA an invoice, which shall set forth the reasonable cost to the Contractor for all services and other work the TJPA directed the Contractor to perform prior to the specified termination date, for which services or work the TJPA has not already tendered payment. The costs shall be determined as provided in Section 5, and shall be invoiced as provided in Section 7. The Contractor may also recover the reasonable cost of preparing the invoice.

d. In no event shall the TJPA be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the TJPA, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to the Contractor under this Section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by the Contractor's final invoice; (2) any claim which the TJPA may have against the Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the TJPA, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and the TJPA's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. The TJPA's payment obligation under this Section shall survive termination of this Agreement.

## 22. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: Submitting False Claims, Monetary Penalties; Disallowance; Taxes; Payment Does Not Imply Acceptance of Work; Responsibility for Equipment; Independent Contractor, Payment of Taxes and Other Expenses; Insurance; Indemnification; Incidental and Consequential Damages; Liability of TJPA; Proprietary or Confidential Information of TJPA; Protection of Private Information; Notices to the Parties; Ownership of Results; Works for Hire; Audit and Inspection of Records; Non-Waiver of Rights; Limitations on Contributions; Modification of Agreement; Administrative Remedy for Agreement Interpretation; Agreement Made in California, Venue; Construction; Entire Agreement; Severability; USDOT Requirements; Prompt Payment of Subcontractors.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. The Contractor shall transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the TJPA. This subsection shall survive termination of this Agreement.

## 23. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, email, or fax, and shall be addressed as follows:

To TJPA: Mr. Mark Zabaneh, Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
(415) 597-4615 fax  
[MZabaneh@transbaycenter.org](mailto:MZabaneh@transbaycenter.org)

To Contractor: Frank Cirone, President  
G4S Secure Integration LLC  
1200 Landmark Center, Suite 1300  
Omaha, NE 68102  
(855) 447-8721 Media  
[Frank.Cirone@usa.g4s.com](mailto:Frank.Cirone@usa.g4s.com)

Any notice of default must be sent by registered mail.

## 24. Proprietary or Confidential Information of the TJPA and the Contractor

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

The TJPA agrees that all information disclosed by the Contractor to the TJPA shall be held in

confidence and used only in performance of this Agreement. The TJPA shall exercise the same standard of care to protect such information as a reasonably prudent public government agency would use to protect its own proprietary data.

## **25. Protection of Private Information**

The Contractor 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 Section 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, the Contractor agrees to all of the following:

a. Neither the Contractor nor any of its subcontractors shall disclose Private Information obtained from the TJPA or the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true.

- (i) The disclosure is authorized by this Agreement;
- (ii) The Contractor 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 (1) 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 (2) the law forbids any person from disclosing.

d. Any failure of the Contractor 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 Contractor, or bring a false claim action against the Contractor.

## **26. News Releases/Interviews**

All Contractor news releases, media interviews, testimony at hearings and public comment relating to the Transbay Transit Center Program shall be prohibited unless expressly authorized by the TJPA.

## **27. Ownership of Results**

Any interest of the Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by the Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the TJPA. However, the Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

## **28. Works for Hire**



If, in connection with services performed under this Agreement, the Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, 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 Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, the Contractor hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA, the Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **29. Audit and Inspection of Records**

The Contractor agrees to maintain and make available to the TJPA, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Contractor 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 all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon the TJPA by this Section.

## **30. San Francisco Sunshine Ordinance**

In accordance with S.F. Administrative Code Section 67.24(e), the Contractors' bids, responses to solicitations 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 benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

## **31. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a nonprofit organization as defined in Chapter 12L of the S.F. Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

## **32. Subcontracting**

The Contractor is permitted to subcontract portions of the services to be performed under this Agreement as follows:

*CNL, Physical Security Information Management System  
2175 Red Rum Dr. Suite 117, Ashburn, VA 20147  
Fisk Electric, Electrical, 10855 Westview Drive, Houston, TX 77043  
Alertus, In-Building Mass Notification System, P.O. Box 600, Beltsville, MD 20704*

*Everbridge, Distributed Recipient Mass Notification System  
155 North Lake Avenue Suite 900, Pasadena, CA 91101*

The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of their services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed.

**33. Assignment**

The services to be performed by the Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by the TJPA by written instrument executed and approved in the same manner as this Agreement.

**34. 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. There shall be no waiver except in writing, signed by the party to be charged.

**35. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the TJPA. No invoices for such services provided by law firms or attorneys, including, without limitation, as subcontractors of the Contractor, will be paid unless the provider received advance written approval from the TJPA.

**36. Conflict of Interest**

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

**37. Limitations on Contributions**

Through execution of this Agreement, the Contractor 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, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any

person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

### **38. Prohibition on Political Activity with TJPA Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor 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. The Contractor 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 that the Contractor violates the provisions of this Section, the TJPA may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Contractor's use of profit as a violation of this Section.

### **39. Equal Employment Opportunity/Nondiscrimination; Penalties**

#### **a. Contractor Shall Not Discriminate**

In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, 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, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

#### **b. Subcontracts**

The Contractor shall incorporate by reference in all subcontracts the provisions of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

#### **c. Nondiscrimination in Benefits**

The Contractor 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, on real property owned by San Francisco, or where the work is being performed for the TJPA 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 Chapter 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, the Contractor shall execute the appropriate “San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101, HRC-12B-102, or HRC-12B-103) with supporting documentation and file the form with the TJPA Contract Compliance Manager.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor 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, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) 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 the Contractor and/or deducted from any payments due the Contractor.

#### **40. Disadvantaged Business Enterprise (DBE) Requirements**

The Contractor or subcontractor 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 DOT-assisted contracts. 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.

Pursuant to the monitoring requirements outlined in Section XIII of the TJPA’s DBE Program (49 CFR 26.37), the Contractor will be required to update and submit the TJPA’s “Bidders/Proposers Information Request Form,” regardless of DBE participation. Upon award of the contract, the Contractor shall submit the TJPA’s “Progress Payment Report” with every invoice, the “Subcontractor Payment Declaration” within five days of each Contractor payment to a subcontractor, and a “Final Expenditure Report” with the completion of the contract.

#### **41. Reserved**

#### **42. Prompt Payment to Subcontractors**

a. Prompt Progress Payment to Subcontractors

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

late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE/SBE and non-DBE/SBE prime contractors and subcontractors.

b. Prompt Payment of Withheld Funds to Subcontractors

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

**43. Requiring Minimum Compensation for Covered Employees**

The Contractor 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 Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor 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, the Contractor 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. Note that the gross hourly compensation for covered employees is \$13.64 as of January 1, 2017.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then the gross hourly compensation as of July 1, 2016, is \$13.00 per hour.

The San Francisco minimum wage will increase to \$14.00 on July 1, 2017. City contractors in San Francisco will need to comply with the minimum wage of July 1, 2017. This rate will apply to both for-profit and non-profit City contractors.

b. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Contractor'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. The Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Contractor 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, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within

such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to 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:

(1) The right to charge the Contractor 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;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Contractor under this Agreement;

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

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

(5) The right to bar the Contractor 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. The Contractor 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. The Contractor 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 Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subcontractors.

h. The Contractor 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 the Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Contractor every two 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 the Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is the Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the

MCO. If any subcontractor under this Agreement fails to comply, the TJPA may pursue any of the remedies set forth in this Section against the Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor 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. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) 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; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor 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 the Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor to exceed that amount in a fiscal year, the Contractor 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 Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Unless exempt, the Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Contractor 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 Contractor 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. The Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Contractor if such a breach has occurred. If, within thirty (30) days after receiving the TJPA's written notice of a breach of this Agreement for violating the HCAO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.

d. Any Subcontract entered into by the Contractor shall require the subcontractors to comply

with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the Subcontract. Each Contractor shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the TJPA may pursue the remedies set forth in this Section against Contractor based on the subcontractor's failure to comply, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Contractor's compliance or anticipated compliance 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. The Contractor 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. The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.

h. The Contractor shall keep itself informed of the current requirements of the HCAO.

i. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subcontractors and subtenants, as applicable.

j. The Contractor shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

k. The Contractor shall allow the TJPA to inspect the Contractor's job sites and have access to the Contractor's employees in order to monitor and determine compliance with HCAO.

l. The TJPA may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the TJPA when it conducts such audits.

m. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

#### **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 Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor 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 Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.



b. First Source Hiring Agreement

(1) The Contractor 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.

(2) The Contractor 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.

(3) The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) 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 Contractor's employment records.

c. Hiring Decisions

The Contractor 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 the Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**46. Reserved**

**47. MacBride Principles – Northern Ireland**

Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA 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 the Contractor acknowledges and agrees that he or she has read and understood this Section.

**48. Drug-Free Workplace Policy**

The Contractor 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. The Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

#### **49. Resource Conservation**

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

#### **50. Tropical Hardwood/Virgin Redwood Ban**

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

#### **51. Preservative-treated Wood Containing Arsenic**

The Contractor 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. Contractor 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 the Contractor 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.

#### **52. Food Service Waste Reduction Requirements**

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the TJPA will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of Contractor's failure to comply with this provision.

#### **53. 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 City and County of 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 and its residents, and to prevent the further spread of graffiti.

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA. This Article is not intended to require the Contractor 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.).

#### **54. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved according to TJPA requirements.

#### **55. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the TJPA who shall decide the true meaning and intent of the Agreement. Nothing in this Section shall be interpreted as the Contractor waiving any legal rights or remedies to which it is entitled.

#### **56. 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.

#### **57. Construction**

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

#### **58. Entire Agreement**

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in the Section entitled "Modification of Agreement".

#### **59. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other

provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

#### **60. USDOT Requirements**

The provisions contained in "USDOT Requirements for Professional Services Contracts," attached as Appendix C, are incorporated into this Agreement, and the Contractor agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be 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, in the TJPA's sole determination, the USDOT terms and conditions shall take precedence.

#### **61. Compliance With Laws**

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

#### **62. Compliance with Americans with Disabilities Act**

The Contractor 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 contractor, must be accessible to the disabled public. The Contractor 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 Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

#### **63. Authority to Execute Agreement**

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. This Agreement may be executed in two or more 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 hereto have executed this Agreement on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

\_\_\_\_\_  
Mark Zabaneh, Executive Director

\_\_\_\_\_  
TJPA Legal Counsel

Transbay Joint Powers Authority  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, TJPA Board

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitles Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood the Section entitled "MacBride Principles—Northern Ireland", San Francisco's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

  
\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Frank Cirone  
Printed Name

\_\_\_\_\_  
President  
Title

\_\_\_\_\_  
G4S Secure Integration, LLC  
Company Name

\_\_\_\_\_  
1200 Landmark Centre, Suite 1300  
Address

\_\_\_\_\_  
Omaha, NE 68102  
City, State, Zip Code

\_\_\_\_\_  
402-233-7700  
Phone Number

\_\_\_\_\_  
43-1965877  
Federal Employer ID Number

## **APPENDIX A – SCOPE OF SERVICES**

### **PHYSICAL SECURITY INFORMATION MANAGEMENT (PSIM) SYSTEM AND EMERGENCY COMMUNICATION SYSTEM/MASS NOTIFICATION SYSTEM (ECS/MNS) INTEGRATION SERVICES**

#### **SECTION 1 - DESCRIPTION**

Provide design-build and programming services, including furnishing all equipment, labor, and materials and integrating a PSIM system and an ECS/MNS with various existing sub-systems, which include, but are not limited to, the fire management system, public address system, message board display system, Rooftop Park beacon/flashing light system, distributed antenna system, and building-wide IP-based communication network infrastructure. These sub-systems are detailed in the Transit Center plans and specifications listed in Section 2 (Contract and Reference Documents). The Contractor will design, program, and implement the Services in accordance with the Contract Documents.

The Contractor will work closely with the TJPA's staff and other consultants to provide the services. The services shall include:

#### **PHYSICAL SECURITY INFORMATION MANAGEMENT (PSIM) SYSTEM**

The scope of work for the PSIM system includes design, programming, materials, and labor to deliver an integrated, secure, scalable, and easily accessible software-based solution for the complete PSIM system, as described in the Contract Documents.

The PSIM system will support establishing the Transit Center as a world-class transit center with premier safety and security management systems. The PSIM system will allow security staff to efficiently and quickly disseminate safety and security alerts and develop and act upon incident analysis reports, and will act as a force multiplier allowing security personnel to more rapidly identify and resolve security incidents. The PSIM system will provide security personnel with a heightened awareness of conditions leading up to and during an incident and will assist security personnel in proactively resolving incidents through a single common user interface driven by an incident response checklist tailored to the specific incident at hand. The PSIM system will monitor, collect, correlate, and integrate events from multiple security devices, systems, and observations and present this information to the security personnel with an incident response checklist, customized to the incident being addressed, allowing an enhanced, consistent, standards-based, and rapid response.

The PSIM software will have these key capabilities:

- a. Capacity to collect data from various security devices and systems
- b. Ability to analyze and correlate the data, events, and alarms to identify real situations and their level of priority
- c. Method to present the relevant situational information in a quick and easily digestible format for an operator to verify situations
- d. Capability to provide standard operating procedures (SOPs), step-by-step instructions based on best practices and an organization's policies, and tools to resolve situations
- e. Tracking of all the information and steps for compliance reporting, training, and, potentially, in-depth investigative analysis

- f. Provision of an audit trail, monitoring how each operator interacts with the system, tracking any manual changes to security systems, and calculating reaction times for each event

## EMERGENCY COMMUNICATION SYSTEM / MASS NOTIFICATION SYSTEM (ECS /MNS)

The scope of work for the ECS/MNS includes design, programming, materials, and labor for the complete design, installation, testing, and commissioning as described in Contract Documents.

The contractor shall obtain approvals from the Authority Having Jurisdiction (AHJ)/San Francisco Fire Department for the design/build of the ECS/MNS. Effort required for approval may include but may not be limited to: meetings, drafting of design documents and shop drawings, stamping/sealing of all design/build documents by a CA professionally licensed engineer, peer review, engineering judgements and test documentation.

To assist the TJPA with the protection of life and prevention of injuries, the ECS/MNS will be used to coordinate and convey real-time information and instructions to passengers and personnel in the Transit Center during emergency events. The ECS/MNS will use intelligible voice communications along with emergency radio communications, visible signals, short message service (SMS) text, graphics (digital displays), and wireless communication methods. These communication methods are intended for the protection of life and prevention of injuries by indicating the existence of an emergency situation and instructing people with the necessary and appropriate response and action.

The Consultant shall provide the Services by personnel listed in Appendix B. Any changes in personnel will be subject to the TJPA's prior review and approval.

The Services shall be completed within 24 months of Contract Award and subsequent Notices to Proceed.

PSIM testing in a virtualized test bed is required for a minimum of 45 days prior to production testing. Testing is dependent on the availability and cooperation of third-party system vendors and integrators. PSIM and ECS/MNS production testing will commence once all third-party systems are tested and stable.

PSIM and ECS/MNS production testing includes:

### PSIM:

- Submit report matrix of verified specification compliance
- Complete system test and report
- 5 day burn-in test and report
- Final acceptance test and report

### ECS / MNS:

- Preliminary test and report
- NFPA 72 testing and report
- Final acceptance test and report

## EXTENDED SERVICES

Upon written request by the TJPA, Consultant will provide one (1) year of testing, support, inspection and maintenance services for the system and software after system acceptance.



## Section 2– CONTRACT AND REFERENCE DOCUMENTS

<b>CONTRACT DOCUMENTS</b>		
<b>Document Name</b>	<b>Description</b>	<b>Issue Date</b>
Specifications Division 00 and Division 01	Division 00 and Division 01 defined in Specification Section 00 01 10	July 17, 2015
rptTOC	Table of Contents	May 16, 2016
Specifications Division 27	Communications	Refer to rptTOC
ASI 145 Issued for Construction	Drawings and Specifications	August 31, 2016
RFP 17-04 Q&A Set 1 Revision 1	Questions & Answers Set No. 1	October 17, 2016
RFP 17-04 Q&A Set 2	Questions & Answers Set No. 2	October 17, 2016
RFP 17-04 Q&A Set 3	Questions & Answers Set No. 3	November 1, 2016
<b>REFERENCE DOCUMENTS</b>		
Section 3.2 Technology ConOps	Safety and Security Concept of Operations (ConOps)	January 29, 2016
Functional Annex 1.0 Emergency Operations Plan	ConOps	October 2, 2015
Functional Annex 1.3 Evacuation/Shelter in Place Plan	ConOps	July 6, 2016
Functional Annex 2.0 Operational Security Plan	ConOps	June 16, 2016
ASI 128 Issued for Construction	Drawings and Specifications	December 16, 2014
ASI 130 Issued for Construction	Drawings and Specifications	February 27, 2015
ASI 134 Phase 1.5 Pathway	Drawings and Specifications	May 27, 2015
ASI 138 Issued for Construction	Drawings and Specifications	September 4, 2015
ASI 139 Issued for Construction	Drawings and Specifications	December 18, 2015
ASI 141 Issued for Construction	Drawings and Specifications	February 5, 2016
ASI 143 Issued for Construction	Drawings and Specifications	May 6, 2016
ASI 144 Phase 1.5 Issued for Construction	Drawings and Specifications	May 13, 2016
Bus Ramps Issued for Construction	Drawings and Specifications	Refer to rptTOC
G4S Proposal for RFP No. 17-04	Proposal for PSIM & ECS/MNS	November 10, 2016
G4S Proposal Section 2.10.2	Updated ECS/MNS	May 16, 2017

## APPENDIX B – COMPENSATION

### B1 – FEE SUMMARY

TASK DESCRIPTION		SUBTOTAL	DURATION
<b>ECS/MNS &amp; PSIM SYSTEM DESIGN PHASE</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$284,056.13</b>	<b>3 MONTHS</b>
SYSTEM DESIGN HOURS		\$284,056.13	
<b>SOFTWARE DELIVERY TO CUSTOMER PHASE</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$1,088,690.11</b>	<b>1 MONTH</b>
ALERTUS ECS/MNS SYSTEM SOFTWARE LICENSES		\$208,812.50	
EVERBRIDGE ECS/MNS SYSTEM SOFTWARE LICENSES		\$129,943.57	
CNL SOFTWARE LICENSES		\$749,934.04	
<b>INSTALLATION AND CONFIGURATION PHASE</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$1,625,247.02</b>	<b>8 MONTHS</b>
SYSTEM INSTALLATION HOURS		\$448,915.78	
PROCUREMENT OF ECS/MNS SYSTEM EQUIPMENT		\$170,497.83	
PROCUREMENT OF PSIM SYSTEM EQUIPMENT		\$233,132.81	
PROCUREMENT OF ECS/MNS SYSTEM EQUIPMENT - SECONDARY ACU		\$61,406.84	
ECS/MNS SYSTEM EQUIPMENT - LOCAL OPERATOR CONSOLES		\$31,285.16	
NETWORK SWITCHES AND FIREWALLS		\$21,696.10	
FISK ELECTRIC SYSTEM INSTALLATION EQUIPMENT		\$70,590.00	
INSTALLATION CONSUMABLES / OTHER DIRECT COSTS		\$66,575.00	
ECS/MNS PROFESSIONAL INSTALLATION SERVICES		\$148,425.00	
FISK ELECTRIC SYSTEM INSTALLATION TASKS		\$372,722.50	
<b>PSIM AND ECS/MNS INTEGRATION PHASE (INCLUDES BENCH TEST)</b>	<b>SUBTOTAL NTE FEE</b>	<b>1,888,744.10</b>	<b>2 MONTHS</b>
SYSTEM INTEGRATION HOURS		\$806,269.10	
ALERTUS/EVERBRIDGE INTEGRATION PROFESSIONAL SERVICES		\$93,750.00	
CNL INTEGRATION PROFESSIONAL SERVICES		\$563,725.00	
UL LISTING CONSULTING		425,000.00	
<b>SYSTEM TESTING, ACCEPTANCE, DOCUMENTATION &amp; MANUALS PHASE</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$208,795.36</b>	<b>2 MONTH</b>
SYSTEM TESTING HOURS		\$208,795.36	
<b>TRAINING PHASE</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$189,253.13</b>	<b>1 MONTH</b>
SYSTEM TRAINING HOURS		\$77,253.13	
ECS/MNS PROFESSIONAL TRAINING SERVICES		\$62,500.00	
CNL PSIM PROFESSIONAL TRAINING SERVICES		\$49,500.00	
<b>SECURITY VULNERABILITY SCAN</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$109,293.02</b>	<b>1 MONTH</b>
G4S EQUIPMENT		\$42,439.35	
SECURITY VULNERABILITY SCAN		\$66,853.67	
<b>2 YEAR INSPECTION &amp; TESTING (NFPA)</b>	<b>SUBTOTAL NTE FEE</b>	<b>\$212,585.05</b>	<b>24 MONTHS</b>
SUBCONTRACTOR SUPPORT		\$50,000.00	
2 YEAR INSPECTION & TESTING (NFPA UPDATES)		\$162,585.05	
	<b>TOTAL MAXIMUM FEE</b>	<b>\$5,606,663.92</b>	
<b>RECURRING COSTS</b>			<b>12 MONTHS</b>
G4S 1 YR. INSPECTION, TESTING & MAINTENANCE		\$104,800.76	

TASK DESCRIPTION		SUBTOTAL	DURATION
CNL SOFTWARE 1 YR. PRODUCT SUPPORT & MAINTENANCE		\$98,193.75	
ALERTUS 1 YR. SUPPORT & MAINTENANCE		\$19,937.50	
EVERBRIDGE 1 YR. SUPPORT & MAINTENANCE		\$52,067.99	
	<b>TOTAL</b>	<b>\$275,000.00</b>	

## B2 – LABOR RATES

DESCRIPTION		RATE	UNIT
<b>G4S LABOR</b>			
	<i>BASE (NOT LOADED)</i>		
	PROJECT MANAGER	\$131.58	PER HOUR
	ENGINEERING MANAGER	\$131.58	PER HOUR
	SYSTEMS ENGINEER	\$112.20	PER HOUR
	APPLICATION ENGINEER	\$131.58	PER HOUR
	TECHNICIAN	\$69.36	PER HOUR
	CADD TECHNICIAN	\$59.16	PER HOUR
	<i>FULLY LOADED*</i>		
	PROJECT MANAGER	\$185.70	PER HOUR
	ENGINEERING MANAGER	\$185.70	PER HOUR
	SYSTEMS ENGINEER	\$158.35	PER HOUR
	APPLICATION ENGINEER	\$185.70	PER HOUR
	TECHNICIAN	\$97.89	PER HOUR
	CADD TECHNICIAN	\$83.50	PER HOUR
*INCLUDES OVERHEAD (10%), GENERAL & ADMIN. EXPENSE (16.64%) AND PROFIT & FEE (10%)			
<b>FISK ELECTRIC</b>			
	<i>BASE (NOT LOADED)</i>		
	PROJECT MANAGER	\$165.00	PER HOUR
	SUPERINTENDENT	\$155.00	PER HOUR
	GENERAL FOREMAN	\$160.17	PER HOUR
	FOREMAN	\$147.57	PER HOUR
	JOURNEYMAN	\$134.96	PER HOUR
	<i>FULLY LOADED*</i>		
	PROJECT MANAGER	\$206.25	PER HOUR
	SUPERINTENDENT	\$193.75	PER HOUR
	GENERAL FOREMAN	\$200.21	PER HOUR
	FOREMAN	\$184.46	PER HOUR
	JOURNEYMAN	\$168.70	PER HOUR
*INCLUDES OVERHEAD (10%), GENERAL & ADMIN. EXPENSE (5%) AND PROFIT & FEE (10%)			
<b>CNL LABOR</b>			
	IPSECURITYCENTER CONSULTANCY	\$2,100.00	PER DAY
	IPSECURITYCENTER PROJECT MANAGEMENT	\$2,100.00	PER DAY
	IPSECURITYCENTER INSTALLATION	\$1,650.00	PER DAY

DESCRIPTION		RATE	UNIT
	IPSECURITYCENTER COMMISSIONING	\$1,650.00	PER DAY
	CUSTOM COMMISSIONING	\$1,650.00	PER DAY
	DEVELOPMENTAL TASKS - DRIVER TEST, MODIFY, DOC.	\$1,650.00	PER DAY
	PSIM SUPPORT STAFF TRAINING - TRAIN THE TRAINERS	\$1,650.00	PER DAY
	IPSECURITYCENTER ADMINISTRATOR AND OPERATOR TRAINING	\$1,650.00	PER DAY
<b>ECS/MNS LABOR</b>			
	ALERTUS PROFESSIONAL SERVICES	\$3,125.00	PER DAY
	EVERBRIDGE PROFESSIONAL SERVICES	\$2,875.00	PER DAY

### B3 – CALCULATION OF CHARGES

This Appendix B sets forth the method for calculating and invoicing of costs by the Contractor for services rendered under the Agreement. This Appendix B does not modify or affect the Fixed Fee under the Agreement or any Not To Exceed (“NTE”) fee specified in a Notice To Proceed (“NTP”) issued under the Agreement. The Contractor represents that all costs invoiced in accordance with this Appendix B and under this Agreement shall be made in good faith for services performed and shall conform to the schedule set forth in Appendix B1, Fee Summary. The Contractor acknowledges and agrees that all information supporting the amounts listed in this Appendix B and any other requests to the TJPA for payment or approval may be subject to investigation as a false claim, as provided in paragraph 8 of the Agreement.

#### A. Charges for Services Performed by the Contractor

##### 1. Direct Labor Costs

The Contractor, as set forth in Appendix B2, has submitted to the TJPA fully loaded labor rates (hourly and/or daily) for Direct Labor Costs to be incurred by the Contractor and its subcontractors. The Contractor’s fully loaded labor rates (hourly) include an overhead rate of 10%, a general and administration expense rate of 16.64% and profit and fee of 10%. Subcontractor “hourly” fully loaded labor rates include an overhead rate, a general and administration expense rate, and profit and fee rate as set forth in Appendix B2. Subcontractor “daily” fully loaded labor rates include all costs for overhead, general and administration expenses, and profit and fee. The Contractor and all subcontractors’ fully burdened labor rates (whether hourly or daily) include all wages, benefits, local state and federal taxes, and labor surcharges, whether paid to or on behalf of the employee or the employer. Benefits include, but are not limited to, health and welfare, pension, and vacation. Local, state and federal taxes and labor surcharges include, but are not limited to, Federal Insurance Contribution Act payments, state and federal unemployment taxes, any and all local, state and federal taxes, worker’s compensation costs, all insurance costs (e.g., general liability, employer’s liability, excess, professional liability, and any other liability insurance costs of any nature whatsoever), any and all general condition costs, field and home office costs, and any costs or benefits required to be paid by applicable union agreements and/or any applicable Project Labor Agreements. All hourly and daily fully burdened labor rates include all direct and indirect costs of labor for each employee and in no event shall the TJPA be responsible to the Contractor or any subcontractor for labor, overhead, general and administration expenses, and profit and fee in excess of that included under the fully loaded labor rates (hourly or daily) set forth in Appendix B2. All hourly and daily fully burdened labor rates and hours invoiced by the Contractor and its subcontractors shall be subject to audit by the TJPA. The fully loaded labor rates (hourly or daily) set forth in Appendix B2 shall remain in effect during the entire term of the Agreement, including all extensions.

The TJPA shall compensate the Contractor at the fully loaded labor rates multiplied by the number of hours worked in the invoice period by the Contractor and its subcontractors, subject to any NTE limitation set forth in Appendix

B1 or any NTP issued by the TJPA. The formula to calculate Direct Labor Costs shall be as follows: Fully Loaded Labor Rates x number of hours = Direct Labor Costs.

## 2. Material and Equipment Costs

The Contractor shall invoice material and equipment costs (including all hardware and software costs), whether supplied by Contractor or its subcontractors or material suppliers, in accordance with the equipment model numbers and equivalent software licensing set forth in Contractor's Proposal to the TJPA dated November 10, 2016.

## B. Charges for Other Direct Costs

Other Direct Costs ("ODCs") shall be reimbursed by the TJPA based on the actual direct cost incurred by Contractor (with no mark-up for overhead, general and administrative expenses or profit or fee). All ODCs are subject to pre-approval in writing by the TJPA.

The following items will be eligible for reimbursement as ODCs:

- Travel and Parking expenses (authorized in writing by TJPA)

Any item not listed above shall not be eligible for reimbursement as an ODC. Ineligible items include, but are not limited to, the following:

- Contractor personnel relocation costs
- Any home office labor charges or pass-through, including but not limited to administrative and clerical personnel time
- Entertainment expenses
- Home office expenses
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, non-Project specific computer hardware or software, communication devices, and electronic equipment
- Meal expenses which are not related to Project-related travel, including refreshments and working lunches with TJPA staff
- Postage and courier services
- Costs of preparing the proposal for the Project
- Taxes
- Insurance premiums

## C. Invoice Requirements

The Contractor shall submit one original invoice package with the appropriate reporting forms and supporting documentation to substantiate services, materials and equipment provided and allowable ODCs. The Contractor will work with the TJPA and PM/PC staff to establish an invoice format that will correlate with appropriate Project software and will be used throughout the Project. Each invoice submission must include sufficient information to identify the participation and amount payable to each Subcontractor. Timesheets, cards or logs must include a brief description of when and what work was performed, memorializing the day's progress. If vehicle travel is authorized, the Contractor shall submit mileage logs which include the beginning and ending mileage to substantiate the variable portal-to-portal distance and driving required while performing the work. Any ODCs must be substantiated with receipts including a brief description for each receipt documenting the purpose of the expense. All invoices must include the contract number, the NTP number (and title, if applicable). Any authorized travel expenses must be approved in advanced by the TJPA and must adhere to the "TJPA Travel Policy for Consultants and Subconsultants" (<http://transbaycenter.org/tjpa/documents>).

## 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[1][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 or 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.



## **Physical Security Information Management System and Emergency Communication System/Mass Notification System Selection Committee Report December 2016**

### **Executive Summary and Recommendation**

In response to Request for Proposals No. 17-04 for Physical Security Information Management (PSIM) System and Emergency Communication System/Mass Notification System (ECS/MNS), issued on September 13, 2016, the TJPA received three proposals from firms meeting all minimum qualifications on November 10, 2016. A selection committee convened on November 15, 2016 to evaluate the proposals and shortlisted all three respondents. On December 1, 2016, the committee conducted oral interviews with the three respondents and finalized its scoring.

Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA negotiate a contract for services with the highest ranked firm, **G4S Secure Integration LLC**.

### **Background**

The TJPA issued a Request for Proposals (RFP) seeking proposals from qualified firms (Respondents) with expertise in the design, installation, commissioning, and maintenance of PSIM systems and ECS/MNS and their integration with various sub-systems that together form a comprehensive emergency management system to implement the Emergency Operations Plan for the Transbay Transit Center. The RFP scope included provision of design-build and programming services, including furnishing all equipment, labor, and materials and integrating a PSIM system and an ECS/MNS with various existing sub-systems, including, but not limited to, the fire management system, public address system, message board display system, Rooftop Park beacon/flashing light system, distributed antenna system, and building-wide IP-based communication network infrastructure. The successful Respondent will design, program, and implement the services in accordance with the Contract Documents.

The PSIM system will allow security staff to efficiently and quickly disseminate safety and security alerts and develop and act upon incident analysis reports, and will act as a force multiplier allowing security personnel to more rapidly identify and resolve security incidents. The system will provide security personnel with a heightened awareness of conditions leading up to and during an incident and will assist security personnel in proactively resolving incidents through a single common user interface driven by an incident response checklist tailored to the specific incident at hand. It will also monitor, collect, correlate, and integrate events from multiple security devices, systems, and observations and present this information to the security personnel with an incident response checklist, customized to the incident being addressed, allowing an enhanced, consistent, standards-based, and rapid response.

The ECS/MNS will coordinate and convey real-time information and instructions on necessary and appropriate response and action to passengers and personnel in the Transit Center during emergency events. The ECS/MNS will use intelligible voice communications along with emergency radio communications, visible signals, short message service (SMS) texts, graphics (digital displays), and wireless communication methods.



### **Schedule**

RFP advertised/posted	September 13, 2016
Pre-proposal Conference	September 22, 2016, 2:00 pm
Addendum #1 Issued	September 30, 2016
Addendum #2 Issued	October 12, 2016
Addendum #3 Issued	October 19, 2016
Deadline for Submission of Questions	October 21, 2016, 4:00 pm
Answers to Written Questions Posted	November 1, 2016
Proposals Due	November 10, 2016, 4:00 pm
Notification of Interviews	November 17, 2016
Interviews	December 1, 2016

### **Selection Committee Members**

Edmond Sum, TJPA Engineering Manager  
Louis Barani, TJPA Program Management/Program Controls IT Consultant\*  
Mark Dylewski, TJPA Program Management/Program Controls IT Consultant\*  
Justin Boberg, TJPA Design team (Shen, Milsom & Wilke)\*\*  
Randall Dongug, TJPA Design team (Shen, Milsom & Wilke)\*\*  
Ron Mahlman, TJPA Design team (Jensen Hughes)  
Matthew Maychrowitz, Electronic Tech Shop Assistant Supervisor, San Francisco International Airport  
Senior Deputy Timothy Conway, San Francisco Sheriff's Department\*\*\*  
Deputy Ronald Chu, San Francisco Sheriff's Department\*\*\*

\*scored jointly

\*\*scored jointly

\*\*\*scored jointly

### **RFP Outreach**

An announcement of the RFP appeared in the *San Francisco Examiner* on Tuesday, September 13, 2016; a copy of the announcement is Attachment A. On the same day, the TJPA posted the RFP on its website for the public to view and print and sent announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. In total, the announcement was sent to 23 targeted firms with 89 contacts and 551 contacts who have signed up for notice of all TJPA contracts.

The TJPA received three responsive proposals on or before the RFP submission date, from:

- ARES Security Corporation
- Edge 360
- G4S Secure Integration LLC

A fourth proposal was also received, from Octopus North America, which was determined to be non-responsive as the firm proposed to only provide a portion of the RFP scope.

### **Selection Committee Evaluation**

The selection committee met on November 15, 2016, to review the written proposals and evaluate strengths and weaknesses using the criteria listed on the score sheet (Attachment B). Following the discussion, committee members filled out scoring sheets. The PMPC Design Manager tabulated and verified the scores. The Selection Committee determined that all three Respondents fell into a competitive range and that all three would be invited to interview.

On December 1, 2016, the selection committee conducted oral interviews with the three Respondents. Each firm was asked to begin the interview with a presentation of up to 20 minutes addressing the following items:

- How the team has worked together successfully on previous projects
- Approach for coordination and integration with current TTC construction

- Summary schedule of system buildout with key milestone dates
- All costs for system including alternates and renewal fees

The presentation was followed by 40 minutes in which each firm was asked ten questions by the selection committee. Following the interviews, the selection committee discussed the strengths and weaknesses of each Respondent firm, and then completed scoring sheets and submitted them to the PMPC Design Manager and TJPA Contracts Compliance Officer for tabulation. Based on its evaluation of the proposals and interviews, the selection committee recommends that the TJPA negotiate a contract for services with the highest ranked firm, **G4S Secure Integration LLC**.

All proposals submitted in response to this RFP are available for review at 201 Mission Street, Suite 2100. Proposals will be retained for two years, except for the selected consultant's proposal which will be maintained on permanent record.

**Attachments**

Attachment A, RFP Announcement

Attachment B, Proposal and Interview Scoring Sheets

Attachment C, Scores

**Reference**

17-04 for Physical Security Information Management (PSIM) System and Emergency Communication System/Mass Notification System (ECS/MNS)

## Attachment A

### ANNOUNCEMENT

#### **REQUEST FOR PROPOSALS NO. 17-04 PHYSICAL SECURITY INFORMATION MANAGEMENT SYSTEM AND EMERGENCY COMMUNICATION SYSTEM/MASS NOTIFICATION SYSTEM INTEGRATION SERVICES**

The Transbay Joint Powers Authority (TJPA) issues a Request for Proposals (RFP) for **PHYSICAL SECURITY INFORMATION MANAGEMENT (PSIM) SYSTEM AND EMERGENCY COMMUNICATION SYSTEM/MASS NOTIFICATION SYSTEM (ECS/MNS) INTEGRATION SERVICES** (Services) for the Transbay Transit Center Program from firms or individuals (Respondents) with expertise in the design, installation, commissioning, and maintenance of PSIM systems and ECS/MNS and their integration with various sub-systems. Together, these systems will form a comprehensive emergency management system to implement the Emergency Operations Plan for the Transbay Transit Center.

The TJPA seeks proposals from qualified individuals and/or firms to provide design-build and programming Services, including furnishing all equipment, labor and materials and integrating a PSIM system and an ECS/MNS with various existing sub-systems, which include, but are not limited to, the fire management system, public address system, message board display system, Rooftop Park beacon/flashing light system, distributed antenna system, and building-wide IP-based communication network infrastructure.

A pre-proposal conference will be held at 2:00 p.m. Pacific Time on Thursday, September 22, 2016, at the TJPA offices at 201 Mission Street, Suite 2100, San Francisco, California 94105. Submissions must be received by the TJPA no later than **4:00 p.m. Pacific Time on Thursday, October 13, 2016**, at the same address.

Prospective Respondents may obtain copies of this RFP, including required forms, by visiting the TJPA's website: <http://www.transbaycenter.org> > TJPA > Doing Business with the TJPA > Current Contract Opportunities or by contacting the TJPA, 201 Mission Street, Suite 2100, San Francisco, CA 94105, (415) 597-4620, email: [PSIM-ECS-MNS-RFP@transbaycenter.org](mailto:PSIM-ECS-MNS-RFP@transbaycenter.org).

This announcement shall not create any legal rights or responsibilities. All terms of this offering shall be as set forth in the RFP and related materials. Without limiting the foregoing, any and all contracts will be contingent upon TJPA Board approval.

## Attachment B

### EVALUATION SCORE SHEET RFP 17-04: PSIM & ECS/MNS Integration Services

Name of Respondent: \_\_\_\_\_

Name of Panelist: \_\_\_\_\_

Signature of Panelist: \_\_\_\_\_

<b>Criteria</b>	<b>Value</b>	<b>Reviewer Comment</b>
<p><b>Introduction and Executive Summary</b> (0 points)</p>		
<p><b>Qualifications and Experience of Respondent Firm</b> (60 points maximum)</p> <p>Provide a brief description of the Respondent firm, including the following information:</p> <ul style="list-style-type: none"> <li>• Background of Respondent's company, which may include information such as:               <ul style="list-style-type: none"> <li>○ Company size</li> <li>○ Lines of business</li> <li>○ Technical resources</li> <li>○ Commissioning capabilities</li> <li>○ Facilities, research and development labs</li> <li>○ Date established</li> <li>○ Ownership type</li> </ul> </li> <li>• Total number of employees engaged in providing supporting products and services that are the subject of this RFP</li> </ul> <p>Provide a summary of the firm's capabilities and experience in design, integration, installation, commissioning, and maintenance of PSIM systems and ECS/MNS and their integration with various sub-systems, with an emphasis on public projects.</p> <p>Describe how the Respondent firm meets the minimum requirements described in Section 6.0. Be as specific as possible.</p> <p>Describe the Respondent firm's approach to providing integration of PSIM system and ECS/MNS services. Describe how the Respondent would tailor its integration of PSIM system and ECS/MNS services to meet the needs of the TJPA. Provide three examples of success on behalf of public agency clients and discuss relevance to this scope of work. Include firm's approach to avoiding conflicts of interest and prioritizing client interests.</p> <p>Up to 10 points within this section will be awarded to Respondents who provide innovative value propositions in addition to meeting the specified requirements. Proposals should address stated goals and provide insight into the uniqueness of the Respondent's solution. Proposals should clearly articulate the unique value Respondents would bring to execution of the Services.</p> <p>Describe the proposed staff that will be used to provide the Services. Specifically, provide their names, titles, business addresses, phone numbers, and brief resumes describing the relevant qualifications and work experience. Resumes are not included in the page limit and should be provided in one section as an attachment or appendix to the proposal. Describe the role each staff member would play in providing the Services. Clearly show the extent and nature of the involvement of the key team members who would provide the Services.</p> <p>Provide the project team's experience in managing and performing engagements of similar complexity and needs. The following information is to be included:</p>		

<b>Criteria</b>	<b>Value</b>	<b>Reviewer Comment</b>
<ul style="list-style-type: none"> <li>• Years of experience</li> <li>• Areas of responsibility as they relate to the RFP</li> <li>• Division the team members currently work for, and experience directly related to each segment of the scope of services</li> </ul> <p>Provide a list of the equipment and system vendors the Respondent has worked with as business partners. Include a list of equipment with which the API/SDK software package integration was successfully completed for such systems as the message board display system, public address system, fire detection and alarm system, VOIP phone/email system, and PSIM system.</p> <p>Submit a qualifications and experience statement for all subcontractors, if any, to be used for any portion of the scope of services. The following information should be submitted:</p> <ul style="list-style-type: none"> <li>• Name and address of subcontractor, vendor, or consultant</li> <li>• Resume or biography of the owner</li> <li>• Resume or biography of key employees who would work on the contract</li> <li>• List of major clients for whom subcontractor/vendor/consultant provided services similar to those required for this procurement for comparable facilities (i.e., half the size of the Transit Center or larger)</li> <li>• Areas of expertise with specific portion of the work to be performed on the contract</li> </ul> <p>Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies.</p>		
<p><b>References</b> (10 point maximum)</p> <p>Provide references for at least five recent clients (preferably other public agencies) of the Respondent and/or any assigned key staff; include the reference names, addresses, telephone numbers, email addresses, and specific projects.</p>		
<p><b>Contract Pricing Proposal</b> (30 points maximum)</p> <p>Each Respondent shall submit its Contract Pricing Proposal (see Attachment 3) for providing the Services. Provide the names and hourly rates of the key individuals assigned to the Program. The TJPA will select the Proposal that represents the best value.</p> <p>Pricing Proposals should allow the TJPA to obtain the Services for the best possible price, and provide the TJPA flexibility in authorizing components of the services based on the TJPA's budgetary requirements. Respondents are encouraged to provide a "menu" of pricing/service options in their Pricing Proposals. One option shall include the Services as specified. The Pricing Proposal should clearly explain what services are proposed to be included (and excluded) from each menu option. Include additional pages as necessary.</p> <p>If any specified requirements cannot be fully included in the solution proposed by the Respondent, the Respondent shall identify those features/requirements in its Pricing Proposal on a separate page(s) titled "EXCLUSIONS." Provide specific reference to the paragraph in the relevant Specification Section and detailed descriptions of any features/requirements that are not included.</p> <p>Any features included in the Respondent's Pricing Proposal in addition to the specified features/requirements shall be identified on a separate page titled "ADDED FEATURES." Provide detailed descriptions of the features/requirements proposed as additions to the specified features/requirements.</p> <p>The following information shall be included in the Pricing Proposal:</p> <ul style="list-style-type: none"> <li>• For each firm, including each subconsultant, the direct current hourly rates by individual for all key personnel, management, technical or professional staff</li> </ul>		

<b>Criteria</b>	<b>Value</b>	<b>Reviewer Comment</b>
<p>and direct current hourly rates by position for support personnel</p> <ul style="list-style-type: none"> <li>• For each firm, including each subconsultant, overhead and profit rates. There is a maximum of 10% profit markup on direct and overhead costs</li> <li>• For each firm, including each subconsultant, a list of direct expenses</li> </ul> <p>In addition to the billing rate information, copies of the most recently completed audit reports for all firms listed in the Proposal shall also be included.</p> <p>The Pricing Proposal will be scored, and then used as the basis for negotiation with the selected Respondent. The TJPA reserves the right to reject any fee structure deemed not responsive to this request.</p>		

**Total \_\_\_\_\_**  
**(100 maximum total score possible)**

**TRANSBAY JOINT POWERS AUTHORITY  
INTERVIEW SCORE SHEET  
RFP 17-04 PSIM System and ECS/MNS Integration**

**FIRM NAME:**

**PANELIST:**

**DATE:**

\_\_\_\_\_

	<i>Description</i>	<i>Score</i>	<i>Notes</i>
I.	<p>Presentation (20 minutes maximum) (maximum 20 points)</p> <p>Asked to cover the following points:</p> <ul style="list-style-type: none"> <li>• Demonstrate how the team has worked together successfully particularly on previous referenced projects.</li> <li>• Outline and provide approach for how their team shall coordinate, integrate and not impact the current TTC construction.</li> <li>• Provide a summary schedule of their system build and show key milestone dates.</li> <li>• Summarize all costs for system build into one slide / page; list basic system, renewal fees and any options.</li> <li>• Provide an organization chart of dedicated personnel and point of contact during system build.</li> </ul>		
II.	<p>Responses to questions (maximum 20 points; 2 points/question)</p> <p>1. The TJPA has requested value engineering proposals from design team members as well as current awarded construction contractors. Would your team recommend any value engineering measures and if so what would they be?</p>		
	<p>2. Discuss the resiliency of your systems. Provide public transportation examples and recovery times.</p>		
	<p>3. The life of the new Transbay Transit Center is expected to be 100 years. What is the recommendation for renewal of your systems? Specifically, when would the TJPA be required to upgrade your systems?</p>		
	<p>4. What is the typical training period for your systems? What do you envision to be the training time required for our project?</p>		
	<p>5. The new Transit Center construction will be substantially complete by December 2017; provide an overview of your approach for working safely within construction areas with multiple trades.</p>		
	<p>6. Discuss your experience working with law enforcement and safety officials and staff and how you have integrated their requirements and needs into your previous projects.</p>		
	<p>7. Quality is important to the TJPA. Does your firm have a quality plan? What is your firms' approach to quality and how would you ensure that all of your vendors follow the same standards?</p>		
	<p>8. Please clearly define/delineate your team's scope of work "end points" in terms of the ECS/MNS integration and specifically in terms of physical connections/terminations between your ECS/MNS integration equipment/cable/conduit, etc. to the TTC Building converged IP network?</p>		
	<p>9. Discuss your process of gathering and vetting the stakeholder requirements and developing the business rules to be implemented in the PSIM.</p>		
	<p>10. The Transit Center Phase 2 may require expansion of these systems, please describe the expansion capabilities of your systems and the requirements for that expansion.</p>		

**TOTAL SCORE (40 points maximum):** \_\_\_\_\_

## Attachment C

### Evaluation Scores (100 points max per panelist)

<b>Firm</b>	<b>Panelist A</b>	<b>Panelist B</b>	<b>Panelist C</b>	<b>Panelist D</b>	<b>Panelist E</b>	<b>Panelist F</b>	<b>Total Score</b>
ARES Security Corp.	70	55.5	59.5	80.5	84	75	<b>424.5</b>
Edge 360	70	67	71	81.5	84	75	<b>448.5</b>
G4S Secure Integration	83	65.5	72	84.5	94	80	<b>479</b>

### Interview Scores (40 points max per panelist)

<b>Firm</b>	<b>Panelist A</b>	<b>Panelist B</b>	<b>Panelist C</b>	<b>Panelist D</b>	<b>Panelist E</b>	<b>Panelist F</b>	<b>Total Score</b>
ARES Security Corp.	24	23.5	38	35	38	37	<b>195.5</b>
Edge 360	32	36	35	31	40	38	<b>212</b>
G4S Secure Integration	33	32	31	34	38	37	<b>205</b>

### Totals

<b>Firm</b>	<b>Panelist A</b>	<b>Panelist B</b>	<b>Panelist C</b>	<b>Panelist D</b>	<b>Panelist E</b>	<b>Panelist F</b>	<b>Total Score</b>
ARES Security Corp.	94	79	97.5	115.5	122	112	<b>620</b>
Edge 360	102	103	106	112.5	124	113	<b>660.5</b>
G4S Secure Integration	116	97.5	103	118.5	132	117	<b>684</b>