



## **TRANSBAY JOINT POWERS AUTHORITY**

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
CALIFORNIA HIGH-SPEED RAIL AUTHORITY  
CITY AND COUNTY OF SAN FRANCISCO, BOARD OF SUPERVISORS  
CITY AND COUNTY OF SAN FRANCISCO, MAYOR'S OFFICE  
PENINSULA CORRIDOR JOINT POWERS BOARD  
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

**Executive Director: Mark Zabaneh**

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### **REQUEST FOR PROPOSALS No. 20-07**

### **Program Management Information System**

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#### **Key RFP Dates**

RFP Issued:	Thursday, July 2, 2020	
Deadline for Submission of Questions:	Friday, July 24, 2020	by 2 p.m.
Answers to Written Questions Posted:	Tuesday, July 28, 2020	
Proposals Due:	Friday, August 14, 2020	by 2 p.m.
Interviews:	Week of August 24 <sup>th</sup> 2020	
Contract Recommended for TJPA Approval:	Thursday, October 8, 2020	

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**ATTACHMENTS**

- Attachment 1: RFP General Conditions
- Attachment 2: Model Professional Services Agreement
- Attachment 3: Fee Proposal Form
- Attachment 4: Federal Transit Administration Requirements and Certifications Required to be Submitted with Proposal
- Fly America Certification
  - New Restrictions on Lobbying Certification
  - Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- Attachment 5: Disadvantaged & Small Business Enterprise (DBE/SBE) Program Information and Forms:
- Bidders/Proposers Information Request Form (Required to be submitted with Proposal)
  - Good Faith Efforts Form (Required to be submitted with Proposal if applicable)
  - Progress Payment Report
  - Subcontractor Payment Declaration
  - Final Expenditure Report

## **1 INTRODUCTION**

The Transbay Joint Powers Authority (TJPA) issues this Request for Proposals (RFP) for a Program Management Information System (PMIS) and File Sharing Application(s) (Services) for the Transbay Program (Program) from PMIS software vendors (Respondents) to provide, implement, maintain, and support PMIS and file sharing collaborative software for the Program's Phase 2 capital components, which include multiple projects/segments and various project delivery methods.

The TJPA plans to enter into a single contract for the Services described in Section 3.0, Scope of Services. Based on its evaluation of the proposals received in response to this RFP (Proposals), the TJPA may select one Respondent to enter into exclusive negotiations for an agreement substantially similar to Attachment 2, Model Professional Services Agreement (Agreement). The Agreement will be for a 4-year base term with two 3-year extension options, exercisable at the TJPA's sole discretion, to extend the Agreement with the successful Respondent, if a contract award is made.

The selection of any Respondent for exclusive negotiations will not imply the TJPA's acceptance of all terms of the Respondent's submittal; terms may be subject to further negotiation. The TJPA will have no obligation unless and until a final agreement is entered into by the parties following approval by the TJPA's Board of Directors (TJPA Board). There is no guarantee that the TJPA will issue any notices to proceed (NTPs), and the TJPA may terminate the Agreement at any time.

Proposals in Adobe PDF (Portable Document Format) must be received by the TJPA via electronic submission via email or link to electronic file share site to [RFP@tjpa.org](mailto:RFP@tjpa.org) no later than **2:00 p.m. on Friday, August 14, 2020**.

Responses to this RFP that are not received by the time and date specified, do not contain all the required information and completed forms, or do not meet all minimum qualifications will be deemed non-responsive and rejected without consideration.

Respondents may obtain copies of this RFP, including the forms to be submitted in the Proposal package, by downloading the document from the TJPA website: <http://www.tjpa.org> > TJPA > Doing Business with the TJPA > Current Contract Opportunities or by contacting the TJPA, 425 Mission Street, Suite 250, San Francisco, CA 94105, (415) 597-4620, email: [RFP@tjpa.org](mailto:RFP@tjpa.org).

## **2 BACKGROUND**

### **2.1 Transbay Joint Powers Authority**

In April 2001, the City and County of San Francisco (City), the Alameda-Contra Costa Transit District (AC Transit), and the Peninsula Corridor Joint Powers Board (PCJPB) executed a Joint Exercise of Powers Agreement under California law creating the TJPA. The purpose of the TJPA

is to design, build, develop, operate and maintain a new transportation terminal and associated facilities in San Francisco, known as the Transbay Program.

The TJPA has been granted primary jurisdiction with respect to all matters pertaining to the financing, design, development, construction, and operation of the Transbay Program. The member agencies of the TJPA have granted to the TJPA most of their jointly held powers, including the authority to buy and sell property, enter into contracts, and accept and spend grants of cash and property.

The TJPA's management functions include contract oversight, policy direction, financing, and investment supervision. The TJPA coordinates and collaborates with, among others, the following governmental entities: U.S. Department of Transportation and its operating administrations—Federal Railroad Administration, Federal Transit Administration, and Federal Highway Administration; the California Department of Transportation (Caltrans); the California High-Speed Rail Authority; the Metropolitan Transportation Commission (MTC); the City; the San Francisco County Transportation Authority (SFCTA); AC Transit; PCJPB; San Mateo County Transit District; and Golden Gate Bridge, Highway and Transportation District.

In accordance with the terms of the San Francisco Peninsula Rail Program Memorandum of Understanding (MOU) signed by the TJPA and its partners—MTC, SFCTA, Caltrain, CHSRA, and the City, an Executive Steering Committee (ESC), composed of executives from each partner, supports the TJPA in project development efforts for the Downtown Rail Extension. The ESC is responsible for making recommendations to the TJPA Board of Directors regarding the scope of efforts described in the MOU. The ESC will be supported by an Integrated Program Management Team (IPMT) consisting of representatives of each partner with relevant experience in large complex projects.

The TJPA Board of Directors is composed of directors appointed by each of the following agencies:

- Alameda-Contra Costa Transit District
- City and County of San Francisco, Board of Supervisors (2)
- City and County of San Francisco, Mayor's Office
- Peninsula Corridor Joint Powers Board
- San Francisco Municipal Transportation Agency
- California High-Speed Rail Authority
- California Department of Transportation, Ex Officio (non-voting)

Mr. Mark Zabaneh is the TJPA's Executive Director.

## **2.2 Program Summary**

The Program is a major infrastructure investment to replace the former Transbay Terminal at First and Mission streets in San Francisco with a modern regional transit station that will connect eight Bay Area counties and the State of California through eleven transit systems: AC Transit, BART (Bay Area Rapid Transit), Caltrain, Golden Gate Transit, Greyhound, Muni (San Francisco municipal bus lines), SamTrans (San Mateo County Transit), WestCAT (Western Contra Costa Transit) Lynx, Amtrak, Paratransit, and high-speed rail from San Francisco to Southern California.

The Program is being constructed in two phases. Phase 1 includes design and construction of the above-grade portion of the transit center, including a 5.4-acre rooftop park, retail areas, and a public art program; the core and shell of the two below-grade levels of the train station; a new bus ramp; a bus storage facility; and a temporary bus terminal. Construction of the transit center is substantially complete, the building is open to the public, and bus services have commenced operations.

The Downtown Rail Extension tunnel, the build-out of the below-grade train station at the transit center, a new underground station, a pedestrian tunnel connecting the transit center with the Embarcadero BART/Muni Metro station, and an intercity bus facility are planned as Phase 2 of the Program. Phase 2 is currently in the planning and preliminary engineering phases.

The TJPA's website at [www.tjpa.org](http://www.tjpa.org) contains further information about the Program.

## **2.3 Program Management System**

The PMIS platform currently used on the Program is Autodesk Constructware, a cloud-based construction project management and collaboration application. The platforms currently used for file sharing are Constructware File Director and Microsoft Networks/Microsoft SharePoint. These systems were implemented for multiple projects and project segments and are used by project participants and stakeholders spanning diverse teams. Day-to-day information management, such as data input and reporting, is performed by designated TJPA consultants and contractors, including a Program Management/Program Controls consultant with a dedicated Document Control Supervisor.

The current systems are being closed out. The TJPA will procure new PMIS and file sharing applications for Phase 2 to be used over a period of approximately four years.

## **3 SCOPE OF SERVICES**

The Respondent shall provide a Program Management Information System and collaborative file sharing application dedicated to the Phase 2 capital components. The Respondent may propose one or more software applications for the methodical process of collecting and managing Program and project information. The TJPA prefers Respondents to propose enterprise solutions that are commercially and readily available with capability for project-specific customization. Work includes implementation, training, customization, maintenance, support, and closeout processes.

### **3.1 General**

Implementation may be phased (background, research, planning, execution, and fine-tuning) but must be completed within 60 calendar days after contract award and receipt of written notice to proceed from the TJPA.

The vendor must provide at a minimum 24 hours of live training and access to additional on-demand video instruction (via the web and native files). Instructional documentation shall be provided in searchable PDF. Training shall be completed for a minimum of three user levels: administrative (TJPA IT Director and TJPA-designated Document Control Supervisor), power users (TJPA staff, document control specialist, project managers, and project engineers), and entry level users (administrative analyst).

Enterprise solutions that are commercially and readily available with capability for project-specific customization are preferred. The customization scope shall consist of modifications to user reports and templates and limited user interface updates such as website portal appearance. Report formatting must include user-definable fields for generating logs, transmittals, and cost documentation and publishing meeting minutes, daily reports, and punch lists. Users shall be provided with necessary built-in tools and appropriate training to create and customize reports and templates.

Maintenance and support of the PMIS shall be 24/7, 365 days per year. The TJPA anticipates 8 hours per month of downtime during non-business hours (8 p.m. – 5 a.m. PST) for database maintenance, backup, and application version upgrades, if applicable. Respondent shall provide a dedicated help desk, live chat, email support, or telephone number for technical support during standard business hours (8 a.m. – 5 p.m. PST).

Closeout of the PMIS shall consist of website portal closure coupled with the backup and migration of all data to a standalone media format (i.e., redundant portable hard drive) from which all data will be accessible to the TJPA.

### **3.2 Components of the PMIS**

The proposed PMIS shall support management of the following:

- Integration
- Project Scope
- Project Time
- Project Cost
- Project Quality
- Project Human Resources
- Project Communications
- Project Risks
- Project Procurement
- Project Stakeholders

### **3.3 PMIS Requirements**

The proposed PMIS will meet the following requirements:

#### **Usability**

- Intuitive and user friendly interface
- Document control and logging features
- Information sharing
- Process collaboration
- Built-in training and instruction manual
- Ability to export data to other formats, such as Excel

#### **Functionality/Modules**

- Robust query/search function
  - Day-to-day data and file searches
  - Public records requests for information
  - Legal discovery
- Contacts module
- Issue action module, with the ability to maintain multiple issue action logs, both internal and external
- Customizable dashboard
- Customizable reports that can be easily created by users
- Program reporting
- Meeting minutes module
- Quality, daily inspection and test report module
- Request for information (RFI) module
- Submittal module
- Permits module
- Correspondence module
- Robust cost module
  - Cost control features
  - Ability to enter budget items, funding, and cost elements
  - Produce reports
- Schedule management
- Punch list module

### **System Features**

- Secure
- Login-based with hierarchy of user security and access levels
- Built-in backup and recovery
- Data owned by TJPA
- Users: 15–250 with option for future expansion
- Largest file size anticipated: 5 gigabyte
- 12-terabyte storage capacity with option for future expansion
- Ability to import Phase 1 data and/or database from the current system (optional)

### **3.4 Key PMIS Assessment Criteria**

#### **Cost Control**

- How are budgets are set up and how are budget changes tracked?
- Is time-phased budgeting allowed?
- How are contract commitments tracked?
- How are expenditures tracked?
- How are forecasts (estimates-at-completion) calculated and tracked?
- How is cost trending during design handled?
- How are cost periods set up?
- Is each cost element (current budget, commitments, expenditures, and forecasts) for each period end date kept in the database for use in comparative reporting (one period versus another)?
- Does the system perform earned value calculations?
- What cost code structures are permitted?
- How are contract changes and potential contract changes handled and tracked in the contract commitments and in the forecast?
- How is contingency draw-down handled?
- Is there a cash flow feature and how does it work? Can it be used for budget, actual and forecast?
- Discussion of exception reporting/notification features.

#### **Funding Management**

- Does the system track encumbrance of funds?
- Are multiple funding sources allowed?

- Discussion of funding draw-down capabilities.
- Can funding source be broken down at budget, commitment, expenditure, and forecast levels?
- Can cash flow be created for each funding source?

### **Schedule Control**

- How can data be imported from/exported to Primavera P6 and/or MS Project?
- If there is an integrated schedule tool, can it create summary-level schedules from P6 and/or MS Project?
- What other kind of schedule tools/reports are available?

### **Process Collaboration**

- Show process collaboration features (RFIs, submittals, action messaging, etc.)
- Is workflow-based document sharing supported?
- Show drawing/configuration control and other design management and tracking features.
- Does the system have an issue-action tracking feature?
- Show "ball-in-court" tracking features.
- How are action-due notices sent (in the system or via e-mail)?
- Is there a feature for escalation of overdue action items?

### **Document Control**

- Show the specific types of documents created within the system and how they are tracked.
- Specifically show meeting minutes, submittals, RFIs, and change orders.
- Are logs automatically created for documents created in the system?
- How are incoming documents handled?
- Does the system preserve the original file name but hide this from users while assigning a standard file number?
- Is there a scanning interface software that works with the proposed system?
- How are individual document control or tracking numbers created/assigned?
- Is there a document preview capability?
- Searching capabilities.
- How are CADD files supported?
- How are project photos organized and logged?

- How are electronic files tracked?
- How is response to incoming documents tracked?

### **Work Breakdown Structure & Program Roll-Up**

- How many levels of Work Breakdown Structure (WBS) are supported? Is there a specific format for the WBS?
- How reports and/or screens can be summarized at various levels of the WBS and for a specific WBS component.

### **Reporting and Customization**

- Standard reports available.
- Discussion of the extent to which input fields, screens and reports can be modified or added.
- Filtering and grouping capabilities.
- Is the system capable of creating executive-level reports, including text, graphics, photographs, cost and schedule summaries for the program and by project?
- How are reports published and accessed online?

### **Security and Administration**

- Is the system proprietary?
- Is the system hosted as an ASP or on TJPA's servers?
- What are the minimum system requirements for TJPA's data center and for individual users?
- Are multiple administrators allowed?
- Discuss how security features including setting authority and access level restrictions are managed.
- How is user access tracked?
- Is there a project directory/contact list?
- Is the project directory linked to user accounts in the database?
- Show any group calendaring, meeting notification or group announcement capabilities.
- What user manuals, training and technical support are available?

### **Pricing and Miscellaneous**

- Pricing, including software and rates for training, technical support and software customization and report customization.
- References for major multiple-project design and construction programs.
- Process and timeline for implementation.

### **3.5 File Sharing Applications Requirements**

The Respondent may propose one or more software applications, cloud-based applications, and server providers for the process of sharing and collaborating Program and project data. File sharing applications will meet the following requirements:

- Secure
- Login-based
- Data owned by TJPA
- Accessible via secure web address
- Version control and file audit functionality
- Live multiple user editing, review, and comment functionality
- Robust query/search function
- Customizable WBS-based directory file tree
- Cross platform compatible: Windows, Mac, Linux, Microsoft Teams, Google Docs, etc.
- Cross team/organization/agency collaboration for internal and external organization use
- Design and engineering collaboration tools
  - Ability to edit, review and annotate PDF files
  - Requirement basis: Bluebeam Revu Studio
  - Minimum of 10 licenses for TJPA staff
- Searchable
- Bare metal backup
- Cloud-based backup
- Active malicious software scanning
- Users: 15–50
- Largest file size anticipated: 5 gigabyte
- 12-terabyte storage capacity with option for future expansion

### **4 MINIMUM REQUIRED SKILLS AND EXPERIENCE**

The selected Respondent shall:

1. Be highly qualified and skilled in the areas of expertise indicated in Section 3.0
2. Have successfully completed similar work
3. Appoint a project manager/account manager who possesses the appropriate education and technical and administrative experience necessary and has managed similar work
4. Assign key individuals and/or subconsultants with appropriate professional qualifications, significant past experience, and technical competence in key areas and/or within the organization structure

## **5 PROPOSAL REQUIREMENTS**

Proposals shall adhere to the format and page limitations described below in Section 5.1. Documents required by Section 5.2 and Section 5.3, however, are not subject to page limitations. Proposals shall be published in 8½ x 11-inch format; typeface shall be no smaller than 11 point, and margins shall be no less than 1 inch. Elaborate brochures or other presentation materials are not desired and will not be considered in evaluating Proposals.

Proposals shall be organized in the following sequence:

### **5.1 Written Submittal**

#### **5.1.1 Introduction, Table of Contents and Executive Summary (2 page limit)**

Submit a letter of introduction and an executive summary of the Proposal. The introductory letter must be signed by a person or persons authorized to obligate the firm (or firms if a joint venture) to honor the commitments set forth in the Proposal package and to verify the accuracy of the information included in the Proposal. Submission of the introductory letter will constitute a representation by the firm or joint venture that it is willing and able to successfully perform the Services, and that all information contained in the Proposal package is true, correct, and not misleading.

#### **5.1.2 Understanding and Approach (5 page limit)**

Describe the Respondent firm's approach to providing the Services. Respondents should demonstrate an understanding of the engagement requirements for the services listed in Section 3 and how the Respondent would tailor its services to meet the needs of the TJPA. The key assessment criteria in Section 3.4 will be considered in the evaluation of Respondent's approach to providing the Services. Provide a process, organization chart of personnel/resources and timeline for implementation of the PMIS. Include with the approach any proposed innovations and project-specific elements.

Provide a declaration of the Respondent firm's ability and willingness to commit and maintain staffing, both number and level, to successfully conclude the engagement being proposed. Identified key individuals may not be substituted with other personnel or reassigned to another project without the TJPA's prior approval.

#### **5.1.3 Qualifications and Experience (5 page limit)**

Provide a brief description of the Respondent firm and describe how the Respondent firm meets the minimum requirements described in Section 4. Be as specific as possible. Provide a general statement of the firm's total size, as well as staff size of the local or regional office proposing to perform the Services.

Describe the Respondent firm's background and experience in providing Program Management Information System services to a governmental organization similar to the TJPA. Provide a list of local governmental agencies and relevant industry clients of the local or regional office from the past five years. Indicate each organization's name and address, contact person, phone

number, email, nature of services provided, dates of engagement, and the names of the Respondent firm's staff who worked on these engagements.

Describe the proposed staff that would provide the Services. Specifically, provide their names, titles, business addresses, phone numbers, email addresses, and brief résumés describing the relevant qualifications and work experience. (The length of résumés must be shortened if necessary to avoid exceeding the maximum page limit established for this section.) Describe the role each staff member would play in providing the Services. Clearly show the extent and nature of the involvement of the key individuals who would provide the Services.

Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies.

#### **5.1.4 References (5 page limit)**

Provide at least five references for major multiple-project design and construction programs. Provide references for at least five recent clients (preferably other public agencies) of the Respondent and/or any assigned key individuals; include the reference names, current contact information addresses, telephone numbers, **email addresses**, and specific projects.

#### **5.2 Fee Proposal**

Submit a proposed annual budget range for performing the Services. Provide a pricing sheet, including software and rates for training, technical support, and software customization and report customization. The fee proposal shall include a cost and rate breakdown on the Fee Proposal Form (see Attachment 3). Please use a separate form for each fiscal year budget.

Respondent may provide subscription-based pricing on a per-user-per month or year basis. For the proposed annual budget range, Respondent shall assume 25 users for year one. Firms moving forward in the procurement process (invited for interview) will be required to provide current financial statements (current and previous year) prior to negotiations.

#### **5.3 Other Required Documents**

Respondents shall complete the forms described below and submit them as part of the Proposal. Required forms are included in Attachments 4 and 5.

- A. Fly America Certification, New Restrictions on Lobbying Certification, Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Attachment 4)
- B. Disadvantaged/Small Business Enterprise Program Requirements – Bidders/Proposers Information Request Form (Attachment 5)

A Good Faith Efforts Form must be submitted if the SBE utilization goal is not being met (refer to Section 11.3). Respondents shall also submit a copy of the Respondent firm's nondiscrimination program or equal employment opportunity policy statement.

## **6 RESPONDENT EVALUATION PROCESS**

The TJPA intends to select one Respondent. The TJPA’s selection committee will review and evaluate the Proposals. The selection committee will score the Proposals in accordance with the criteria and methodology described in this RFP. The Respondent that receives the highest score in the selection process will be selected to negotiate an Agreement with the TJPA.

### **6.1 Step One: Proposal**

#### **6.1.1 Satisfaction of Minimum Requirements**

Proposals will be evaluated to ensure that the Respondent has demonstrated compliance with each of the requirements described in Section 4, Minimum Required Skills and Experience. Any Proposal that does not meet the minimum requirements will be automatically rejected, and the selection committee will not evaluate the remainder of the Proposal.

#### **6.1.2 Proposal Evaluation and Ranking**

Proposals that satisfy the minimum requirements will be scored as follows:

Approach to Providing the Services	45 points
Qualifications and Experience	30 points
References	5 points
Cost	20 points

The maximum total score possible is 100. Respondent Proposals will be ranked according to total score. The selection committee will shortlist those Proposals that meet a minimum score, as determined by the selection committee (Finalist Respondents). Finalist Respondents will be invited to participate in the final selection process. The final selection process may include the submission of additional information and/or participation in an oral interview.

### **6.2 Step Two: Interview**

The TJPA will invite the Finalist Respondents to participate in oral interviews at a specified time, date, and location and will impose a time limit for each oral interview. During the oral interview, the Finalist Respondents will be required to deliver a brief presentation consisting of a live demonstration of the proposed software and respond to questions from the selection committee, including questions concerning the Respondent’s Proposal and presentation. The proposed key individuals of the Finalist Respondent’s team will be expected to actively participate in the interviews and to respond to the selection committee’s questions. The selection committee will assign points to each Finalist Respondent based on the oral interview up to a maximum of 100 points.

At the conclusion of the oral interviews, the selection committee will combine the scores for the Proposal and oral interview for each Finalist Respondent. The highest-ranking Finalist Respondent will be selected to negotiate a professional services contract with the TJPA. In the event of a tie, the TJPA may elect, in its absolute and sole discretion, to break the tie by conducting a tiebreaker between the tied Finalist Respondents.

In the event that agreement cannot be reached with the highest-ranking Finalist Respondent as determined by TJPA staff in its sole discretion, then negotiations may be entered into with other Finalist Respondents in the order of their ranking. There will be no binding agreement with any Finalist Respondent unless and until approved by the TJPA Board, at its sole discretion.

## **7 SUBMITTAL PROCEDURES**

The Proposal in Adobe PDF (Portable Document Format) must be received by the TJPA via direct email or email link to a file share site at [RFP@tjpa.org](mailto:RFP@tjpa.org) no later than **2:00 p.m. on Friday, August 14, 2020.**

Proposals that are not received by the time and date specified herein, do not contain all the required information and completed forms, or do not meet the minimum qualifications may be deemed non-responsive and rejected.

Beginning on the date this RFP is issued and made available to prospective Respondents, there will be no communications concerning this RFP between members of the TJPA Board, TJPA staff, other consultants already engaged by the TJPA or members of the selection committee and prospective Respondents and their employees or agents, except as provided herein. Questions about the RFP may be directed in writing to the TJPA's Executive Director. The Executive Director will consider all questions received by the close of business on the date noted in the RFP schedule as the deadline for submission of questions and, as appropriate, respond in writing. Any violations of the above restriction will result in the immediate disqualification of the Respondent making said contact from further participation in the Program. This restriction will end when contract award notification has been made.

Questions about the RFP may be directed in writing to:

Transbay Joint Powers Authority  
425 Mission Street Suite 250  
San Francisco, CA 94105  
Email: [RFP@tjpa.org](mailto:RFP@tjpa.org) (preferred)

Respondents are to promptly notify the Executive Director, in writing, if the Respondent discovers any ambiguity, discrepancy, omission, or other error in this RFP (see Attachment 1, RFP General Conditions, Item C.) As set forth in Attachment 1, Item D, Respondents may telephone the TJPA at (415) 597-4620 before submitting a Proposal to determine if the Respondent has received all addenda.

## **8 SCHEDULE AND ADDENDA**

See the key RFP dates listed on the title sheet of this RFP.

The TJPA may modify this RFP prior to the date Proposals are due by issuing written addenda. Addenda will be posted on the TJPA's website ([www.tjpa.org](http://www.tjpa.org) > TJPA > Doing Business with the TJPA > Current Contract Opportunities). For parties who requested a hard copy of the RFP by

regular mail, addenda may be sent to them via regular, first class U.S. mail. For firms registered on the TJPA's website to receive notice of addenda, the TJPA will make reasonable efforts to notify potential Respondents via email in a timely manner of the posting of addenda on the website. In either case, the last known address of each firm listed with the TJPA will be used. All parties, regardless of how they obtained the RFP, are solely responsible for ensuring the receipt of any and all addenda, and should therefore check the website before submitting their Proposals to ensure receipt of all addenda, and to ensure their Proposals respond to any such addenda.

## **9 STANDARD AGREEMENT PROVISIONS**

Following negotiations, the selected Respondent will be expected to enter into a professional services agreement substantially in the form of the Model Professional Services Agreement, Attachment 2. Failure to timely execute the Agreement, or to furnish any and all insurance certificates and other materials required in the Agreement, will be deemed an abandonment of the Respondent's contract offer.

Respondents are urged to pay special attention to the requirements of the Minimum Compensation Ordinance and the Health Care Accountability Ordinance. The Minimum Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P, requires contractors to provide employees covered by the Ordinance who do work funded under the Contract with hourly gross compensation and paid and unpaid time-off that meet certain minimum requirements. The Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q, requires contractors to provide health care coverage to certain employees or pay amounts in lieu thereof. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the MCO and HCAO is available at <https://sfgov.org/olse/>.

TJPA will not negotiate different terms in the Model Professional Services Agreement if exceptions are not noted within the Respondent's Proposal.

## **10 AUTHORIZATION OF CONSULTANT'S WORK**

Once the Agreement is executed, any resulting work will be assigned to the selected Respondent (Consultant) by the TJPA through NTPs. It is anticipated that the first NTP will be issued in October 2020.

## **11 DISADVANTAGED BUSINESS ENTERPRISE (DBE) / SMALL BUSINESS ENTERPRISE (SBE)**

It is the policy of the TJPA to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of Department of Transportation (DOT)-assisted contracts. It is the intention of the TJPA to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the TJPA's construction, procurement and professional services activities.

Pursuant to 49 CFR Section 26.13, the TJPA is required to make the following assurance in every DOT-assisted contract and subcontract:

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

The TJPA recommends that Respondents review the TJPA's DBE Program and SBE Programs, available on the TJPA website: <http://www.tjpa.org> > TJPA > Doing Business with the TJPA. Pursuant to the monitoring requirements outlined in both the DBE Program and the SBE Program, each Respondent will be required to complete and submit the TJPA's Bidders/Proposers Information Request Form with its Proposal, regardless of DBE/SBE participation. Upon award of the contract, the Auditor will be required to submit the TJPA's Progress Payment Report with every invoice request, the Subcontractor Payment Declaration as proof of payment to any subcontractors, and the Final Expenditure Report with the completion of the contract. These forms are attached to this RFP and are available on the TJPA website: <http://www.tjpa.org> > TJPA > Doing Business with the TJPA.

### **11.1 Equal Employment Opportunity**

The TJPA encourages Respondents to actively recruit minorities and women for their respective workforces. The TJPA requests copies of any nondiscrimination or equal opportunity plans that the Respondents have in place.

### **11.2 DBE Participation**

The TJPA has a race-neutral DBE Program and there is no DBE goal on this contract; however, Respondents are encouraged to obtain DBE participation and should refer to the section below for information about any mandatory SBE utilization goal.

### **11.3 SBE Utilization Goal**

The TJPA has established a **5.92%** SBE utilization goal for this contract. However, Respondents are encouraged to obtain SBE participation for this contract. TJPA accepts certifications from the following as SBEs: any state's Unified Certification Program, California Department of General Services, and the San Francisco Contract Monitoring Division.

**11.4 Questions Regarding DBE/SBE**

Written questions concerning DBE/SBE/nondiscrimination requirements should be addressed to:

Ms. Erin Roseman  
Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Email: [RFP@tjpa.org](mailto:RFP@tjpa.org) (preferred)

**12 LEVINE ACT**

The Levine Act (Government Code § 84308) is part of the Fair Political Practices Act that applies to elected officials and their alternates who serve on appointed boards, such as the TJPA Board.

The Levine Act prohibits any TJPA Board member (including a Board member's alternate) or officer who has received \$250 or more from an applicant for a contract with the TJPA within the previous twelve months from participating in or influencing the decision on awarding that contract. The Levine Act also requires a Board member or officer of the TJPA who has received such a contribution to disclose the contribution on the record of the proceeding in which a contract is being considered. In addition, TJPA Board members and officers are prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the contract is pending before the TJPA and for three months following the date a final decision concerning the contract has been made.

Each Respondent must disclose any contributions of \$250 or more that it has made to a TJPA Board member or officer within the twelve-month period preceding the submission of its Proposal. This requirement applies to the Respondent, as well as to any member firm or individuals on the Respondent's team, subsidiaries, parent companies, other firms associated with the Respondent and agents of the Respondent. If such a contribution has been made, Respondent must provide to the TJPA's Executive Director a written statement setting forth the date and amount of said contribution(s). The Executive Director must receive this information at the same time the Proposal is received.

Members of the [TJPA Board of Directors](#) are:

Nadia Sesay, Chair	Tilly Chang, Alternate
Jeff Gee, Vice Chair	No Alternate
Elaine Forbes	No Alternate
Matt Haney	Tilly Chang, Alternate
Michael Hursh	Elsa Ortiz, Alternate
Boris Lipkin	Bruce Armistead, Alternate
Jeffrey Tumlin	Cheryl Brinkman
Tony Tavares, Ex Officio	No Alternate

## **13 PROTEST PROCEDURES**

### **13.1 Protest Submittal**

A protest describing the nature of the disagreement must be submitted in writing to the TJPA no later than five (5) days following notification of proposed award.

The letter of protest must contain a description of the protest and be signed and dated. Protests must be addressed to:

Executive Director  
Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Email: [info@tjpa.org](mailto:info@tjpa.org)

### **13.2 Executive Director's Decision Final**

The Executive Director will inform the protester in writing of the decision, stating the reasons for the decision, and responding at least generally to each material issue raised in the protest. The Executive Director's letter to the protester will state that the protester may contact the Executive Director to discuss the response, and the protester has the right to address the TJPA Board on the date when the contract is calendared to be awarded if the Executive Director denies the protest.

The decision of the Executive Director is final. Subject to the provisions of Section 13.3, the protester may seek a remedy in state or federal court, as appropriate, from the final action of the TJPA.

### **13.3 Protest to FTA**

FTA may only entertain a protest that alleges that the TJPA (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional office or headquarters within five (5) working days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the TJPA before pursuing a protest with FTA.

# Attachment 1

## RFP GENERAL CONDITIONS

### A. Consultant Offices

Assigned staff must be able to reach TJPA offices in a reasonable amount of time when work is needed. The Transbay Joint Powers Authority (TJPA) will not reimburse the Consultant for the costs of business travel.

### B. Errors and Omissions in RFQ/RFP

Respondents are responsible for reviewing all portions of this RFQ/RFP. Respondents are to promptly notify the TJPA Executive Director, in writing, if the Respondent discovers any ambiguity, discrepancy, omission, or other error in the RFQ/RFP. Any such notification should be directed to the Executive Director promptly after discovery, but in no event later than five (5) working days prior to the due date for proposals. Any modifications or clarifications of this RFQ/RFP will be made by addenda as provided below.

### C. Objections to RFQ/RFP Terms

Should a Respondent object on any ground to any provision or legal requirement set forth in this RFQ/RFP, the Respondent must, not more than ten (10) working days after the RFQ/RFP is issued, provide written notice to the Executive Director of the TJPA setting forth with specificity the grounds for the objection. The failure of a Respondent to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

### D. Addenda to RFQ/RFP

The TJPA may modify the RFQ/RFP, prior to the proposal due date, by posting addenda on the TJPA's website ([www.TransbayCenter.org](http://www.TransbayCenter.org)). For parties who requested a hard copy of the RFQ/RFP by regular mail, addenda may be sent to them via regular, first class U.S. mail. For firms registered on the TJPA website as wanting to receive notice of addenda, the TJPA will make reasonable efforts to notify potential Respondents in a timely manner of the posting of addenda on the website. In either case, the last known address of each firm listed with the TJPA will be used.

All parties, regardless of how they obtained the RFQ/RFP, are solely responsible for ensuring receipt of any and all addenda. All parties are responsible for ensuring that their Proposals reflect any and all addenda issued by the TJPA prior to the proposal due date regardless of when the proposal is submitted and should therefore check the website before submitting their Proposals to ensure receipt of all addenda, and to ensure their qualifications respond to any such addenda. The Respondent can call the TJPA before submitting its Proposal to determine if the Respondent is aware of all addenda.

### E. Term of Proposal

By signing and submitting a proposal, each Respondent certifies that the proposed services and terms are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

### F. Revision of Proposal

A Respondent may revise its Proposal on the Respondent's own initiative at any time before the deadline for submission of proposals. The Respondent must submit any revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Respondent.

#### **G. Errors and Omissions in Proposal**

Failure by the TJPA to object to an error, omission, or deviation in a proposal will in no way modify the RFQ/RFP or excuse the Respondent from full compliance with the specifications of the RFQ/RFP or any contract awarded pursuant to the RFQ/RFP.

#### **H. Financial Responsibility**

The TJPA accepts no financial responsibility for any costs incurred by a firm in responding to this RFQ/RFP. Submissions to the TJPA under this RFQ/RFP will become the property of the TJPA and may be used by the TJPA in any way deemed appropriate.

#### **I. Public Disclosure**

Contractors' bids, responses to RFQ/RFPs 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.

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

If a Respondent is a non-profit entity that receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Respondent must comply with Chapter 12L. The Respondent must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Respondent's meetings and records, and (2) a summary of all complaints concerning the Respondent's compliance with Chapter 12L that were filed with the City and County of San Francisco (City) in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Respondent shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Respondent's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

#### **K. New Restrictions on Lobbying Certification**

All Respondents are required to include in their Proposal packages the standard federal certification form regarding lobbying as set forth in the RFQ/RFP Attachments if the contract is expected to be more than \$100,000.

#### **L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

A contract awarded under this RFQ/RFP 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.

The contractor is required to comply with federal suspension and debarment laws and must include the requirement to comply with federal suspension and debarment laws in any lower tier covered transaction it enters into, if any.

By signing and submitting its bid or proposal, the Respondent certifies as follows:

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the Respondent knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Respondent agrees to comply with the requirements of federal suspension and debarment laws while this offer is valid and throughout the period of any contract that may arise from this offer. The Respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions.

By signing and submitting its Proposal, the Respondent also certifies to the TJPA that the Respondent has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any TJPA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the TJPA. All Respondents are required to include in their Proposal packages the certification form regarding debarment, suspension and other responsibility matters as set forth in the RFQ/RFP Attachments.

#### **M. Reservations of Rights by the TJPA**

The issuance of this RFQ/RFP does not constitute an agreement by the TJPA that any contract will actually be entered into by the TJPA. The TJPA expressly reserves the right at any time to:

- waive or correct any defect or informality in any response, proposal, or proposal procedure, as determined by the TJPA in its sole discretion
- reject any or all proposals, without indicating any reason for such rejection
- reissue an RFQ/RFP
- prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFQ/RFP, or the requirements for contents or format of the proposals
- request that one or more Respondents clarify, supplement or modify the information submitted
- extend deadlines for accepting responses; request amendments to responses after the expiration of deadlines; request clarifications, revised proposals or best and final offers; or negotiate or approve final agreements
- during negotiation, expand or limit the scope of the proposed Services, increasing or decreasing contract amounts, including negotiate with and award contracts to more than one qualified Respondent
- if negotiations with a selected Respondent fail to proceed to the reasonable satisfaction of the TJPA, at the TJPA's sole and absolute discretion, negotiate with and enter into a contract with another Respondent, or begin the selection process anew
- consider any information about any Respondent that is not expressly contained in Respondent's response
- procure any materials, equipment or services specified in this RFQ/RFP by any other means
- determine that no Program will be pursued

#### **N. No Waiver**

No waiver by the TJPA of any provision of this RFQ/RFP shall be implied from any failure by the TJPA to recognize or take action on account of any failure by a Respondent to observe any provision of this RFQ/RFP.

#### **O. Applicability of City Contracting Provisions**

Under Section 6509 of the Government Code, the TJPA is subject to the same restrictions on its powers as those which are applicable to an entity designated in the Joint Powers Agreement. The City and County of San Francisco has been designated as the administrator of the TJPA in the Joint Powers

Agreement. Respondents must comply with the San Francisco ordinances applicable to contracts and procurement that are referenced in this RFQ/RFP and attached documents.

**P. Restrictions on Campaign Contributions to Elected Officials**

Certain members of the TJPA Board are elected officials. Respondents shall declare whether they have made a campaign contribution to any such elected official, or committee controlled by such elected official at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for a contract pursuant to this RFQ/RFP. This includes contributions to:

- the official's re-election campaign
- a candidate for that officer's office
- a committee controlled by the official or candidate

Respondents shall be disqualified from participation in this RFQ/RFP on the sole discretion of the TJPA as guided by rule and policies of Section 1.126 of the San Francisco Campaign and Governmental Code (substituting references to the City and County of San Francisco in such section with the TJPA, as applicable).

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Respondent approaches any TJPA officer or employee about this RFQ/RFP, or a TJPA officer or employee initiates communication with a potential Respondent about a contract. The negotiation period ends when a contract is awarded or not awarded to the Respondent. Inquiries for information, requests for documents relating to this RFQ/RFP, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- a) Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- b) Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- c) Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

**Q. No Representations or Warranties by TJPA**

The information presented in this RFQ/RFP and in any report or other information provided by the TJPA to respondents is provided solely for the convenience of the interested parties. It is the sole responsibility of interested parties to assure themselves that the information contained in this RFQ/RFP or other documents are accurate and complete. No representations, assurances or warranties pertaining to the accuracy of such information are or will be provided by the TJPA or its advisors.

**R. No Conflict of Interest**

The TJPA shall disqualify any respondent to this RFQ/RFP that has a conflict of interest under Section C8.105 of the San Francisco Charter, Government Code Section 1090, et. seq., the Political Reform Act (Government Code Section 87100 et. seq.), or any other applicable conflict of interest laws. Any false, incomplete, or otherwise unresponsive statements made in connection with a proposal may be cause for its disqualification at the TJPA's sole discretion.

**Attachment 2**  
**MODEL PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_ 20\_\_\_, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Type Of Services (“Contractor”).

**Recitals**

A. The TJPA requires \_\_\_\_\_ (“Services”) for the Transbay 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 \_\_\_\_\_, 20\_\_\_, 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**

a. 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.

b. 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.

c. 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 \_\_\_ years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that (i) the TJPA shall have the right to extend this Agreement for an additional \_\_\_ years by providing to the Contractor written notice of such extension on or before the expiration date 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 the TJPA.

## 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 the Contractor Agrees to Perform

The Contractor agrees to perform the services listed in Appendix A 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.

[insert following clause as appropriate to procurement]

To minimize the potential for a conflict of interest or unfair competitive advantage, the Contractor agrees that it shall not enter into a contract with any property owner with respect to any property that is planned for acquisition by the TJPA on Appendix E attached hereto, and any properties that are subsequently added to this list.]

## 5. Compensation

a. All work under this Agreement shall be compensated on an hourly or fixed fee by deliverable basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed \_\_\_\_\_ (\$\_\_\_\_\_) The breakdown of the Contractor's fees appears in Appendix B, "Fees."

b. Hourly rates or fixed fee by deliverable for services are to remain fixed during the entire contract period, including any option periods, pursuant to Appendix B.

c. 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 the 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.

d. 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, "Compensation," 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. The Contractor must submit required DBE/SBE Progress Payment Reports with every invoice. All amounts paid to the Contractor shall be subject to audit by the TJPA.

The TJPA shall make payment to the Contractor at the address specified in Section 23, "Notices to the Parties."

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

Pursuant to San Francisco Administrative Code Chapter 6, Article V [OR] Section 21.35, 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 the 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 the 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 A, and shall not be changed or substituted without the prior written consent of the TJPA. 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 the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the TJPA.

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

### **a. Independent Contractor**

The Contractor or any agent or employee of the 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 neither 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 that 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 determine 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 with coverages at least as broad as 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 on an occurrence basis, with limits not less than \$1,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal and Advertising Injury, Products and Completed Operations; and

(3) Business Automobile Liability Insurance with limits not less than \$1,000,000 per accident for Bodily Injury (including death), 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 entities indicated in Appendix C, Additional Insureds.

(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. The Contractor shall provide thirty (30) days' advance written notice to the TJPA of material change in coverages, reduction or nonrenewal of coverages, or cancellation of coverages for any reason. Notices shall be sent to the address specified in Section 23, "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 five (5) 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.M. Best 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. Regarding Workers' Compensation, the Contractor hereby agrees to waive subrogation which any insurer of the Contractor may acquire from the Contractor by virtue of the payment of any loss. The Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the TJPA for all work performed by the Contractor, its employees, agents and subcontractors.

i. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Contractor under this Agreement. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the TJPA requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

## **16. Indemnification**

[If the Contractor is NOT a design professional (an architect, a landscape architect or an engineer)]

The 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 the 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.

[OR, if the Contractor is a design professional (an architect, a landscape architect, or an engineer)]

a. General Indemnity

To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the TJPA, its members, directors, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

(1) Limitations

(2) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(3) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(4) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

b. Copyright Infringement

The Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its members, directors, officers, or employees of articles or services to be supplied in the performance of the Contractor's services under this Agreement.

**17. Incidental and Consequential Damages**

The Contractor shall be responsible for incidental and consequential damages to the TJPA resulting in whole or in part from the Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the TJPA may have under applicable law to seek a defense, indemnity, or damages for such acts or omissions.

**18. Liability of TJPA**

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in Section 5, "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.

**19. Liquidated Damages**

By entering into this Agreement, the Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, the Contractor agrees that the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that the TJPA will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. The TJPA may deduct a sum representing the liquidated damages from any money due to the Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of the Contractor's failure to deliver to the TJPA within the time fixed or such extensions of time permitted in writing by the TJPA.

**20. Default; Remedies**

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

(1) The 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; Indemnification; Proprietary or Confidential Information of the TJPA; Protection of Private Information; Assignment; Drug-Free Workplace Policy; Compliance With Laws; USDOT Requirements.

(2) The 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 the 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 the 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.

b. On and after any Event of Default, 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. 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, "Compensation," and shall be invoiced as provided in Section 7, "Payment." 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.



## **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.

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the TJPA to disclose the information; or
- (3) 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 the 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 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 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 the 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. The TJPA shall be provided with a copy of each subcontract promptly upon execution.

### **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 pursuant to which the Contractor and any subcontractors may be required to prepare filings under state law; 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 Agreement 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 Agreement until the later of either the termination of negotiations for such Agreement or six months after the date the Agreement is

approved. The Contractor acknowledges that the foregoing restriction applies only if the Agreement 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 Agreement; 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 Agreement; 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 12G, 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 12G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12G 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. The Contractor Shall Not Discriminate**

In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with the Contractor or subcontractor, applicant for employment with the Contractor or subcontractor, or 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. The 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. The 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.

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 Agreement, 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 Agreement.

#### **41. Small Business Enterprise (SBE) Requirements**

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of \_\_\_ percent (\_\_\_%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

Pursuant to the monitoring requirements outlined in Section IX of the TJPA's SBE Program, the Contractor will be required to update and submit the TJPA's "Bidders/Proposers Information Request Form," regardless of SBE 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.

#### **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, the 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 Agreement 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.

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 the 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.

1. 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. The 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 the Contractor based on the subcontractor's failure to comply, provided that TJPA has first provided the 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 the 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 City under the HCAO, including reports on subcontractors and subtenants, as applicable.

j. The Contractor shall provide the TJPA, or City, 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, or City, 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, or City, 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. The 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. Consideration of Criminal History in Hiring and Employment Decisions**

a. The Contractor agrees to comply fully with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions", including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T 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 <https://sfgov.org/olse>. A partial listing of some of the Contractor's obligations under Chapter 12T is set forth in this Section. The Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to the Contractor's or subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City and County of San Francisco, and shall not apply

when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. The Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. The Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. The Contractor or subcontractor shall not inquire about, require disclosure of, or, if such information is received base an Adverse Action on, an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. The Contractor or subcontractor shall not inquire about or require applications, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Chapter 12T subsection 32(d). The Contractor or subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. The Contractor or subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. The Contractor and subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. The Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the TJPA shall have the right to pursue any rights or remedies available to the City under Chapter 12T, including, but not limited to, penalties payable to the City.

#### **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 the Contractor 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. The 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**

The 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, the Contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, the 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 the 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'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 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 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 Section 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 Section 54, “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 D, 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, 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.

#### **64. Compliance with Naming Rights Agreement**

The TJPA has executed an agreement with salesforce.com providing salesforce the right to name the new transit center the “Salesforce Transit Center” and the right to receive certain other benefits. The Naming Rights Agreement imposes requirements and obligations relative to the name of, references to, and logos associated with the transit center. The Contractor will comply with the procedures, restrictions, and requirements developed by the TJPA related to implementation of its obligations under the Naming Rights Agreement, and the terms for the Contractor’s use of the name and logos associated with the transit center.

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:

\_\_\_\_\_  
\_\_\_\_\_, 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 Section 47, “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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Type of Services

\_\_\_\_\_  
Federal Employer ID Number

**APPENDIX A**  
**SCOPE OF SERVICES**

[Attach Scope of Services]

## **APPENDIX B FEES**

There shall be no mark up by the Contractor for the cost of subcontractors retained by the Contractor in the performance of the Services.

The above hourly rates [OR] fees per deliverable shall include all incidental expenses of the Contractor, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in - and out-of-house photocopying, charges for sending facsimiles, transportation, travel, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Contractor or the Contractor's subcontractors.

Direct costs actually incurred by the Contractor in performing the Services are subject to reimbursement if such costs are pre-approved by TJPA in writing. Contractor will not mark up such allowable costs and a receipt or invoice must be submitted documenting allowable costs. Any allowable travel costs must be consistent with TJPA's Travel Policy.

**APPENDIX C**  
**ADDITIONAL INSUREDS**

Transbay Joint Powers Authority

The Member Agencies of the TJPA:

Alameda-Contra Costa Transit District  
California High-Speed Rail Authority  
City and County of San Francisco  
Peninsula Corridor Joint Powers Board – Caltrain  
State of California, Department of Transportation

The following entities involved in the naming rights for the transit center:

Salesforce.com and all legal entities controlling, controlled by, or under common control with,  
directly or indirectly, salesforce.com

And all of the officers, directors, agents, permitted assigns, and employees of each of the above.

The Additional Insureds listed in this Appendix shall also include such other parties as the TJPA may request from time to time.

## APPENDIX D

### USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

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

#### 1. DEFINITIONS

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

- (a). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by Federal Transit Administration (FTA) or Federal Railroad Administration (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 Program, which will replace the Transbay Terminal with the new transit center building and extend Caltrain to the transit center. Total project consists of three major components: a new, multi-modal transit center on the site of the former Transbay Terminal; the extension of Caltrain commuter rail from its current San Francisco terminus at 4th and Townsend streets to a new underground terminus under a new transit center; and the establishment of a Redevelopment Area with related development projects, including transit-oriented development on publicly owned land in the vicinity of the transit center.
- (l). **Recipient** means the TJPA or another entity that provides fund to the TJPA as a subgrantee.
- (m). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (n). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA or FRA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (o). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (p). **U.S.DOT Directives** means any U.S. DOT regulation, policy, procedure, directive, circular, notice, order or guidance providing information about U.S.DOT's programs, application processing procedures, and Project management guidelines.

**2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

\*\* *This requirement applies to all Agreements.*

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

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

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

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

#### **4. ACCESS TO DOCUMENTS**

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

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

- (a). Where the TJPA is considered a “local government” and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the TJPA, the FTA or FRA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement (“Documents”) for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA or FRA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor’s Documents and construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.
- (b). Where the TJPA is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the TJPA, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.
- (c). The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions, as reasonably needed, of any Documents.
- (d). The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the TJPA, the FTA or FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

#### **5. FEDERAL CHANGES**

**\*\*** *This requirement applies to all Agreements.*

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

## 6. CIVIL RIGHTS REQUIREMENT

\*\* *This requirement applies to all Agreements.*

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

- (a). Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21; and U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR parts 27 and 37.
- (b). Equal Employment Opportunity - The following equal employment opportunity requirements apply to the Agreement:
- (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

## 7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

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

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

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

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

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

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

(d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

(e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

## **8. AMERICANS WITH DISABILITIES ACT**

\*\* *This requirement applies to all Agreements.*

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

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

\*\* *This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event

of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

#### **10. FLY AMERICA REQUIREMENTS**

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

- (a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- (b). The Contractor shall submit the “Fly America Certification” if the regulation is applicable to the particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

#### **11. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

## **12. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

## **13. RECYCLED PRODUCTS**

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

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

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

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

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

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

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

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

## **15. CLEAN AIR**

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

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

**16. CLEAN WATER REQUIREMENTS**

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

- (a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

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

**17. BUY AMERICA REQUIREMENTS**

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

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

**18. BREACHES AND DISPUTE RESOLUTION**

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

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

- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 19. LOBBYING

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

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

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

## 20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

**21. SEISMIC SAFETY REQUIREMENTS**

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

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

**22. BONDING REQUIREMENTS**

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

- (a). A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (b). A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- (c). A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

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

(1). **Bid Bond Requirements (Construction)**

(a). Bid Security

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

(b). Rights Reserved

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

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

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

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

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

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

(a). Performance Bonds

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

(b). Payment Bonds

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

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

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

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

1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).

2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
  3. Substantial progress payments are made before delivery of end items starts.
  4. Agreements are for dismantling, demolition, or removal of improvements.
- (b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
  2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.
- (d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
    - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
    - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
    - (iii) \$2.5 Million if the Agreement price is increased.

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

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

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

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

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

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

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

**23. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

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

**(a). Minimum Wages**

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

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

(2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

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

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

- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions

- have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

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

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

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

(d). **Apprentices and Trainees**

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

(2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and

individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3). **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

(f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.

(g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.

(h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

(i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j). **Certification of Eligibility**

(1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

**FLY AMERICA CERTIFICATION**

49 U.S.C. Section 40118  
41 CFR Part 301-10

*Certificate of Compliance*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance*

*\*\*If a foreign air carrier was used, the certification shall adequately explain why services by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

Explanation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUY AMERICA CERTIFICATION**

**FTA Certification requirement relating to procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), the applicable regulations in 49 C.F.R. Part 661.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**FRA Certification requirement relating to procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the FRA Buy America requirements of 49 U.S.C. Section 24405(a)(1).

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 24405(a)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. Section 24405(a)(2).

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**NEW RESTRICTIONS ON LOBBYING CERTIFICATION**

The Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Contractor shall require that the language of this certification be included in all Subcontracts, and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995) and U.S. DOT regulations, "New Restrictions on Lobbying," specifically 49 CFR 20.110. Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies and affirms the truthfulness and accuracy of each statement of this certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 *et seq.*, apply to this certification and disclosure, if any.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- (1) The prospective participant certifies to the best of its knowledge and belief that it and its principals:
  - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
  - d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) The prospective proposer also certifies that if, later it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to the TJPA.
- (3) Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective primary participant shall attach and provide a written explanation to the TJPA.

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements 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 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder/Offeror Name: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Authorized Representative Title: \_\_\_\_\_

Authorized Representative Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# FEE PROPOSAL

RFP

Firm / Proposer Name

Total Fee: \$

Home Office Address

Location where services  
will be performed

Overhead Rate

 %

Direct Labor	Estimated Hours	Fully Loaded Rate/Hour	Total \$
		<b>Subtotal</b>	

Subcontractors & Suppliers			
		<b>Subtotal</b>	

**TOTAL**



## Attachment 4: Federal Transit Administration Requirements and Certifications Required to be Submitted with Proposal

### 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 Federal Transit Administration (FTA) or Federal Railroad Administration (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 Program, which will replace the Transbay Terminal with the new transit center building and extend Caltrain to the transit center. Total project consists of three major components: a new, multi-modal transit center on the site of the former Transbay Terminal; the extension of Caltrain commuter rail from its current San Francisco terminus at 4th and Townsend streets to a new underground terminus under a new transit center; and the establishment of a Redevelopment Area with related development projects, including transit-oriented development on publicly owned land in the vicinity of the transit center.
- (l). **Recipient** means the TJPA or another entity that provides fund to the TJPA as a subgrantee.
- (m). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (n). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA or FRA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (o). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (p). **U.S.DOT Directives** means any U.S. DOT regulation, policy, procedure, directive, circular, notice, order or guidance providing information about U.S.DOT's programs, application processing procedures, and Project management guidelines.

**2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

\*\* *This requirement applies to all Agreements.*

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

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

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

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

#### **4. ACCESS TO DOCUMENTS**

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

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

- (a). Where the TJPA is considered a “local government” and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the TJPA, the FTA or FRA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement (“Documents”) for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA or FRA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor’s Documents and construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.
- (b). Where the TJPA is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the TJPA, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.
- (c). The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions, as reasonably needed, of any Documents.
- (d). The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the TJPA, the FTA or FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

#### **5. FEDERAL CHANGES**

**\*\*** *This requirement applies to all Agreements.*

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

## 6. CIVIL RIGHTS REQUIREMENT

\*\* *This requirement applies to all Agreements.*

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

- (a). Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21; and U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR parts 27 and 37.
- (b). Equal Employment Opportunity - The following equal employment opportunity requirements apply to the Agreement:
- (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

## 7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

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

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

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

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

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

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

(d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

(e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

## **8. AMERICANS WITH DISABILITIES ACT**

\*\* *This requirement applies to all Agreements.*

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

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

\*\* *This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event

of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

#### **10. FLY AMERICA REQUIREMENTS**

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

- (a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- (b). The Contractor shall submit the “Fly America Certification” if the regulation is applicable to the particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

#### **11. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

## **12. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

## **13. RECYCLED PRODUCTS**

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

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

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

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

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

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

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

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

## **15. CLEAN AIR**

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

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

**16. CLEAN WATER REQUIREMENTS**

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

- (a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

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

**17. BUY AMERICA REQUIREMENTS**

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

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

**18. BREACHES AND DISPUTE RESOLUTION**

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

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

- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 19. LOBBYING

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

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

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

## 20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

**21. SEISMIC SAFETY REQUIREMENTS**

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

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

**22. BONDING REQUIREMENTS**

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

- (a). A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (b). A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- (c). A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

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

(1). **Bid Bond Requirements (Construction)**

(a). Bid Security

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

(b). Rights Reserved

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

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

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

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

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

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

(a). Performance Bonds

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

(b). Payment Bonds

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

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

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

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

1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).

2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
  3. Substantial progress payments are made before delivery of end items starts.
  4. Agreements are for dismantling, demolition, or removal of improvements.
- (b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
  2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.
- (d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
    - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
    - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
    - (iii) \$2.5 Million if the Agreement price is increased.

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

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

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

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

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

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

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

**23. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

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

**(a). Minimum Wages**

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

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

(2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

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

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

- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions

have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

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

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

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

(d). **Apprentices and Trainees**

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

(2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and

individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3). **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

(f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.

(g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.

(h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

(i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j). **Certification of Eligibility**

(1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

**FLY AMERICA CERTIFICATION**

49 U.S.C. Section 40118  
41 CFR Part 301-10

*Certificate of Compliance*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance*

*\*\*If a foreign air carrier was used, the certification shall adequately explain why services by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

Explanation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUY AMERICA CERTIFICATION**

**FTA Certification requirement relating to procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), the applicable regulations in 49 C.F.R. Part 661.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**FRA Certification requirement relating to procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the FRA Buy America requirements of 49 U.S.C. Section 24405(a)(1).

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 24405(a)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. Section 24405(a)(2).

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**NEW RESTRICTIONS ON LOBBYING CERTIFICATION**

The Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Contractor shall require that the language of this certification be included in all Subcontracts, and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995) and U.S. DOT regulations, "New Restrictions on Lobbying," specifically 49 CFR 20.110. Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies and affirms the truthfulness and accuracy of each statement of this certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 *et seq.*, apply to this certification and disclosure, if any.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- (1) The prospective participant certifies to the best of its knowledge and belief that it and its principals:
  - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
  - d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) The prospective proposer also certifies that if, later it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to the TJPA.
- (3) Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective primary participant shall attach and provide a written explanation to the TJPA.

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements 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 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder/Offeror Name: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Authorized Representative Title: \_\_\_\_\_

Authorized Representative Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **RFP ATTACHMENT 5**

### **DBE/SBE PROGRAM FORMS**

- a) **Bidders/Proposers Information Form (must be submitted with proposal)**
- b) **Instructions for properly completing the Bidders/Proposers Information Form – *please read carefully!***
- c) **Good Faith Efforts Form (must be submitted with proposal if there is a contract SBE goal and the goal is not met in the proposal)**
- d) **Progress Payment Report**
- e) **Subcontractor Payment Declaration Form**
- f) **Final Expenditure Report**

**TRANSBAY JOINT POWERS AUTHORITY  
BIDDERS/PROPOSERS INFORMATION REQUEST FORM**

*To be completed by Prime Contractor and submitted as part of bid/proposal.*

NAME OF PROJECT/PROPOSAL							PROJECT/PROPOSAL NUMBER					
PROPOSER BUSINESS NAME AND ADDRESS												
NAME OF PERSON SUBMITTING BID					SIGNATURE OF PROPOSER					DATE		
CONTACT PERSON NAME					CONTACT PHONE NUMBER				CONTACT EMAIL			
<b>IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work. 3) Attach a copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed on this form. 4) Attach "Intent to Perform" letter signed by the subcontractor.</b>												
							<b>DBE-SBE Participation</b>					
LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Age of Firm	Item of Work, Service or Materials Supplied	NAICS Code (if known) *	Annual Gross Receipts of Firm	Certified DBE or SBE (Y/N)	Certifying Agency	Type of DBE or SBE **	Award Amount	Percentage of Contract Participation	
<b>A. PRIME Contractor</b>												
<b>B. Subcontractor/Vendor/Joint Venture</b>												
<b>TOTAL</b>										\$0	0.00%	

\* **NAICS Code:** North American Industry Classification System Code. Codes can be found at <http://www.census.gov/naics>.  
 \*\* **Type of DBE/SBE:** (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated as a Small Business)  
 - DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/hq/hcp/lucp.htm> for a list of participating agencies.  
 - SBEs must be certified by the San Francisco Human Rights Commission (<http://www.sfgov.org/sfhumanrights>) or the California Department of General Services (<http://www.eprocure.dgs.ca.gov/default.htm>)  
 - Important: Attach the proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal.  
 - This information will be used to create and maintain a federally-required Bidders List, regardless of DBE/SBE participation.  
 - Use additional sheets as necessary.

## How to fill out the Bidders/Proposers Information Request Form

1. Name of Project/Proposal – insert name of the TJPA Request for Proposals (RFP) or Invitation for Bids (IFB)
2. Project/Proposal Number – insert TJPA-assigned number of the relevant RFP or IFB
3. Proposer Business Name and Address – insert company name and address of prime contractor. If proposal or bid is being made by a joint venture, contact the TJPA for an alternate form.
4. Name of Person Submitting Bid – insert contact name for the prime contractor
5. Signature of Proposer – signature of person listed in number 4
6. Date – date proposal or bid is being submitted
7. Note the requirements in small print – “IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work. 3) Attach copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed on this form. 4) Attach “Intent to Perform” letter signed by the subcontractor.”

Certification must be attached. The TJPA accepts DBE participation only from firms currently certified in the California Unified Certification Program (CUCP). For SBE participation, certifications are accepted from the CUCP, the San Francisco Human Rights Commission, and/or the State of California Department of General Services. If a proposal or bid includes subcontractors, a letter stating the subcontractor’s intent to perform work on the project must be attached.

8. Sections A and B must be completed, even if there is no DBE/SBE participation planned for the contract. The information in this section is required for TJPA DBE/SBE Program monitoring purposes and for maintaining a federally-required bidders list. **Do not write “not applicable” or “n/a”.** If a proposal or bid is being submitted by one firm or individual, with no partners or subcontractors, then that firm or individual is the PRIME Contractor and must complete Section A. Even if the name, address and phone number are the same as provided above on the form, the remaining columns must be completed; do not write “same as above”. **All subcontractors, whether DBE/SBE or non-DBE/SBE, must be listed in Section B.** Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

- Age of firm – how many years the firm has been in business
- NAICS Code – North American Industry Classification System Code. Codes can be found at [www.census.gov/naics](http://www.census.gov/naics).
- Annual Gross Receipts of Firm – a range may be provided, e.g., less than \$500,000; \$500,000 - \$1,000,000; \$1,000,000 - \$5,000,000; \$5,000,000 - \$10,000,000; etc.
- Certified DBE/SBE – mark yes or no in this column. If “yes”, list the type of certification: CUCP, HRC, DGS.
- DBE/SBE Certifying Agency – if you marked yes as a Certified DBE/SBE, note which agency your certification letter is from—BART, SFMTA, HRC, etc.
- Type of DBE/SBE – if you marked yes as a Certified DBE/SBE, put the number that corresponds to the type of DBE/SBE as follows—
  1. African-American
  2. Hispanic
  3. Native American
  4. Asian-Pacific
  5. Asian-Indian
  6. Female-Woman
  7. Other
- Award Amount – leave this column blank, unless you are submitting an updated form after contract award
- Percentage of Contract Participation – if only one firm or individual is proposing or bidding, with no partners or subcontractors, this is 100% for the prime contractor. Fill in appropriate percentages for each firm if some of the work is being subcontracted. Note that the total at the bottom of the form must be 100% when all percentages are added.

Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

**TRANSBAY JOINT POWERS AUTHORITY  
SBE PARTICIPATION GOOD FAITH EFFORTS FORM**

This form must be completed and submitted along with compelling documentation detailing the good faith efforts made to meet the SBE participation goal **if the information submitted on the Bidders/Proposers Information Form indicates that the SBE goal has not been met.**

If the SBE participation goal is not met, and if this form, along with compelling documentation detailing the good faith efforts made to meet the goal, is not completed and returned with the bid or **proposal, the bid or proposal shall be deemed non-responsive and rejected.**

Even if the Bidders/Proposers Information Form indicates that the SBE goal has been met, bidders/proposers are still encouraged to submit good faith efforts documentation to protect their eligibility for the contract.

**Contract No.:** \_\_\_\_\_ **Contract Name:** \_\_\_\_\_

**Bidder/Proposer:** \_\_\_\_\_

Please supply the following information:

1. Attended any pre-solicitation, pre-proposal, or pre-bid meetings held to inform all bidders about the contract and SBE requirements

Meeting Date: \_\_\_\_\_

Attendee(s): \_\_\_\_\_  
\_\_\_\_\_

2. List below and/or on an attached sheet the names and dates of all certified SBEs solicited for this project. List the dates and methods used for initial contact and any follow-up contact. Attach copies of letters, faxes, emails and any other supporting documentation that you would like the Contract Compliance Manager to consider in determining good faith efforts.

3. Summarize below and/or on an attached sheet the items of work for which the Bidder requested subcontractor services of SBEs, the information furnished to interested SBEs regarding work requirements, and any breakdown of tasks into economically feasible units to facilitate SBE participation. Where there are SBEs available for doing portions of the work normally performed by the bidder with its own staff, the bidder will be expected to make portions of such work available for SBEs.

**TRANSBAY JOINT POWERS AUTHORITY  
SBE PARTICIPATION GOOD FAITH EFFORTS FORM**

4. List below and/or on an attached sheet the names of any SBEs solicited for the work above, and a summary of the discussions or negotiations with them.

a. List solicited SBEs not available to participate on the contract, stating the reason.

b. List solicited SBEs chosen to participate, and the reasons for the choice.

c. List solicited SBEs not chosen to participate, reasons for the choice, and any actions taken by the bidder to assist the rejected SBEs in remedying deficiencies in their proposal.

If insurance or bonding is a reason for rejecting any potential SBE, a complete explanation including contact and discussions with insurance and surety firms must be provided.

Print Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, ZIP: \_\_\_\_\_

Date: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**TRANSBAY JOINT POWERS AUTHORITY  
PROGRESS PAYMENT REPORT**

*To be completed by Prime Contractor and submitted to Project Manager with every monthly invoice.*

**PART 1: PROJECT SUMMARY**

Contract Award Date:	TJPA Contract No.:	Contract Title:		
Prime Contractor:	Contact Person:	Contact Phone No.:	Contact Email:	
Prime Contractor Address:		Signature:		
Invoice Date:	Invoice No.:	For the Period:		

1. Award amount of Prime Contract	\$ -
2. Amount of Change Orders, Amendments and Modifications to Date	\$ -
3. Total Contract Amount to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$ -
4. Total Amount for this Invoice	\$ -
5. Total Previously Invoiced Awaiting Payment	\$ -
6. Total Amount Paid to Date (not including Lines 4 and 5)	\$ -
7. Total Invoice Amount Requested to Date (Line 4 + Line 5 + Line 6)	\$ -
8. Percent Complete (Line 7/Line 3)	0%

**TRANSBAY JOINT POWERS AUTHORITY  
PROGRESS PAYMENT REPORT**

**PART 2: CONSULTANT/SUBCONSULTANT PAYMENT DETAIL SUMMARY**

A	B	C	D	E	F	G	H	I	J
Name of Firm (Including Prime, Subs, Vendors, and Joint Ventures)	DBE or SBE (Y/N)	Portion of Work (%)	Contract Amount (\$)	Amount of Change Orders to Date (\$)	Total = Contract Amount + Change Orders (D+E) (\$)	Amount Invoiced This Period (\$)	Previously Invoiced Awaiting Payment (\$)	Amount Paid to Date (\$)	Percent Complete to Date ((G+H+I) / F) (%)
TOTAL		0	0	0	0	0	0	0	0

**TRANSBAY JOINT POWERS AUTHORITY  
SUBCONTRACTOR PAYMENT DECLARATION**

This form must be completed and submitted by the Prime Contractor for all subcontractors, vendors, and joint venture partners for every invoice submitted to TJPA within five (5) working days following actual payment to subconsultant. Payments to subconsultant shall be made no later than ten (10) working days following receipt of progress payment from TJPA. Use additional sheets if necessary. Failure to submit all required information may lead to partial withholding of progress payment.

Date: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Contract Title: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Invoice Date: \_\_\_\_\_ Invoice No.: \_\_\_\_\_

For the Period: \_\_\_\_\_

Total Amount of Invoice: \_\_\_\_\_ TJPA Check No.: \_\_\_\_\_

Subcontractor/ Vendor/JV	DBE/ SBE (Y/N)	Business Address Payment Sent To	Amount Paid	Payment Date	Check Number
Total Amount Paid to Subconsultants (this Pay Period)			\$0.00		

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

\_\_\_\_\_  
Signature of Contact Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone

**TRANSBAY JOINT POWERS AUTHORITY  
FINAL EXPENDITURE REPORT**

*To be completed by Prime Contractor at the end of the contract.*

CONTRACT TITLE/NO.					TOTAL CONTRACT AWARD AMOUNT			DATE OF AWARD				
PRIME CONTRACTOR/CONSULTANT NAME AND ADDRESS					TOTAL EXPENDITURES AT END OF CONTRACT			DATE OF CONTRACT COMPLETION				
PROJECT MANAGER NAME					PROJECT MANAGER SIGNATURE						DATE	
CONTACT PERSON NAME RE: FINAL EXP. REPORT					CONTACT PHONE NUMBER			CONTACT EMAIL				
IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work.												
					<b>DBE Participation</b>							
LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Item of Work, Service or Materials Supplied	NAICS Code (if known) *	Certified DBE/SBE (Y/N)	Certifying Agency	Type of DBE or SBE**	Date of Work Completed	Date of Final Payment	Total Amount Paid	% of Total Expenditures	
<b>A. PRIME Contractor</b>												
<b>B. Subcontractor/Vendor/Joint Venture</b>												
<b>TOTAL</b>										\$	-	0.00%
Comments/Notes: (Explain cost overruns or discrepancies; DBE firm substitutions, etc...)												

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 \*\* Type of DBE/SBE: (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated as a Small Business)  
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 - Important: Attach the proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal.  
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