

**STAFF REPORT FOR CALENDAR ITEM NO.: 12  
FOR THE MEETING OF: June 13, 2024**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute a professional services agreement between the Transbay Joint Powers Authority (TJPA) and AECOM Technical Services, Inc. (AECOM) for Program Management and Construction Management (PMCM) services for the Downtown Rail Extension, known as The Portal, for a five-year term in an amount not to exceed \$158,165,635, and with two options to extend for two years each (total of nine years) in an aggregate amount not to exceed \$297,335,420.

**EXPLANATION:**

PMCM services are required currently as The Portal has now progressed to the pre-construction phase from project development. The current Program Management Program Controls (PMPC) contract was established to provide staff supplementation and support to advance the project through project development and 30% design while meeting Federal grant requirements to obtain funding through the Capital Investment Grants (CIG) New Starts program and other Federal and State grant programs. The PMPC contract expires on June 30, 2024.

Scope of Services

TJPA requires the services of an experienced PMCM to assist in overseeing and managing the delivery of The Portal through each phase of preconstruction, construction, testing and rail activation for this large and complex public infrastructure project, over the life of the project.

TJPA staff prepared the scope of services for PMCM based on review of the Federal Transit Administration's (FTA) project and construction management guidelines, other transit agency PMCM procurements, including San Francisco Municipal Transportation Agency, Los Angeles County Metropolitan Transportation Authority (LA Metro), and Southern California Regional Rail Authority (Metrolink), and conversations involving lessons learned with the construction delivery teams of the Peninsula Corridor Joint Powers Board (Caltrain), San Francisco Airport and Valley Transportation Authority. The PMPC team did not participate in preparation of the scope of services, or any of the procurement documents, procedures, requirements, or evaluation metrics.

The general responsibilities of the PMCM are:

- a. Program management
- b. Project management
- c. Construction management and construction support
- d. Project delivery and contract development/compliance
- e. Configuration management
- f. Project controls
- g. Estimating
- h. Community outreach and construction relations

The key personnel on the PMCM team are:

- i. Construction manager
- ii. Program contract manager
- iii. Engineering manager
- iv. Chief tunneling engineer
- v. Project controls manager
- vi. Progressive Design Build (PDB) / Construction Manager/General Contractor (CMGC) procurement lead
- vii. Interface and integration lead

#### Procurement and Evaluation Process

On June 26, 2023, TJPA issued Request for Proposal (RFP) No. 23-03 for PMCM services.

Potential respondents were provided significant information about TJPA, the Transbay Program as a whole, The Portal, and the scope of PMCM services to inform preparation of their proposals. For example:

- The RFP documents included the proposed project staffing plan and organization chart, project delivery alternatives study, detailed construction schedule, quantitative risk analysis report, quarterly risk review, risk and issues registers, risk ranking diagram, cost estimate and design development issues, and the Governance Study Blueprint update. Additionally, TJPA's website provided potential respondents with significant additional information about the agency and the planning for the project over the last more than 20 years.
- TJPA hosted a pre-proposal conference on July 10, 2023 and a meet the primes event on July 18, 2023.
- Potential respondents were invited to submit questions to inform their proposal preparation. TJPA published answers to all questions respondents submitted during the procurement on July 19, 2023, July 28, 2023, August 15, 2023, and August 29, 2023.

Prior to the proposal due date, no respondent indicated that they had additional outstanding questions or required additional information to prepare their proposal; no respondent indicated that they were unable to prepare a robust proposal based on the information available to them.

On September 22, 2023, TJPA received three proposals meeting all the minimum qualifications of the RFP from the following teams:

- Arcadis (Arcadis as lead)
- Portal Connectors (AECOM as lead)
- Transbay Connect Partnership (PGH Wong Engineering, Inc. and EPC Consultants, Inc. as joint venture leads)

TJPA convened a selection committee made up of representatives from TJPA, Caltrain, and San Francisco County Transportation Authority, all with experience in managing delivery of similar services for public projects. As with all TJPA procurements, each selection committee member signed a statement confirming their commitment to providing each proposal a fair and independent evaluation based on the metrics established by TJPA; confirming that the committee member had no disqualifying conflicts of interest; and affirming that no committee member had any prohibited communications concerning the procurement.

The criteria for evaluation of the written proposals consisted of the following:

- Management approach (max 40 points)
- Community engagement and outreach strategy (max 10 points)
- Qualifications and experience of key personnel (max 35 points)
- References (max 15 points)

The oral interviews were evaluated and assigned up to a maximum of 100 points based on 10 questions (max 10 points each) developed by the selection committee.

The selection committee convened and evaluated the written proposals. The selection committee invited all three firms to participate in oral interviews and evaluated respondent oral presentations.

Upon a thorough review of all submitted materials, reference checks and interviews, the selection committee determined the AECOM team to be the highest ranked proposer. This determination was based on the AECOM team's demonstrated experience, approach and qualifications of the many professionals to be assigned and available to this project. The Selection Committee Report is attached.

TJPA used a qualifications-based procurement method. Respondents were instructed to provide the fee component of their proposal in a separate, sealed envelope. After completing the evaluation of respondents' qualifications and identifying the highest-ranked respondent as described above, TJPA opened the sealed fee proposal for the highest ranked respondent and used that information as the basis for negotiation. More information about the negotiated fees is provided in this report.

#### Qualifications of the AECOM Team

The AECOM team led by Carter Rohan, Construction Manager, will bring a number of dedicated technical leads and resources organized to work in the Integrated Project Delivery Team (IPDT) structure, to be implemented after contract award, comprised of TJPA, Caltrain, the General Engineering Consultant, and the construction contractor teams (once those contracts are awarded and team members onboarded). Mr. Rohan's experience stems from 16 transit programs with five in the Bay Area involving 26 miles of tunneling, 108 miles of track, and 36 underground stations. Stephen Polechronis will serve as the Program Contract Manager. Mr. Polechronis has served in this capacity during project development, preconstruction, and construction phases on three mega transit rail projects for Los Angeles Metro and Metrolink involving CIG funding and working closely with FTA headquarters and Region 9. Meghan Murphy will serve as Engineering Manager and Derek Penrice as Chief Tunneling Engineer, each having demonstrated experience with the requirements and complexities of the project. The AECOM team includes 14 specialty subconsultants providing robust capacity and competency.

The AECOM team has managed or provided engineering services for some of the largest, most technologically advanced tunneling and underground station projects both nationally and globally including TJPA Transbay Program Phase 1, San Francisco Municipal Transportation Agency (SFMTA) Central Subway, Caltrain Modernization Program, Santa Clara Valley Transportation Authority (VTA) – Bay Area Rapid Transit (BART) Silicon Valley Extensions

Phases 1 and 2, Los Angeles Metro Rail Program, California High Speed Rail, Metrolink (Southern California), and the Grand Central Madison (formerly East Side Access) Project in New York City.

#### Small Business Enterprise (SBE)/Disadvantaged Business Enterprise (DBE)

The AECOM team includes 12 certified SBE/DBE firms, meeting the RFP SBE utilization goal of 25% over the term of the contract. Consistent with TJPA policies and TJPA's practice with all contractors, the AECOM team will be required to submit DBE/SBE Progress Payment Reports with every monthly invoice. Thus, TJPA will be able to monitor AECOM's achievement of the contract goal. If AECOM proposes to replace a DBE/SBE subcontractor during the contract term, it must make good faith efforts to replace the original DBE/SBE subcontractor with another DBE/SBE firm.

#### Contract Term

TJPA established the base term of the contract as five years (July 2024 – June 2029). This term coincides with preconstruction, procurement of construction contracts and engagement with the contractors for design completion and construction pricing, and construction management of the advance works contracts. The contract provides TJPA two options to extend at two years each (2029-2031 and 2031-2033). TJPA would have sole discretion to exercise these options to extend the term, which are planned to correspond with the commencement of significant construction.

#### Compensation

As described above, TJPA used a qualifications-based procurement method. After completing the evaluation of respondents' qualifications and identifying the AECOM team as the highest-ranked respondent, TJPA opened AECOM's sealed fee proposal and used that information as the basis for negotiation.

As a result of negotiation, the total compensation under the agreement shall not exceed \$158,165,635 over the five-year base term. If TJPA elects to exercise the two option periods of two years each (nine-year total term), the total compensation over the full term of the contract shall not exceed \$297,335,420.

The contract limits were developed based on a detailed estimated staffing plan, identifying by task and subtask each position and expected Full Time Equivalent per year over the contract term. The contract limit values are escalated. TJPA staff confirmed that the estimated assignment of personnel and the projected level of effort over the term of the agreement is reasonable.

TJPA proposes a Time and Materials form of compensation. TJPA is primarily purchasing labor with other costs being incidental to the purchase of labor. The FTA allows such services to be purchased on a Time and Materials basis as long as there is a stated not to exceed value and that no other contract type is appropriate. FTA Circular 4220.1F identifies the contract types available to grantees and limitations on their use. Thus, TJPA will compensate the AECOM team for actual time incurred at established hourly rates (actual wages, indirect costs, general and administrative expenses and profit fixed at 9 percent), not to exceed any amount specified in a Notice to Proceed (discussed below) and the overall contract limit. The hourly rates for the contractor and subcontractors were reviewed and confirmed to be competitive. The scope of

permissible Other Direct Costs is limited to only the items identified in the contract, except with TJPA's advanced written approval. AECOM's mark-up on subcontractors is fixed at 1.5 percent; this mark-up was negotiated down from AECOM's original proposal of 2.0 percent and represents a substantial savings for TJPA. TJPA does not pay any mark-up on Other Direct Costs.

#### Authorization of Work

As with all TJPA contracts, the PMCM work will be authorized under the contract based on written Notices to Proceed (NTPs). Each year, TJPA and AECOM will discuss the scope of services required by TJPA for the upcoming year, the staffing plan to provide the services, and the associated costs to do so. TJPA will issue an NTP, defining the scope, schedule, and budget in its sole discretion. TJPA will include the expected cost of the PMCM services for an upcoming year in the proposed Fiscal Year budget, which must be presented to and approved by the TJPA Board annually. The AECOM team would not be authorized to incur any costs except under an approved NTP.

If the contract award is approved, TJPA plans to issue NTP #1 under the contract to cover PMCM services in FY24-25 in the amount of \$15,748,400. The funds are currently budgeted in the proposed FY24-25 Phase 2 Capital Budget. Since the existing PMPC contract expires at the end of FY23-24, there will be no overlap in services or costs.

#### Professional Services Agreement

The RFP contained the anticipated form of professional services agreement (Agreement). Based on that form, staff negotiated a professional services agreement with AECOM for the services (enclosed herewith), and the firm has executed the Agreement. The Agreement is consistent with TJPA's standard form for professional services, with the substantive exceptions noted below:

- Edits to reflect negotiated compensation structure and limitations
- Edits to insert statement regarding expected duty of care
- Edits to clarify contractor obligations relative to construction contractor safety and indemnity
- Edits to provide good faith efforts for TJPA to make payment to PMCM contractor within certain period after receiving funds from funding partners
- Edits to clarify the expectation that PMCM contractor provide a copy of certain insurance policies on request
- Edits to indemnity provisions
- Edits to incidental and consequential damages provisions
- Edits to insurance provisions
- Edits to statement of certain San Francisco code provisions generally to conform with City and County of San Francisco edits to its standard form of professional services agreement.

A redline indicating the proposed changes compared to the form of agreement attached to the RFP is attached. After negotiation, TJPA staff, in consultation with legal counsel, believe these revisions are appropriate, generally consistent with market expectations, and overall in the best interest of TJPA.

### Protest

On April 19, Transbay Connect Partnership submitted a protest of the award of the contract to AECOM. On May 9, Transbay Connect Partnership submitted a supplemental protest. On April 26, Transbay Connect Partnership submitted written correspondence addressed to the Board regarding its protest. That correspondence is enclosed here.

TJPA Board policy places the authority to determine protests with the TJPA Executive Director. Because of the unique factual allegations in the protests, out of an abundance of caution, and to avoid even the appearance of impropriety in the decision-making process, Executive Director Van de Water determined it was prudent to delegate the role to Caltrans Chief Deputy District Director David Ambuehl. Director Ambuehl conducted an independent review, and denied the protests. The decision is enclosed. Per Board Policy, the decision is final.

### **RECOMMENDATION:**

Staff recommends that the Board of Directors authorize the Executive Director to execute the Agreement with AECOM Technical Services, Inc. to provide PMCM services for The Portal, for a five-year term in an amount not to exceed \$158,165,635, and with the option to extend for up to two additional two-year terms (total of nine years) in an amount not to exceed \$297,335,420.

### **ENCLOSURES:**

1. Resolution
2. Professional Services Agreement with AECOM Technical Services, Inc. – CLEAN  
Professional Services Agreement with AECOM Technical Services, Inc. – REDLINE
3. Selection Committee Report
4. April 26, 2024 correspondence from Transbay Connect Partnership
5. Decision regarding RFP 23-03 Bid Protest

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

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

WHEREAS, The TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program, including Phase 2 – Downtown Rail Extension (DTX) now known as The Portal; and

WHEREAS, The TJPA requires Program Management and Construction Management services for The Portal; and

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

WHEREAS, On June 26, 2023, the TJPA issued Request for Proposals (RFP) No. 23-03 for Program Management and Construction Management services; and

WHEREAS, On September 22, 2023, the TJPA received three proposals to the RFP that met all minimum qualifications and requirements; and

WHEREAS, A selection committee evaluated the written proposals and oral interviews, as further described in the selection committee report presented herewith, on a qualifications basis; and

WHEREAS, The selection committee determined the proposal submitted by Portal Connectors (led by AECOM Technical Services, Inc. as prime contractor) to be responsive to the RFP, qualified to perform the scope of services, and the highest ranked proposer; and

WHEREAS, Based on the selection committee's recommendation, the TJPA staff negotiated a professional services agreement with AECOM Technical Services, Inc., the form of which was presented herewith, to provide Program Management and Construction Management services for The Portal for a five-year term in an amount not to exceed \$158,165,635, and with two options to extend for two years each (total of nine years), in an aggregate amount not to exceed \$297,335,420; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a professional services agreement with AECOM Technical Services, Inc. to provide Program Management and Construction Management services for The Portal for a five-year term in an amount not to exceed \$158,165,635, and with two options to extend for two years each (total of nine years), in an aggregate amount not to exceed \$297,335,420.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting on June 13, 2024.

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Secretary, Transbay Joint Powers Authority



**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
TJPA and AECOM TECHNICAL SERVICES, INC.**

THIS AGREEMENT (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_ 20\_\_\_, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and AECOM Technical Services, Inc., a California corporation (“Contractor”).

**Recitals**

A. The TJPA requires Program Management and Construction Management Services (“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 Contractor acknowledges and agrees that the TJPA does not expressly or impliedly guarantee that any or all of the total contract will be funded or will be authorized to the Contractor. The Contractor acknowledges and agrees that funding may occur in phases. The Contractor further acknowledges and agrees that the nature of the work under this Agreement and the limitations of the TJPA’s funding require that the TJPA authorize the Contractor to perform only limited scopes of work based on the immediate needs of the Program. Finally, the Contractor acknowledges and agrees that due to the above described funding uncertainties, the Contractor shall only provide services and receive compensation if and when such funding is authorized and that the determination regarding if and when the Contractor will provide services is within the sole discretion of the TJPA.

E. 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”).

F. 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 five (5) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that the TJPA shall have the right to extend this Agreement for two (2) additional consecutive terms of two (2) years each at the identical terms set forth in this Agreement, except for any terms that are modified by the mutual agreement of the parties. The TJPA may exercise an extension option at the TJPA's sole and absolute discretion by providing the Contractor written notice of such extension on or before the expiration date of this Agreement. The TJPA's exercise of any such extension option shall be subject to and conditioned upon the approval of such extension by the TJPA in the manner required by its policies.

## **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**

### **a. Procedure for Developing Scope of Services**

The Contractor agrees to perform the services listed in Appendix A (Scope of Services), attached hereto and incorporated by reference as though fully set forth within.

The Scope of Services consists of a series of tasks that the TJPA may authorize under Annual Work Plans/NTPs or a combination of these documents. The following process shall be used to implement the Annual Work Plans/NTPs:

(i) The TJPA will initiate each Annual Work Plan/NTP by requesting an Annual Work Plan/NTP proposal. The proposal request will describe the actual tasks to be performed by the Contractor based on the scope of work in Appendix A (Scope of Services), the schedule for performance of these tasks, and the required deliverables.

(ii) The Contractor will prepare and submit to the TJPA an Annual Work Plan/NTP proposal, outlining in detail its approach to performing the requested work. The proposal will include, at a minimum, the following:

- (a) A detailed description of the work to be performed by task (including any subtasks), and the means and methods that will be used to perform the work;

- (b) A work breakdown structure for performing the required tasks;
- (c) A schedule (in both electronic and written format) including milestones for completion for each task (including any subtask) and deliverables;
- (d) A management plan that lists personnel (including any subcontractors) assigned to each part of the work, along with a rationale for the proposed staffing plan;
- (e) A budget plan, including the following information for the Contractor and all subcontractors included in the proposal:
  - 1. A detailed cost estimate for each task (and any subtask);
  - 2. Estimated hours and hourly rates (as described in Appendix B) by assigned personnel;
  - 3. Estimated other direct costs (including subcontractors) (as described in Appendix B); and
  - 4. Cash flow plan
- (f) List of work products that will be delivered as part of the Annual Work Plan/NTP.

(iii) The TJPA will review the proposal and promptly negotiate with the Contractor the scope, approach to completing the work (including staffing plan and estimated hours), deliverables and schedule requirements.

(iv) Upon completion of negotiation and meeting all Annual Work Plan/NTP prerequisites, the TJPA will direct the Contractor in writing to proceed with the work after the TJPA obtains appropriate governmental approvals. The Contractor may not commence any work without written authorization from the TJPA to proceed.

(v) In the event that the TJPA and the Contractor cannot reach agreement on the terms of any Annual Work Plan/NTP, the TJPA may either cancel the request or have the work accomplished through other available resources. In the alternative, if the TJPA desires the Contractor to undertake and/or complete certain work, the TJPA may direct the Contractor to proceed with the work under such conditions as the TJPA may require to meet the schedule, budget, or other Program requirements. Under no circumstances may the Contractor refuse to undertake work that the Contractor is qualified to perform and which is consistent with the Services if so directed in writing. The TJPA and the Contractor shall continue to negotiate any outstanding terms while the work is being performed. The TJPA shall not deny the Contractor reasonable compensation for such approved work performed.

(vi) If the Contractor proceeds to do work that is out of scope of approved Annual Work Plans/NTPs without first obtaining the TJPA's written approval in accordance with the above procedures, regardless of the amount or value of the work, the TJPA shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the TJPA's comments or concerns, expediency, schedule constraints, or other considerations will not be acceptable reasons to proceed with unauthorized work without the TJPA's prior written approval.

The following shall not be considered out-of-scope work, but shall be considered incidental to the Scope of Services outlined in Appendix A: (1) All work required to comply with local, state and federal codes, regulations and standards, as interpreted by local, state or federal agencies having approval or sign-off authority for this Program; and (2) All work required to correct deficiencies and errors, including work related to resubmittals of work product that are evaluated reasonably by the TJPA to be incomplete or inadequate.

(vii) The TJPA's decision to authorize any work under Annual Work Plans/NTP will be at the TJPA's sole discretion and largely depend on (1) the TJPA's evaluation of the Contractor's services

and work products previously authorized and completed or in-progress (i.e., whether the services and products are of satisfactory quality to the TJPA and whether such services and products were completed within the agreed-upon budget and within a reasonable schedule); (2) approval from and/or compliance with requirements of the FTA and other funding agencies; and (3) the availability of funding.

**b. Key Personnel and Staffing**

Work under this Agreement shall be performed only by competent personnel and staffing under the supervision of and/or in the employment of the Contractor.

The Contractor's Key Personnel are specified in Appendix A-1 (Key Personnel). The Contractor agrees to commit and assign the Program Contract Manager to manage this Program for the Contractor and to serve as the single official contact on behalf of the Contractor in all matters related to the Program for the duration of the Contract. The Contractor agrees that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract.

The Contractor shall advise the TJPA immediately any time one of the Key Personnel deviates from its committed role to the Program. The TJPA may in turn require the Contractor to provide a remedy and/or corrective actions for such deviations.

If the Contractor proposes substitutions for any of the Key Personnel who are listed in Appendix A-1, the Contractor shall propose a replacement in writing to the TJPA's Executive Director or designee for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company). If the performance of any person assigned to a Key Personnel position or staffing is determined to be unsatisfactory by the TJPA, the TJPA reserves the right to direct the Contractor to replace that person and/or take any other appropriate remedial action without prejudice to the TJPA or the services contractor is obligated to perform under this Agreement.

The Contractor shall replace any Key Personnel departing from the Program or departing from their assigned role in the Program with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days after the departure. Failure to replace Key Personnel shall be cause for the TJPA to suspend invoice payments. Furthermore, the Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Contractor shall bear any costs related to and be held fully responsible for any training, re-training, duplicate staffing, inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Program or departing from their assigned role in the Program before the end of the term of the Agreement. The Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training, re-training, duplicate staffing and learning on the job, etc.

**c. Current Workload and Available Resources**

The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work immediately upon receipt of NTP. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of Annual Work Plan/NTP.

**d. Information and Data**

The Contractor shall request in writing any information and data it will require from the TJPA for its work. The Contractor shall identify the timing and priority for which this information and data will be required in its response to a request for proposal for an Annual Work Plan/NTP. The Contractor and the TJPA shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Annual Work Plan/NTP.

**e. Contractor's Performance**

The Contractor shall meet with the TJPA on a quarterly basis to evaluate the Contractor's performance under the Agreement with respect to the following:

- (i) Contractor's adherence to this Agreement.
- (ii) Quality of performance of Key Personnel and other staff assigned to the Program by the Contractor and its subcontractors.
- (iii) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the TJPA's staff and other contractors, including design, grant management, financial, construction management and other professionals.
- (iv) Management of authorized budget for Annual Work Plans/NTPs.
- (v) Adherence to agreed schedule.
- (vi) Quality of deliverables.
- (vii) Monitoring, reporting and updating of progress of assigned work.
- (viii) Timeliness in resolving issues, including issues arising from performance evaluations.
- (ix) Working relationship between Contractor's team and other stakeholders.

Should the TJPA be dissatisfied with any of the above categories of Contractor performance, the TJPA will render a negative evaluation on the Contractor's performance for the quarter preceding the evaluation. In such cases, the Contractor shall be required to formulate and deliver to the TJPA within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to the TJPA on a monthly basis until the problem areas have been resolved or brought under control. The Contractor's receipt of more than two negative quarterly performance evaluations during the term of this Agreement will be considered by the TJPA when determining whether to authorize the Contractor to proceed with future phases of the Agreement.

For each category of Services undertaken by Contractor (e.g., scheduling, reporting, accounting), Contractor shall perform such Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in California on large, complex regional transportation projects.

**f. Transmittal of Products**

At a time when requested by the TJPA's Executive Director or their designee, and after completion of each task and subtask, the Contractor shall transmit to the TJPA all documents and work product (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Program. Documents and work product include, but are not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services

performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work product for recordkeeping purposes.

The Contractor's Key Personnel shall have thoroughly reviewed and approved all documents and work product and signed off as such prior to transmitting to the TJPA.

**g.      Reproduction of Products**

The Contractor shall arrange and provide for all printing (or other required reproduction) of all documents and work product produced in the course of its and its subcontractor's work. The TJPA shall determine the documents and work product to be reproduced and the type, quality, and quantity of the reproduction. The cost of reproduction shall be treated as a reimbursable expense under this Agreement. The Contractor shall make its best efforts to obtain competitive quotations for any reproduction cost exceeding \$500.

**h.      Design**

Except where the TJPA expressly requests the Contractor to perform design services in an Annual Work Plan/NTP, the Services to be performed by Contractor shall not impose upon it any obligation to assume any responsibilities, duties, services, or activities assumed or required to be rendered or performed by any Architect, Engineer, or Construction Contractor employed by, or associated with, the TJPA in relation to this Program. In performing constructability review, value engineering, verification of existing conditions, hazard analysis, safety analysis and cost effectiveness or any other review involving the drawings and/or specifications for the Program, the Contractor does not undertake to perform any design work nor does it accept responsibility for any of the design features or design of the Program, which shall remain the sole responsibility of the Architect, Engineer, or Construction Contractor, as appropriate.

**i.      Safety**

(i) Contractor's Responsibility for Safety of its Employees. The Contractor is responsible for the safety of the Contractor's employees and the employees of the Contractor's subcontractors.

(ii) Contractor's Monitoring of the Work of Construction Contractors for Contract Compliance. Contractor shall be required to monitor and document the work of construction contractors, including their subcontractors, suppliers of any tier (collectively, the "Construction Contractor"), as identified in Appendix A (Scope of Services) and subsequent amendments, for compliance with applicable contract documents (including without limitation, plans, drawings and specifications, quality, and health and safety plans), federal, state and local laws, rules and regulations pertaining to health and safety, including federal and/or state OSHA rules and regulations. Contractor shall perform such responsibilities for the sole purpose of monitoring contract and regulatory compliance on behalf of the TJPA. Contractor shall not supervise, direct, have control over, or have responsibility for construction means, methods, sequences, techniques of the Construction Contractor. In no event shall such monitoring responsibilities be construed as imposing on Contractor any duties or responsibilities to employees of Construction Contractor.

(iii) Indemnification. The TJPA will include Contractor in the scope of the general indemnity of original construction contractor under contract to the TJPA. Due to Contractor's unique project management role, the risk of inadvertent omission of such indemnification requirements rests with Contractor.

**j. Hazardous Materials**

Nothing in this Agreement shall be construed or interpreted as requiring the Contractor to be or assume the status of an owner, operator, generator, transporter, storer, or any other potentially responsible party as defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state, or local statute, regulations, order or administrative finding for the enforcement of such act or statute, governing the treatment, storage, transportation, reporting and disposal of hazardous substances.

For purposes of this Agreement, the term “hazardous substance” shall mean and include, but shall not be limited to, any element, constituent, chemical substance, compound, or mixture, which are defined in or induced under or regulated by any federal, state or local statute, regulation, order or administrative finding for enforcement of such statute, regulation, or order pertaining to environmental regulation, contamination, clean-up or disclosure, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Toxic Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational Safety and Health Act, and the Superfund Amendments and Reauthorization Act of 1986.

**k. Third Party Litigation**

As part of its scope of work, the Contractor agrees to testify at the TJPA’s request if litigation is brought by a third party against the TJPA in connection with the Program. Unless the action is brought by the Contractor, or is based upon the Contractor’s negligence, the TJPA will compensate the Contractor for the preparation and the testimony at the Contractor’s standard hourly rates.

**l. Program Direction**

The work to be performed by the Contractor under this Agreement shall be subject to the direction of the Executive Director of the TJPA or their designee. As used in this Agreement, the term “program direction” shall include but not be limited to the following:

(i) Directions to the Contractor, which shift work emphasis between tasks, require pursuit of certain activities, or otherwise provide information and program guidance to the Contractor in order to accomplish the Scope of Services described in Appendix A, and in the current Annual Work Plan/NTP.

(ii) Review and, where required, approval or acceptance of submittals or other products prepared by the Contractor in the performance of its services.

The Contractor acknowledges and agrees that it shall direct any request for clarification or other communication concerning program direction first to the Executive Director or their designee. The Executive Director or their designee is the designated TJPA employee to provide direction to all Key Personnel and staffing assigned to the Program.

**m. Submittals and Responses**

The TJPA and the Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Annual Work Plan/NTP.

The TJPA’s review and comments on the Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any

comment or review by the TJPA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state, and federal codes, regulations, and standards.

If the Contractor considers certain review comments or directives, either written or oral, by the TJPA to require work efforts not included in approved Annual Work Plans/NTPs, the Contractor shall provide the TJPA with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures elsewhere in this Agreement.

**n. Intern Mentoring Program**

The Contractor shall cooperate with the TJPA to either expand its adopted intern mentoring program through a professional architect/engineering/management organization's intern mentoring program, or the Contractor shall create an intern mentoring program specifically for this Program. The purpose of the intern mentoring program shall be to involve local youth or residents interested in exploring professional careers in architecture, engineering, construction management, or related professional services, into the professional services work of the Contractor on the Program. The intern mentoring program will be designed to engage, inform, and challenge youth, and to enlighten and motivate students toward professional careers in architecture, engineering, construction management, and related professional services. The program will include opportunities throughout the period of the Program for local high school youth or local residents to participate as a volunteer or paid intern in the conduct of substantive professional services work of the Contractor on the Program. The Contractor will contact and seek intern applicants from local schools and community-based organizations. The Contractor shall report to the TJPA those individuals participating in the intern mentoring program, and their activities on the Program.

**5. Compensation**

**a. Generally**

All compensation due to the Contractor for all services performed under this Agreement shall be computed in conformance with the provisions of Appendix B attached hereto.

The maximum amount payable under this Agreement ("Contract Limit" or "Ceiling Price") shall not exceed two hundred ninety-seven million three hundred thirty-five thousand four hundred twenty Dollars (\$297,335,420) (\$158,165,635 over the base term and \$139,169,785 over the option periods if exercised).

Billing and reimbursement under this Agreement shall be consistent with Appendix B to this Agreement

Notwithstanding any contrary provision of this Agreement, the Contractor is not obligated to perform any services once the Contract Limit has been reached unless authorized by a mutually agreed upon modification to this Agreement, and the TJPA is not obligated to compensate the Contractor for services performed after the Contract Limit is reached unless authorized by modification to this Agreement.

The hourly rates (including wages, indirect costs, general and administrative expenses, and profit) and other direct costs associated with this Agreement shall be subject to the rate requirements set forth



below and in Appendix B. The hourly rates and other direct costs shall be negotiated and established in each Annual Work Plan/NTP agreement.

**b. Actual Compensation**

Actual compensation under this Agreement shall be determined as set forth in an Annual Work Plan/NTP and Appendix B.

No charges shall be incurred under this Agreement, nor shall any payments become due to the Contractor until reports, services, or both, required under this Agreement or under a specific Annual Work Plan/NTP are received from the Contractor and approved by the Executive Director as being in accordance with this Agreement. The TJPA, in its sole discretion, 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.

Compensation shall be further subject to the following requirements:

(i) Conform with (a) the work to be performed pursuant to an accepted Annual Work Plan/NTP or approved by the TJPA as compensable out of scope work or ordered by the TJPA pursuant to this Section 5; (b) any compensation limits or sublimits set forth in such Annual Work Plan/NTP or written approvals, and this Agreement; and (c) all other terms of this Agreement.

(ii) Be necessary in order to accomplish the work.

(iii) Be reasonable for the services to be performed.

(iv) Be actual net costs or prices to the Contractor or its subcontractors at any tier, (e.g., the cost or price less any refunds, rebates, or other items of value received by Contractor or its subcontractors at any tier, that have the effect of reducing the cost or price actually incurred). As used herein, the term “costs” shall include the following:

(a) Those Program costs recorded by the Contractor that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.

(b) Those Program costs incurred in conformance with Appendix B, but not necessarily paid, but only if the Contractor is not delinquent in its payment of such costs which it is obligated to pay in providing services on this Program.

(c) The amount of reimbursement that has been paid by the Contractor for subcontracted services under similar cost standards.

**c. Rates**

Within thirty (30) days after award of this Agreement, the Contractor will submit information necessary to establish Rates for the performance of services under this Agreement. The TJPA shall not approve any invoice or make any payment under this Agreement until such time as the Rates are established. The parties will negotiate in good faith and enter into a Payment Terms and Rate Agreement in substantially the form attached as Appendix B (herein called “rate agreement”) on an annual or multi-year basis for the work to be performed for each of the Contractor’s fiscal year(s). At the end of the Contractor’s fiscal year(s), should the parties fail to negotiate a new rate agreement, the Contractor agrees

to accept the provisions of the previous rate agreement until such time as a new rate agreement is accepted. Any invoices submitted prior to the execution of the rate agreement will be subject to the existing previously negotiated rates.

**d. Disallowed Or Otherwise Not Recognized Costs**

The Contractor understands and agrees to the following:

(i) That any compensation or reimbursement received under this Agreement does not constitute a final decision by the TJPA as to the allowability of such compensation or reimbursement, and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement or of the Contractor's obligations under the Agreement (including, but not limited to, requirements of the Agreement to be included in the Contractor's subcontracts).

(ii) That unless approved otherwise by the Executive Director or their designee, the TJPA will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed. Any audit by the TJPA must be commenced within three (3) years after the termination, completion or expiration of this Agreement. Once commenced, any audit performed by the TJPA shall be completed in a reasonable amount of time.

(iii) If the TJPA determines that the Contractor or its subcontractor(s) is not entitled to either the compensation or reimbursement requested or received, the TJPA will notify the Contractor stating the reasons therefore.

(iv) Completion of the work under this Agreement will not alter the Contractor's or its subcontractors' obligation to return any funds due the TJPA as a result of later refunds, corrections, or other transactions, nor alter the TJPA's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

(v) 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 Contractor under this Agreement.

**e. Reimbursable Expenses**

The TJPA shall reimburse the Contractor only for those authorized expenses identified in Appendix B to this Agreement.

**f. Payment; Invoice Format**

The Contractor shall be compensated and reimbursed by the TJPA on the basis of invoices submitted every month for services performed during the preceding month. Invoices shall be submitted within approximately thirty (30) days after the end of said calendar month. For the end of the fiscal year, monthly invoices shall include up to the last day of the calendar month ending June 30th; invoices starting the next fiscal year beginning July 1st shall be included in the next calendar month invoice cycle. 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 charges for each individual assigned under this Agreement shall be listed separately. Further, Invoices furnished by the Contractor under this Agreement shall be in a form acceptable to the TJPA and each invoice shall include:

- Contract Number
- A unique invoice number
- Annual Work Plan/NTP Number
- Name and position of employee
- Description of the work performed
- Hours worked by employee
- Rate per employee
- Cost by employee
- Other Direct Costs
- Subcontractor Costs supported by itemization in the same format described above
- Fixed-Fee for current invoice period and Fixed-Fee paid to date
- Total Costs
- Percent of Schedule Completed and Budget Expended
- DBE/SBE Progress Payment Report (as an attachment)

**g. Invoice Disputes**

Should the TJPA contest any portion of an invoice, the disputed portion shall be held for resolution, but the uncontested balance shall be processed for payment. The TJPA shall furnish an explanation for each contested cost item. The TJPA may, at any time, conduct an audit of any and all records kept by the Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices, or alternatively, will be refunded by the Contractor.

**h. No Late Charges**

The TJPA shall make payment to the Contractor at the address specified in the section entitled "Notices to the Parties." The TJPA shall promptly route to the TJPA funding agencies all proper invoices submitted by the Contractor. The TJPA shall make a good faith effort to pay undisputed amounts in such invoices within thirty (30) days after their approval by the necessary and appropriate TJPA funding agencies. However, in no event shall the TJPA be liable for interest or late charges for any late payments. The Contractor acknowledges that the provisions of Civil Code § 3320 and Public Contract Code § 7107 do not apply to the Contractor or this Agreement, and to the extent they apply, the Contractor waives the protections of these and similar statutes to the greatest extent permitted by law.

**i. Changes To Scope or Annual Work Plans/NTP**

The TJPA reserves the right to order modifications/change orders to the Scope of Services (as set forth in Appendix A), or the Annual Work Plans/NTPs. Modifications/change orders may consist of additions, deletions, or other change in the Contractor's Services. Modifications/change orders shall specify the changes ordered and the adjustment of compensation and completion time required, if any, for the modified scope. All modifications/change orders shall be incorporated in an amended Annual Work Plan/NTP. The TJPA and the Contractor shall negotiate and execute all such modifications/change orders.

The Contractor understands and agrees that Contractor will not receive additional compensation or reimbursement for costs incurred prior to the effective date of a duly executed modification/change order or for any costs associated with negotiating the modification/change order. The Contractor's execution of the modification/change order shall constitute a waiver of claims for additional

compensation or extension of time for the specified scope or work, except as set forth in the modification/change order.

When time does not allow for a modification/change order to be negotiated, or in the event that the TJPA and the Contractor cannot reach agreement on such modification/change order, the TJPA may issue a unilateral change order instructing the Contractor to proceed with a change in the Contractor's Services based on the TJPA's estimate of cost and time to perform the change in the work. Upon receipt of a unilateral change order, the Contractor shall proceed with the ordered work. However under no circumstances shall the Contractor be required to perform work that is not consistent with the Services on a unilateral basis.

Should the Contractor disagree with any terms or conditions set forth in a unilateral change order, the Contractor shall submit a change order request within seven (7) days after receipt of the unilateral change order. If such a request is not submitted as required, the Contractor waives all rights to additional compensation for such work, and payment constituting full compensation for work included in the unilateral change order will be made as set forth in the unilateral change order. If the Contractor timely submitted a change order request as set forth above following receipt of a unilateral change order within ninety (90) days after completion of the unilateral change order work, the parties will meet informally in an effort to resolve any outstanding compensation issues.

In addition to the requirements set forth in the preceding paragraph, the Contractor waives all costs exceeding the TJPA's estimate for the unilateral change order work unless the Contractor submits a written notice of a dispute within seven (7) days after one of the following, whichever occurs first: (1) the Contractor submits an invoice for completion of the work under the unilateral change order; or (2) the Contractor's receipt of written notice from the TJPA that the TJPA accepts or otherwise considers the unilateral change order work completed.

## **6. Guaranteed Maximum Costs**

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

b. Except as may be provided by laws governing emergency procedures, TJPA representatives 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 Annual Work Plan/NTP and in excess of the total compensation under this Agreement as stated in Section 5, unless the changed scope is authorized by written amendment and approved as required by law and this Agreement.

c. TJPA representatives 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 Agreement or Annual Work Plan/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 Annual Work Plan/NTP for which funds have not been certified as available in the budget or by supplemental appropriation.

## **7. Intentionally Omitted**

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

Pursuant to San Francisco Administrative Code, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for statutory penalties set forth in the code. 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. Suspension and Debarment**

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 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. 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; the TJPA does not retain the right to control the means or the method by which the Contractor performs work under this Agreement.

##### **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 \$2,000,000 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 \$10,000,000 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. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the TJPA 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, (1) the retroactive date must be shown, and must be before the date of the Agreement or the beginning of contract work, (2) the insurance must be maintained continuously throughout the term of this Agreement, and without lapse, for a period of at least 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, and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years beyond the expiration of this Agreement.

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 Services under this Agreement, the Contractor shall do the following: (1) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with a current rating comparable to A.M. Best's rating of no less than A: VII, that are authorized to conduct business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (2) for the Professional Liability Insurance, make available for the TJPA's inspection a complete, certified copy of the declarations and applicable policy language, including all applicable conditions, exclusions, definitions, terms, endorsements and any other applicable language, effecting coverage required by this Article 15, which copy may be redacted to exclude proprietary information. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. The Contractor hereby grants to the TJPA a waiver of any right to subrogation which any insurer of the Contractor may acquire against the TJPA by virtue of the payment of any loss under such insurance. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TJPA has received a waiver of subrogation endorsement from the insurer.

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.

j. The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

k. The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the Contractor shall ensure that the TJPA is an additional insured on insurance required from subcontractors.

## **16. Indemnification**

### **a. General Indemnity**

To the fullest extent permitted by law, and consistent with California Civil Code § 2782.8(a), 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 (collectively, "claims") to the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.

Consistent with California Civil Code § 2782.8(e), if there is subsequently procured a project-specific general liability policy that insures all project participants for general liability exposures on a



primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis, then Contractor's duty and cost to defend the TJPA shall not be limited by "the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor."

b. Limitations

(1) 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.

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

c. 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. Liability of Contractor

Contractor's liability to the TJPA for all damages that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, shall first be satisfied by the proceeds of any Project-wide liability insurance coverage procured by the TJPA, and, if such coverage is not procured or is insufficient or otherwise inapplicable, then from the proceeds of any applicable insurance required by Article 15 of this Agreement. Contractor's aggregate liability to the TJPA that is not satisfied by the proceeds of any Project-wide liability insurance coverage, however, shall not exceed the sum of \$20,000,000.00, inclusive of any amounts paid by Contractor's insurance required by Article 15 of this Agreement.

## 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. Delays and Extensions of Time

The Contractor acknowledges and agrees that its delay in prosecuting the work may result in monetary damages to the TJPA. The Contractor acknowledges and agrees that the TJPA will hold the Contractor responsible and liable for any delay costs to the extent caused by the Contractor.

In the event the Contractor is delayed in the timely prosecution of this Agreement by the TJPA's vendors, suppliers, officers, or employees, or by Uncontrollable Forces through no fault or lack of diligence on the part of the Contractor, the Contractor shall present a written request to the TJPA

Executive Director for an extension of time of the performance of the work, together with supporting documents, within thirty (30) calendar days of commencement of the delay of the work. The Contractor shall be deemed to have waived the right to request a time extension if not requested within this period, and shall not have a cause to make a claim of the same TJPA-caused delay at a later date. Approval of such extension of time by the TJPA Executive Director shall not be unreasonably withheld and shall be added to the time for completion of the work.

Any such extensions of time shall be the exclusive remedy to the Contractor for TJPA-caused delays, with the exception of TJPA-caused delays in excess of one hundred twenty (120) days, in which case the Contractor may propose an equitable adjustment.

Neither the TJPA nor the Contractor shall be considered to be in default in the performance of any obligation under this Agreement (other than an obligation to make payment for invoices rendered pursuant to this Agreement) when a failure of performance is the result of Uncontrollable Forces. The term "Uncontrollable Forces" means any cause or causes beyond the control of the TJPA or the Contractor which renders either party unable to perform such obligation. These causes include, but are not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, drought, fire, pestilence, lightning and other natural catastrophes; epidemic, war, riot, civil disturbance or disobedience, sabotage strike, lockout, labor disturbances, and restraint by court order or public authority. Nothing contained in this Section shall be construed as requiring the TJPA or the Contractor to settle any strike, lockout or labor of dispute in which it may be involved, or to accept any permit, certificate or other authorization, or to enter into other contracts or commit to a financing arrangement, which contain conditions or terms which the TJPA or the Contractor determines are unduly burdensome. However, to the extent the Contractor is or becomes aware of Uncontrollable Forces that could or will impact the Program, the Contractor is required to use all reasonable effort to mitigate the harm and damages which would be caused to the Program by such Uncontrollable Forces.

## **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 the 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 the 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, but in no case shall termination become effective less than fourteen (14) days from the date of the notice.

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." The Contractor may also recover the reasonable cost of preparing the invoice.

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

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

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

## **22. Rights and Duties Upon Termination or Expiration**

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

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, "Term of Agreement," this Agreement shall

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

### **23. Notices to the Parties**

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

To TJPA:                      Executive Director  
Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
(415) 597-4620  
[info@tjpa.org](mailto:info@tjpa.org)

To Contractor:            Andrew Liu  
AECOM Technical Services, Inc.  
150 California Street, Suite 200  
San Francisco, CA 94111  
(925) 260-7027  
[andrew.liu@aecom.com](mailto:andrew.liu@aecom.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

### **24. Proprietary or Confidential Information of the TJPA**

The Contractor agrees that all information disclosed by the TJPA to the Contractor shall be held in confidence and used only in performance of this Agreement, except to the extent the use or disclosure is: (i) authorized by this Agreement; (ii) made after the Contractor receives advance written approval from the TJPA; or (iii) required by law or judicial order.

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

If this Agreement requires the TJPA to disclose “Private Information” to the Contractor within the meaning of San Francisco Administrative Code Chapter 12M, the Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services. The Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

### **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 deliverables, including drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files (electronic native 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. The Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

## **30. Intentionally Omitted**

## **31. Intentionally Omitted**

## **32. Subcontracting**

Subject to specific direction in any Annual Work Plan/NTP, the Contractor is permitted to subcontract portions of this work under this Agreement as set forth in Appendix A-2 (Subcontractors). 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.

Any intended substitution of subcontractors listed in Appendix A-2 to this Agreement shall be submitted to the TJPA's Executive Director or their designee prior to the substitution of any subcontractor performing any work under the terms of this Agreement. In the event that a DBE/SBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original DBE/SBE subcontractor with another DBE/SBE subcontractor. No substitution of subcontractors shall be made at any time without the prior written approval of the TJPA Board of Directors.

### **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. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

### **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. San Francisco Limitations on Contributions**

Through execution of this Agreement, the Contractor acknowledges that its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract 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 elected official 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 submission of a proposal for the contract until the later of either the termination of negotiations for such Agreement or twelve months after the date the Agreement is

approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. The Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the TJPA.

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

In performing the services, the Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the TJPA for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

### **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 employee benefits between employees with domestic partners and employees with spouses



and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

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. Intentionally Omitted

f. Consideration of Salary History

The Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K.

#### **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 twenty-five percent (25%). 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.

c. The reference to Section 7108.5 of the California Business and Professions Code in Subsections (a) and (b) applies to the extent said provision is ever determined to apply.

## **43. San Francisco Minimum Compensation**

If San Francisco Administrative Code Chapter 12P applies to this Agreement, the Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of

the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

#### **44. San Francisco Healthcare Accountability Ordinance**

If San Francisco Administrative Code Chapter 12Q applies to this Agreement, the Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO). If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

#### **45. San Francisco First Source Hiring Program**

If applicable to this Agreement, the Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and the Contractor is subject to the enforcement and penalty provisions in Chapter 83.

#### **46. San Francisco Consideration of Criminal History in Hiring and Employment Decisions**

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 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.

#### **47. MacBride Principles – Northern Ireland**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### **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. Intentionally Omitted**

**50. San Francisco 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. Intentionally Omitted**

**52. San Francisco Food Service Waste Reduction Requirements**

The Contractor shall comply with the San Francisco Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**53. Intentionally Omitted**

**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, and Use of Electronic Signatures**

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.

Unless otherwise prohibited by law or TJPA policy, the parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA.

#### **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.

## **65. Cooperative Drafting**

This Agreement has been drafted through a cooperative effort of TJPA and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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:

\_\_\_\_\_  
Adam Van de Water, Executive Director

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

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

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

CONTRACTOR

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

\_\_\_\_\_  
150 California Street, Suite 200  
Address

\_\_\_\_\_  
Andrew Liu  
Printed Name

\_\_\_\_\_  
San Francisco, CA 94111  
City, State, Zip Code

\_\_\_\_\_  
Sr. Vice President, Transportation West Coast  
Title

\_\_\_\_\_  
(925) 260-7027  
Phone Number

\_\_\_\_\_  
AECOM Technical Services, Inc.  
Contractor Name

\_\_\_\_\_  
95-2661922  
Federal Employer ID Number

- Appendix A: Scope of Services
- Appendix A-1: Key Personnel
- Appendix A-2: Subcontractors
- Appendix B: Form of Cost Reimbursement and Rate Agreement
- Appendix C: Additional Insureds
- Appendix D: USDOT Requirements for Agreements with the TJPA

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



## **APPENDIX A SCOPE OF SERVICES**

Contractor is responsible for assisting and supporting TJPA with the general responsibilities described below. TJPA will contract separately to support work that is not included in Contractor's scope. Potential organizational conflict of interest will be reviewed on a case-by-case basis after specific tasks are defined. TJPA will determine at its sole discretion if an organizational conflict of interest exists.

This Appendix highlights the functions of Contractor that are required to support the project. Additional ancillary duties, assignments, and activities may be required and, if determined to be necessary, will be defined, documented, negotiated, and approved by TJPA.

### **1 Program Management**

- a. Development of a Contract Management Plan (CMP) that supports an effective commencement of services by Contractor and management of the Construction Management (CM) Services Bench. The CMP shall be submitted to TJPA within 45 days of NTP for review and approval. All Contractor work shall be performed in accordance with the approved CMP. A separate CMP specific to the construction management support services shall be submitted to TJPA for review and approval prior to the commencement of any work specific to the construction management support services scope.
- b. Development and implementation of a Program Management Plan (PMP) which shall include clearly defined roles and responsibilities for internal and external stakeholders and shall include documented procedures to manage following:
  - i. Project management
  - ii. Project schedules
  - iii. Project budgets
  - iv. Communication and decision-making protocols
  - v. Information management
- c. Effective coordination with FTA, Caltrain, external agencies having jurisdiction (AHJs), utility agencies and owners and several other applicable governmental entities in the life cycle of projects.
- d. Update and completion of the necessary documents required for federal and state funding approvals and oversight.
- e. Coordination with all parts of TJPA in the development and/or implementation of required plans and procedures to effectively manage the program during design, construction, and establishment of operations.
  - i. Provide writing, preparing, and maintaining program and project management plans, agreements, permits and administration with particular emphasis on meeting FTA and Caltrain requirements.
  - ii. Utilize industry best knowledge and experience in managing the implementation of highway design, utility interaction and relocations, construction, equipment, and materials.

- iii. Maintain and foster relationships with agencies, local governments, community stakeholders, and other consultants/contractors.
- iv. Organize peer reviews and industry reviews, executive partnering, and other strategic
- v. Provide expertise in design, procurement and construction management of electrified commuter rail systems and transit tunnel construction.

## **2 Project Management**

- a. Lead and support management and delivery of projects on time and within budget.
- b. Support developing, managing, and administering The Portal from inception to close-out.
- c. Support the management of all aspects of engineering and construction, utility coordination and relocation, technical support, schedules, budget, funding, grants management, staffing, agency reporting, and prioritization of work.
- d. Establish, maintain, implement, and audit cost and schedule management activities to ensure compliance with contract documents, and applicable policies, procedures, and plans.
- e. Identify problems and recommend resolutions to scope, budget, cost, and schedule-related activities.
- f. Participate with TJPA and its engineering consultants, other stakeholders, and contractors in the evaluation of value engineering analysis.
- g. Provide on-going project management and coordination.
- h. Support activities as required to close-out; this may include but is not limited to constructability reviews, feasibility and engineering reviews, design reviews, risk assessments; evaluation of utility relocations, preparing meeting minutes, establish agreements with stakeholders and utility owners, and right-of-way certification.

## **3 Construction Management and Construction Support Services**

- a. Assist with oversight of the contractor(s) by providing construction management and support services for The Portal.
- b. Assist TJPA in the development and management of a visible safety and quality culture.
- c. Assist TJPA with fully enforcing any safety or quality related notices.
- d. Perform constructability analysis at various stages of the project. The analysis shall be performed in accordance with industry standards for cost estimating, construction techniques, value engineering, lean construction, and project management best practices.
- e. Assist in preparing and/or reviewing the scope of work and tasks, the contract documents and solicitation documents for construction contract.
- f. Provide geotechnical coordination services to advise and assist in the review of subsurface investigative reports/data to support the project. If requested, provide geotechnical

field inspection services for earthwork and foundation construction to verify compliance with design criteria, standards, and contract specification.

- g. Perform or assist TJPA in pre-construction survey activities and verify the preconstruction survey performed by the project contractor(s).
- h. Review, for compliance, all contractor submitted documents in accordance with TJPA approved plans and procedures; process in a timely manner, verify all open issues are addressed, and following review by Caltrans, TJPA, or TJPA's engineering consultant, return the submittal back to the contractor. Contractor staff shall follow all Caltrain's related guidelines and documentation requirements as it pertains to submittal review for communication, track and systems items.
- i. Provide independent field survey verification checks on contractor provided survey. For all structure and Right of Way work, assist and support the verification check of contractor benchmarks and ensure contractor adheres to all applicable requirements of the Caltrans Surveys Manual. Coordinate construction activities as directed by TJPA. Support TJPA in the enforcement and ongoing management of construction contract terms and conditions. Provide timely and pertinent review and input on all correspondence. Support TJPA in maintaining cost and schedule goals and commitments on projects. Implement project controls measures that provide real-time assessments of projects budget and schedule.
- j. Support and assist by providing timely and pertinent review of all changes, claims, Time Impact Analysis submittals, and other contract modifications and interpretations.
- k. Provide coordination and management of third-party work including and not limited to agreements, variances, permits, and utility relocations.
- l. Cooperate with TJPA's Contract Compliance staff in the administration of Disadvantaged Business Enterprise (DBE) / Small Business Enterprise (SBE) requirements.
- m. Receive, review, and recommend for acceptance all operations and maintenance manuals prepared and submitted by contractors and/or suppliers and coordinate any required reviews by TJPA Engineering or TJPA engineering consultant.
- n. Ensure that operational and start-up tests of equipment are performed by the contractor to verify the proper operation, functioning of individual equipment, and compatibility of related systems.
- o. Assist TJPA's Environmental Compliance and Sustainability Department in regulatory compliance.
- p. Assist with project and construction close-out processes, including but not limited to the transfer of key records and documents, the final inspections, testing, review of the as-built plans and resolution of outstanding contractual issues; all close-out activities shall be performed in accordance with the Quality Management Plan (QMP), as applicable.
- q. Support and assist TJPA with the implementation of the Quality Management Program (QMP). The QMP includes the following activities:
  - i. Design assessments (as applicable during construction)
  - ii. Construction assessments

- iii Management plan assessments
- iv Process assessments
- v Management System Audits
- vi Corrective action requests
- vii Quarterly Management Reviews
- viii Final Acceptance data monitoring

r. Assist TJPA in the investigation and resolution of quality related issues as directed by the Project Manager or Project Quality Manager.

s. Perform materials verification testing, if necessary, per TJPA and Caltrain procedures.

t. Provide health and safety management to oversee the contractor's compliance with environmental health and safety regulations and requirements. Contractor shall review and monitor contractor compliance with environmental health and safety requirements. Contractor will develop, implement, and manage the approved Environmental Health and Safety Plan which includes the following activities:

- i. Hazardous material monitoring
- ii. Health and Safety compliance and reporting
- iii. Safety and security training
- iv. Safety Hazards Analysis
- v. Safety and Security Verification Certification

u. Implement the materials testing program by observing and reporting on the contractor's compliance with materials testing requirements. Review and comment on the contractors' testing plans and submittals. Manage on-site tests and witness factory tests. Activities include:

- i. Performing quality assurance and validation tests.
- ii. Develop materials testing plans and reporting procedures.
- iii. Review contractor materials testing submittals
- iv. Report on results of materials testing by independent laboratories.

v. Provide Start up Testing and Commissioning and Pre-revenue Services. Prepare Rail Activation Plan to include as a complete Caltrain operating system. Define an integrated test plan that includes TPSS, OCS, SCADA, train control, communications, LRT vehicles, PA system, VMS system, and CCTV system. Prepare integrated training plan based on Caltrain requirements. Activities include:

- i. Rail activation plan including procedures, test, exercises, approvals and training
- ii. Acceptance plan, test program and schedule (including integration test, readiness drills, pre-revenue service tests), approvals schedule, fallback planning and mitigation plans, training plan, procedures and schedule in compliance with Caltrain requirements.
- iii. Documentation required for the safety and security certification under CPUC and FRA requirements.

w. Provide field offices and supplies necessary to support all field operations and for the daily upkeep of offices, whether established by TJPA, Contractor, or a third party. Field supplies includes but is not limited to survey supplies, safety equipment and supplies, and small tools. Office supplies includes but is not limited to computer or Information Technology equipment and communication devices, janitorial supplies, office furniture, and daily use office items.

x. Manage project vehicles, parking validation, and parking costs necessary to support projects. Project vehicles may be requested by TJPA and may be assigned by TJPA to any TJPA employee or Contractor staff.

#### **4 Project Delivery and Contract Development/Compliance**

a. Advise on various project delivery methods including contract terms and conditions, procurement reviews, and state and federal transportation grant legislation and program requirements to support delivery of The Portal.

b. Perform tasks to support project delivery and contract development/compliance, which include but are not limited to:

- i. Support review of proposals and bids, especially in areas such as past performance, claims and litigation history, financial responsibility, and business ethics.
- ii. Assist in the review, development, and implementation of overall project delivery and procurement strategy, document, plan, and schedules, including industry review process, key contract terms and conditions.
- iii. Advise on proposer/bidder comments and requests for changes to solicitation requirements.
- iv. Assist in reconciling contract documents and preparation of final contract terms and review of conformed Contract Documents.
- v. Provide contract administration support under the direction of TJPA's Procurement/Contract Management.
- vi. Provide DBE/SBE program requirements and Equal Employment Opportunity (EEO) workforce provisions compliance review and monitoring under the direction of TJPA requirements.
- vii. Develop specifications, solicitation technical packages, and intergovernmental agreements.

c. In addition to Design-Bid-Build (DBB) for the enabling works program, TJPA will be utilizing a Progressive Design-Build (PDB) for the Heavy Civil and Tunneling contract and Construction Manager/General Contractor (CMGC) for the implementation of Systems, Trackwork and Station Fit-out contracts. Contractor shall perform tasks to support TJPA for these Alternative Project Delivery processes including but not limited to:

- i. Work with the engineering consultant(s), construction contractor(s), and TJPA staff to develop the approach to cost estimating method and the development of the Opinion of Probable Construction Cost (OPCC).
- ii. Provide Independent Value Assessment capability to assist with contractor cost negotiations.
- iii. Review the estimating methodology report submittal from the construction contractor(s).
- iv. Provide technical leadership and support team to:
  1. Develop an independent cost estimate at the designated milestones of the CMGC or PDB contract.
  2. Assist TJPA in reconciliation of cost estimates with the CMGC or PDB and documentation.
  3. Assist TJPA by leading and/supporting negotiations with the CMGC or PDB to establish the guaranteed maximum price or lump sum.

4. Provide other cost estimating support as needed between development of the final estimate and issued for construction documents in support of the CMGC and PDB contract.
5. Develop independent cost estimates for early works packages and additional field work.
6. Review the cost estimates/OPCC provided by the construction contractor(s) and participate in quantity and estimate reconciliation meetings.
7. Assist TJPA to negotiate with the construction contractor(s) to reach the final project construction value.

## **5 Configuration Management**

Configuration Management encompasses a range of activities related to establishing and maintaining consistency across project lifespan, from project definition and preliminary engineering to closeout. This could include everything from a systems-level approach for requirements and contract interface management, to document management, including equipment/materials inventory (provided by the contractor), which involves managing most documents for project files, as well as change control for all contracts related to a project.

Contractor shall provide staffing, technical resources, knowledge, and expertise to manage TJPA Configuration Management tasks, which include but are not limited to:

- a. Manage project records through workflow process, including submittals, RFIs, correspondence, and similar.
- b. Maintain design standards related to specific projects.
- c. Maintain a record of baseline configuration and requirements and track changes across contract interfaces.
- d. Maintain the requirements checklist to assist in managing the program to verify that design and construction complies with all requirements and commitments established during the planning and environmental clearance phase and the requirements of the various entities whose funds will be used to deliver the Program have been met.
- e. Verify that physical and schedule interfaces are coordinated between the contracts and other components, projects and subprojects and contract packages within the program.
- f. Track changes to and maintain system-wide standards documents.
- g. Maintain TJPA Program Management Plan and Procedures documents.
- h. Manage the document exchange between TJPA and the contractor and other consultants.
- i. Track contract change activities related to projects, whether for contractors, consultants, engineers, designers, and similar.
- j. Work closely with projects Manager, Construction Manager, Resident; Engineer, Vendor/Contract Management, Project Controls, and Cost Estimating to track contract changes.

k. Gather information regarding the cost estimate, scope of change, and issues to facilitate the procurement process to resolution and potentially contract issuance.

l. Secure and manage equipment/materials inventory to be provided by the contractor as prescribed in Federal Acquisition Regulations (FAR).

## **6 Project Controls**

Coordinate and support TJPA Program Controls for cost, scheduling, estimating, and risk management for environmental, engineering, construction, and maintenance/operations phases of The Portal project. Manage and maintain baseline reports to establish cost, budget, and schedule objectives for The Portal project, against which project controls report on the status and progress of the work; actual and projected costs; schedule progress; and trends.

Contractor shall provide technical staffing and resources, knowledge, and expertise to provide support for TJPA Program Controls tasks, which include but are not limited to:

a. Project control support throughout all phases of a project that include scheduling, estimating, cost control, change control, document controls and records management.

b. Utilize state-of-the-art knowledge of information technology and information systems practices as it relates to project controls. IT Architecture to be revisited every three years to revise or adjust as necessary.

c. Review dispute avoidance claims mitigation and risk analysis.

d. Identify, develop, and implement project and program controls practices, standards, procedures and tools for project controls-related reporting, and program controls.

e. Provide BIM management, and support, to oversee the digital delivery through design, construction, and closeout. This includes supporting TJPA in developing a Building Information Modeling (BIM) and Digital Construction strategy, and the accompanying systems and standards, for effective communication, data driven decision making, and records management across the project.

f. Track, monitor, and verify cost and schedule to ensure timely and cost-effective project execution.

g. Advise and provide daily support on financial strategies and mechanisms related to cost, source of funding, cash flow, and long-term project implementation, operations, and maintenance under a cost-effective, cost of ownership, and life cycle framework.

h. Refine, innovate, and implement project control practices, standards, procedures, and tools for project-wide reporting.

- i. Perform the following project control tasks, which include but are not limited to:
  - i. Analyze cost, scheduling, and risk issues.
  - ii. Conduct cost and schedule reviews and provide reporting.
  - iii. Support payment application and invoicing review.
  - iv. Review and comment on the contents of RFP(s) and IFB(s) for the design and construction.

- v. Maintain, enhance, and enforce all document control and record management plans, policies, and procedures.
- vi. Maintain Program Management subplans as needed, and when applicable create new project controls related subplans.
- vii. Maintain an integrated Master Program Schedule for all activities including Real Estate Acquisitions, Design and Engineering Milestones, Third Party Agreements, Utility Relocations, Stakeholder Coordination, Procurements, Approvals and Inspections, and all Construction Schedules.
- viii. Prepare Fiscal Year project budgets and make incremental adjustments as needed.
- ix. Conduct internal risk assessments for the project.
- x. Verify cost estimates are in line with risk assessments.
- xi. Assist in conducting quality assurance of the financial data and analyzing the data for financial reconciliation.

## **7 Estimating Cost**

Estimating develops and prepares cost estimates to support TJPA procurement activities for professional services planning, environmental, construction, maintenance, and operations contracts; develops TJPA design and construction (capital cost) budgets, and during the planning and design phases of projects for design optimization and value engineering studies, life-cycle cost analyses, and risk assessments.

Contractor shall provide technical staffing, resources, knowledge, and expertise to coordinate and support TJPA estimating tasks, which include but are not limited to:

- a. Develop and implement cost estimation practices, standards, procedures, and tools to support development of TJPA's design and construction (capital cost) budgets and to support economic optimization of TJPA project designs.
- b. Prepare Independent Cost Estimates for professional services, construction, maintenance, and operations contracts, changes, and claims.
- c. Furnish cost and price analyses of proposals from consultants and contractors.
- d. Prepare estimates to establish project budgets for planning, construction and procurement, value engineering studies, real estate and joint development purchase and exchange decisions.
- e. Provide estimates and economic analyses to support design optimization, constructability, and project feasibility decisions.
- f. Review and provide comments on estimates prepared by other consultants for planning and construction.
- g. Prepare estimates to validate funding requests from other government agencies and third-party utilities.
- h. Provide design and construction technical analyses and support to TJPA Management Audit Services.



i. Conduct construction market analysis by reviewing cost and bidding trends and evaluating factors that may influence construction bidding; and j. Design, develop, and deploy industry best practices, standards, procedures, and tools to continually improve the cost estimating function.

## **8 Community Outreach and Construction Relations**

Contractor will support TJPA on project communication management and implementation of The Portal, which includes, but is not limited to, industry, public, and stakeholder communications and outreach, along with crisis and construction impact mitigation. In coordination with TJPA Communications, Contractor will coordinate programs to minimize and help address field construction issues and inquiries, make provisions to accommodate TJPA approved tours of the various project sites, and refer all media inquiries or requests for project related information to TJPA Communications. Contractor will assign a dedicated outreach professional to support TJPA with these requirements.

## **9 Other Activities**

In the performance of the scope above, TJPA may require Contractor to provide the following equipment and services, not all inclusive:

- a. Project Office Space and Furniture
- b. Communications Equipment and Services
- c. Computer & Network Equipment and Services
- d. Software and Software Support
- e. Field Supplies
- f. Cameras
- g. Office Supplies
- h. Graphic Services
- i. Courier Services
- j. Copiers, Plotters and Scanners
- k. Signage/Banner Services
- l. Housekeeping/Custodial
- m. Safety Equipment & Training
- n. Survey Equipment and Supplies
- o. Preconstruction Survey Services
- p. Obtaining and maintaining permits, as required.
- q. Vehicles for TJPA and Consultant staff
- r. Code Books and Reference Manuals
- s. Professional Training & Seminars t. Such other services as are related or ancillary to the services described above and/or to accomplish the purpose of the Program Management/Construction Management services.

END OF SCOPE OF SERVICES

**APPENDIX A-1**  
**KEY PERSONNEL**

	<b>Position</b>	<b>Person</b>
1	Construction Manager	Carter Rohan
2	Program Contract Manager	Stephen Polechronis
3	Engineering Manager	Meghan Murphy
4	Chief Tunneling Engineer	Derek Penrice
5	Project Controls Manager	Hans Hoppe
6	Progressive Design Build (PDB)/Construction Manager/General Contractor (CMGC) Procurement Lead	Ashish Patel
7	Interface and Integration Lead	Joe Bayat

**APPENDIX A-2  
SUBCONTRACTORS**

	<b>Company</b>	<b>General Summary of Scope</b>
1	Auriga Corporation*	Transit Systems Support; Construction Management Services
2	Civic Edge Consulting*	Communications Strategies, Community Outreach and Communications
3	Conсор PMCM, Inc.	Construction Management Services
4	Edgar Lopez & Associates*	Contract Devel. & Admin.; Contractor Relationship/Negotiation; Strategic Advisory
5	Hollins Consulting, Inc.*	Doc. Control/ Admin. Support; Utility Relocation; ROW Support; Scheduling; Program Controls/Cost Support; Design Mgmt. (Stations); PMCM Staff Support
6	Intueor Consulting Inc.*	PMCM Support., Controls, Procure. Supp.; Rail & Comm. Sys. & Asset Mgt.; Org. Change Mgt.
7	ISI Inspection Services, Inc.	Inspection, Materials Testing, Other tasks to be determined
8	JRU Enterprises	Right-of-Way Support
9	KMC Construction Consulting*	Cost Estimating
10	Luster National, Inc.*	Program Management and Construction Management Support
11	M Lee Corporation*	Scheduling, Estimating and Other Project Controls Tasks
12	Mott MacDonald Group, Inc.	PMCM & Proj. Mgt; Sub. matter expertise - Tunnel, Geotech, Rail; Procure. Docs Development; Construct. & Risk Mgt.; Requirements Mgt., Safety Assurance, Digital Delivery
13	Pendergast Consulting Group*	S/L/DBE Support; Workforce Development and Community Outreach
14	Saylor Consulting, Inc.*	Estimating & Scheduling Services; Construction Management Support
15	Towill, Inc.*	Surveying
16	WSP USA Inc.	Program Management and Construction Management Support

\* Indicates SBE.

**APPENDIX B**  
**FORM OF**  
**PAYMENT TERMS AND RATE AGREEMENT**

Pursuant to Professional Services Agreement between the Transbay Joint Powers Authority (hereinafter referred to as "TJPA") and AECOM Technical Services, Inc., a California Corporation (hereinafter referred to as "Contractor") for Program Management and Construction Management Services ("PSA"), TJPA and Contractor hereby agree to enter into this Time and Materials Agreement ("TMA") as follows:

TJPA will pay the Contractor as follows upon the submission of invoices approved by the TJPA CFO (or their designee):

**(a) Hourly rate.**

(1) *Hourly rate* means the rate(s) attached hereto as Attachment 1 for payment for labor that meets the labor category qualifications of a labor category specified in the PSA that are-

(i) Performed by the Contractor;

(ii) Performed by the subcontractors; or

(iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under common control.

(iv) Hourly rates for Contractor and subconsultants are established in Attachment 1 and will be approved by TJPA in the annual Work Plan/NTP. If the average hourly rate adjustment submitted by Contractor exceeds the annual escalation factor used to determine the Contract Limit, the Contractor shall submit sufficient justification to the TJPA CFO, Project Director and Project Controls Manager in support of the request. The justification shall also indicate, in sufficient detail, adjustments to the staffing plan subtask category used to determine the Contract Limit in a manner acceptable to TJPA resulting in no increase within the subtask category. Staff additions, substitutions, or replacements may be submitted to the TJPA CFO, Project Director, and Project Controls Manager (or their designees) for approval and inclusion in the annual work plan accompanied by the updated work breakdown schedule that shows no changes to the scope and cost upon completion.

(2) The appropriate hourly rates shall be multiplied by the number of direct labor hours performed.

(3) The hourly rates shall be paid for all labor performed on the PSA that meets the labor qualifications specified in the PSA. Labor hours incurred to perform tasks for which labor qualifications were specified in the PSA will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the PSA, unless specifically authorized by the TJPA CFO (or their designee).

(4) The hourly rates shall include wages, indirect costs, general and administrative expenses, and profit (at the rate of nine percent). The invoice shall reflect the approved mark-up

(described below) on agreed to subcontracted effort. Fractional parts of an hour shall be payable on a prorated basis.

(5) Invoices may not be submitted more than monthly to the TJPA CFO (or their designee). The Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate) by evidence of actual payment of non-labor costs and by-

(i) Individual daily job timekeeping records;

(ii) Records that verify the employees meet the qualifications for the labor categories specified in the PSA; or

(iii) Other substantiation approved by the TJPA CFO (or their designee).

(6) Promptly after receipt of each substantiated invoice, TJPA shall, except as otherwise provided in the PSA or this TMA, and subject to the terms of paragraph (d) of this TMA, pay the invoice as approved by the TJPA CFO (or their designee).

(7) Unless otherwise prescribed in the PSA, the TJPA CFO (or their designee) may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the TJPA CFO (or their designee) considers necessary to protect TJPA's interests. The TJPA CFO (or their designee) may require a withhold of 5 percent of the amounts due under paragraph (a) of this TMA, but the total amount withheld for the contract shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this TMA.

(8) Unless the this TMA prescribes otherwise, the hourly rates shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the hourly rates and overtime work is approved in advance by the TJPA CFO (or their designee), overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under paragraph (k) of this TMA. If the hourly rates provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved in advance by the TJPA CFO (or their designee).

**(b) Other Direct Costs.**

(1) For the purposes of this clause-

(i) *Direct materials* mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Other Direct Costs* ("ODC") means-

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the PSA; and

(C) Other direct costs attached hereto as Attachment 2. Except for those ODCs specified in Attachment 2, no other ODCs are permitted without the advanced written approval of the TJPA CFO and TJPA Project Manager (or their designees).

(2) If the Contractor furnishes its own materials, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, TJPA will reimburse the Contractor for allowable ODCs provided the Contractor-

(i) Has made payments for ODCs in accordance with the terms and conditions of the agreement or invoice for the ODCs; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to TJPA and such payment is in accordance with the terms and conditions of the agreement or invoice for the ODC.

(4) The ODCs are included in Attachment 2 (or otherwise have received advanced written approval from the TJPA) and are allowable. The TJPA CFO (or their designee) will determine allowable costs in accordance with FAR subpart 31.2 and 2 CFR 403-406 and any other applicable federal law or regulation in effect on the date of this contract.

(5) The Contractor may include allocable indirect costs and ODCs to the extent they are-

(i) Comprised only of costs that are clearly excluded from the hourly rate;

(ii) Allocated in accordance with the Contractor's written or established accounting practices; and

(iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.

(6) To the extent able, the Contractor shall-

(i) Obtain ODCs at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the TJPA CFO (or their designee) and give the reasons. The Contractor shall give credit to TJPA for cash and trade discounts, rebates, scrap, commissions, and other

amounts that have accrued to the benefit of the Contractor or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor or lost through fault of TJPA.

(7) TJPA will not pay profit or fee to the Contractor on materials or other ODCs. Contractor may apply a mark-up of 1.5% on agreed to subcontracted effort.

(8) If the Contractor enters any subcontract that requires TJPA consent, TJPA is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of TJPA.

(9) Contractor must receive the TJPA CFO's (or their designee's) prior written approval before incurring any ODC that exceeds \$5,000.

(10) *Travel Reimbursement.* Travel will be reimbursed based on TJPA Travel, Business Expense, and Relocation Policy: Standard Practices and Guidelines for TJPA Consultants and Subconsultants, dated October 2009.

**(c) Total cost.**

It is estimated that the total cost to TJPA for the performance of the PSA and each Annual Work Plan/NTP shall not exceed the ceiling price set forth in the PSA and sublimits set forth in an Annual Work Plan/NTP, and the Contractor agrees to use its best efforts to perform the work specified in the PSA and each Annual Work Plan/NTP and all obligations under the PSA within such ceiling price and sublimits.

If at any time the Contractor has reason to believe that the hourly rate payments and Other Direct Costs that will accrue in performing the PSA in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the PSA, the Contractor shall notify the TJPA CFO giving a revised estimate of the total price to TJPA for performing the PSA with supporting reasons and documentation. If at any time during performing the PSA, the Contractor has reason to believe that the total price to TJPA for performing the PSA will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the TJPA CFO, giving a revised estimate of the total price for performing the PSA, with supporting reasons and documentation. If at any time during performing this contract, TJPA has reason to believe that the work to be required in performing this PSA will be substantially greater or less than the stated ceiling price, the TJPA CFO (or their designee) will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the PSA.

**(d) Ceiling price.** TJPA will not be obligated to pay the Contractor any amount more than the ceiling price in the PSA. The Contractor exceeds the ceiling price at its own risk and expense.

**(e) Audit.** At any time before final payment under the PSA, the TJPA CFO (or their designee) may request audit of the invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the TJPA CFO (or their designee) not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt

and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of the PSA and this TMA (including, without limitation, the terms of paragraph (f) of this TMA), TJPA shall promptly pay any balance due the Contractor. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under the PSA, but in no event later than 120 days (or such longer period as the TJPA CFO (or their designee) may approve in writing) from the date of completion.

**(f) Assignment and Release of Claims.** The Contractor, and each assignee under an assignment entered into under the PSA and in effect at the time of final payment under the PSA, shall execute and deliver, at the time of and as a condition precedent to final payment under the PSA, a release discharging TJPA, its members, directors, officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the PSA and this TMA, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing the PSA, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the TJPA CFO (or their designee) not more than 6 years after the date of the release or the date of any notice to the Contractor that TJPA is prepared to make final payment, whichever is earlier.

**(g) Invoice Reimbursement.**

(1) Allowable Costs – Costs will only be allowed if the proposed costs are consistent with cost principles of the Federal Acquisition Regulation (FAR) as set forth in 48 C.F.R. Part 31 and any other applicable federal law or regulation. TJPA will perform and audit the PSA and any subcontracts for compliance with these requirements.

(2) Agency will accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods if those rates are not currently under dispute.

(3) "Billing rates." Until final annual indirect cost rates are established for any period, TJPA will reimburse Contractor at billing rates established in the Contractor's proposal and audited by the Proposer's Certified Public Accountant, attached as Attachment 3, subject to adjustment when the final indirect cost rates are established. Final indirect cost rates may be established by an audit performed by the federal government or other governmental agency

These indirect cost rates—

- Shall be the anticipated final rates; and
- May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.



(4) Final Payment. Upon Contractor's compliance with all terms of the PSA, TJPA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(5) During the term of the PSA and for a period of five (5) years after final payment under the agreement, or until after a final audit has been resolved, whichever is later, , Contractor shall:

- Keep and maintain, in their original form, all records, books, papers, or documents related to Proposer's performance; and

- Permit TJPA or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to Contractor's performance of the PSA including, but not limited to: direct and indirect charges, and detailed documentation, for work Contractor has performed or will perform under the PSA.

(6) For a period of not less than five years after final payment under the PSA, TJPA may have Contractor's invoices or invoices and statements of cost audited. Any payment may be—

- Reduced by amounts found by TJPA not to constitute allowable costs; or
- Adjusted for prior overpayments or underpayments.

The parties have executed this Agreement as of [\_\_\_\_\_].

TRANSBAY JOINT POWERS AUTHORITY

AECOM Technical Services, Inc.

\_\_\_\_\_  
Adam Van de Water, Executive Director

\_\_\_\_\_  
Andrew Liu,  
Sr. Vice President, Transportation West Coast

Attachments:

Attachment 1. Hourly Rates

Attachment 2. Other Direct Costs

Attachment 3. Billing Rates

ATTACHMENT 1

HOURLY RATES

[to be attached after establishment of the indirect cost rate for an applicable period]

ATTACHMENT 2  
OTHER DIRECT COSTS

Onsite Vehicles

Parking

Office Space Fit-out/Move in

Office Space Rent

InEight Setup

InEight Maintenance

Other Software

Computer equipment

PPE

Printing

Travel \*

Living Expenses

\* Note: The Contractor has agreed that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract. Accordingly, TJPA does not expect ODCs to include travel of Key Personnel to/from their home and the Contractor's local offices.

ATTACHMENT 3

BILLING RATES

[applied prior to establishment of the indirect cost rate]

Downtown Transbay Extension  
Program Management and Construction Management Services  
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
AECOM	Assistant Contracts Manager	Jimmy Liu	\$56.11	Field	102.64%	0.00%	9.0%	\$123.93
AECOM	Assistant Office Engineer	AjayKanth Satti	\$41.00	Field	102.64%	0.00%	9.0%	\$90.56
AECOM	Assistant Resident Engineer	Armen Avanesian	\$51.45	Field	102.64%	0.00%	9.0%	\$113.64
AECOM	Change & Configuration Manager	Steven Reid	\$111.66	Field	102.64%	0.00%	9.0%	\$246.63
AECOM	Change Control Technician	Marianne Ghobreal	\$60.00	Field	102.64%	0.00%	9.0%	\$132.53
AECOM	<b>Construction Manager **</b>	<b>Carter Rohan</b>	\$205.96	Field	102.64%	0.00%	9.0%	\$454.92
AECOM	Construction Safety - Buildings	Patrick Walz	\$69.91	Field	102.64%	0.00%	9.0%	\$154.42
AECOM	Construction Safety - Tunnel	Mike Kirchanski	\$80.00	Field	102.64%	0.00%	9.0%	\$176.70
AECOM	Construction Safety - Tunnel	Mike McDowell	\$93.04	Field	102.64%	0.00%	9.0%	\$205.50
AECOM	Contracts Compliance - Payroll	Hannah Lee	\$69.75	Field	102.64%	0.00%	9.0%	\$154.06
AECOM	DBB Util Relocation - ACM	Audrey Brook1	\$121.04	Field	102.64%	0.00%	9.0%	\$267.35
AECOM	<b>Engineering Manager **</b>	<b>Meghan Murphy</b>	\$120.50	Field	102.64%	0.00%	9.0%	\$266.16
AECOM	Estimator	Leonard Calianno	\$112.07	Home	123.50%	0.00%	9.0%	\$273.02
AECOM	Health & Safety Manager	Mike Voudouris	\$90.00	Field	102.64%	0.00%	9.0%	\$198.79
AECOM	Information Management Lead	Matt Perna	\$115.94	Home	123.50%	0.00%	9.0%	\$282.45
AECOM	Inspector - Architectural	Bruce Farrell	\$105.93	Field	102.64%	0.00%	9.0%	\$233.98
AECOM	Inspector - Civil	Aaron Jayne	\$76.05	Field	102.64%	0.00%	9.0%	\$167.98
AECOM	Inspector - Civil	Arieto Manalo	\$81.92	Field	102.64%	0.00%	9.0%	\$180.94
AECOM	Inspector - Civil	Dave Vornberger	\$93.94	Field	102.64%	0.00%	9.0%	\$207.49
AECOM	Inspector - Civil	David Akers	\$75.38	Field	102.64%	0.00%	9.0%	\$166.50
AECOM	Inspector - Mechanical	Coleman Bailey (T&S)	\$68.75	Field	102.64%	0.00%	9.0%	\$151.85
AECOM	Inspector - Mechanical	Coleman Bailey (Tun)	\$68.75	Field	102.64%	0.00%	9.0%	\$151.85
AECOM	Inspector - Mechanical	Robert Alfasi	\$81.00	Field	102.64%	0.00%	9.0%	\$178.91
AECOM	Inspector - Plumbing	Vini Shah (Sta)	\$79.33	Field	102.64%	0.00%	9.0%	\$175.22
AECOM	Inspector - Plumbing	Vini Shah (Tun)	\$79.33	Field	102.64%	0.00%	9.0%	\$175.22
AECOM	Inspector - Structural	Carla Aguilar Rivera	\$97.04	Field	102.64%	0.00%	9.0%	\$214.34
AECOM	Inspector - Track	Bob Brosey	\$75.00	Field	102.64%	0.00%	9.0%	\$165.66
AECOM	Inspector - Track	Brian Price	\$75.58	Field	102.64%	0.00%	9.0%	\$166.94
AECOM	Inspector - Tunnel	Vishwam Sheth	\$57.55	Field	102.64%	0.00%	9.0%	\$127.12
AECOM	Lead Inspector	Isnard Estriplet	\$129.32	Field	102.64%	0.00%	9.0%	\$285.64
AECOM	Lead Inspector	Raffaele Aliberti	\$66.11	Field	102.64%	0.00%	9.0%	\$146.02
AECOM	Office Engineer	Ferdie Rodriguez (R Fernando)	\$70.42	Field	102.64%	0.00%	9.0%	\$155.54
AECOM	Office Engineer	Henry Diep	\$65.62	Field	102.64%	0.00%	9.0%	\$144.94
AECOM	Office Engineer	Juan Romero	\$55.96	Field	102.64%	0.00%	9.0%	\$123.60
AECOM	Office Engineer	Muataz Yaseen	\$91.35	Field	102.64%	0.00%	9.0%	\$201.77
AECOM	PDB Main Civil - ACM	Rich Redmond Jr.	\$161.91	Field	102.64%	0.00%	9.0%	\$357.62
AECOM	Principal Level Environmental Specialist	Rodney Jeung	\$127.42	Home	123.50%	0.00%	9.0%	\$310.41
AECOM	Procurement Manager	Ashish Patel	\$168.27	Field	102.64%	0.00%	9.0%	\$371.67
AECOM	<b>Program Contract Manager **</b>	<b>Stephen Polechronis</b>	\$185.57	Field	102.64%	0.00%	9.0%	\$409.88

Downtown Transbay Extension  
Program Management and Construction Management Services  
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
AECOM	Project Administrator	TBDd	\$47.50	Home	123.50%	0.00%	9.0%	\$115.71
AECOM	QA/QC	TBDe	\$88.40	Home	123.50%	0.00%	9.0%	\$215.36
AECOM	Senior Level Environmental Specialist	Anne Ferguson	\$62.50	Home	123.50%	0.00%	9.0%	\$152.26
AECOM	SME: Engineering	Osborne Anthony	\$97.77	Home	123.50%	0.00%	9.0%	\$238.18
AECOM	SME: Geotechnical Engineer	Stephen Huang, GE	\$98.57	Home	123.50%	0.00%	9.0%	\$240.13
AECOM	SME: Paleontologist/Archaeologist	Jay Rehor	\$66.84	Home	123.50%	0.00%	9.0%	\$162.83
AECOM	SME: Paleontologist/Archaeologist	Kat Kubal	\$54.65	Home	123.50%	0.00%	9.0%	\$133.14
AECOM	SME: Precast Specialist	Orin Brown	\$97.50	Home	123.50%	0.00%	9.0%	\$237.52
AECOM	SME: Principal Paleontologist	Mark Hale	\$62.44	Home	123.50%	0.00%	9.0%	\$152.11
AECOM	Station Fit-Out - ACM	Audrey Brook2	\$121.04	Field	102.64%	0.00%	9.0%	\$267.35
AECOM	Track & Systems - ACM	Sy Morales	\$127.40	Field	102.64%	0.00%	9.0%	\$281.40
AECOM	Utilities Package Lead	Audrey Brook	\$121.04	Field	102.64%	0.00%	9.0%	\$280.71
Auriga Corp.	Inspector - Communications	Clay McDonald	\$90.00	Field	154.75%	0.00%	9.0%	\$252.69
Auriga Corp.	Inspector - Electrical	Omar Hafud Al-Sudani	\$60.00	Field	154.75%	0.00%	9.0%	\$173.27
Auriga Corp.	Inspector - Signalling	Michael Moyer	\$90.00	Field	154.75%	0.00%	9.0%	\$259.91
Auriga Corp.	Inspector - Systems	Fathi Aljarrah	\$77.10	Field	154.75%	0.00%	9.0%	\$216.59
Civic Edge Consulting	Community Outreach Specialist	Paisley Strellis	\$68.28	Field	195.80%	0.00%	9.0%	\$220.15
Conсор PMCM, Inc.	Inspector - Civil	Corey Funkner	\$86.92	Field	117.59%	0.01%	9.0%	\$206.16
Conсор PMCM, Inc.	Inspector - Communications	Charles Smith	\$86.01	Field	117.59%	0.01%	9.0%	\$204.00
Conсор PMCM, Inc.	Inspector - Electrical	Darren Goodbar	\$90.00	Field	117.59%	0.01%	9.0%	\$213.46
Conсор PMCM, Inc.	Inspector - Electrical	David Taylor	\$93.88	Field	117.59%	0.01%	9.0%	\$222.67
Conсор PMCM, Inc.	Inspector - Electrical	Michael Johnson	\$88.40	Field	117.59%	0.01%	9.0%	\$209.67
Edgar Lopez & Associates	SME: Procurement	Edgar Lopez	\$224.56	Home	47.00%	0.00%	9.0%	\$359.81
Hollins Consulting, Inc.	Admin Support Manager	Laura Patino	\$93.75	Field	113.15%	0.00%	9.0%	\$220.70
Hollins Consulting, Inc.	Administrative Assistant	Megan Wong	\$55.00	Field	113.15%	0.00%	9.0%	\$127.77
Hollins Consulting, Inc.	Assistant Contracts Compliance - Payroll	Tsehai Netsereab	\$46.95	Field	113.15%	0.00%	9.0%	\$110.35
Hollins Consulting, Inc.	Assistant Office Engineer	Leah Rhodes	\$51.40	Field	113.15%	0.00%	9.0%	\$120.81
Hollins Consulting, Inc.	DBB Building Demo - ACM	Jermaine Smith	\$86.54	Field	113.15%	0.00%	9.0%	\$203.28
Hollins Consulting, Inc.	Document Control Technician	Jonathan Valencia	\$60.10	Field	113.15%	0.00%	9.0%	\$144.61
Hollins Consulting, Inc.	Junior Engineers	TBDc	\$81.12	Field	113.15%	0.00%	9.0%	\$188.47
Hollins Consulting, Inc.	Procurement Specialist	Cecilia Luu	\$80.29	Field	113.15%	0.00%	9.0%	\$191.66
Hollins Consulting, Inc.	Project Assistant	Leena Ahmadi	\$49.09	Field	113.15%	0.00%	9.0%	\$116.17
Hollins Consulting, Inc.	Utility Coordination Manager	Jermaine Smith	\$86.54	Field	113.15%	0.00%	9.0%	\$203.28
Hollins Consulting, Inc.	Utility Coordinator	Will Spargur	\$76.24	Field	113.15%	0.00%	9.0%	\$177.14
Intueor	Contracts Administrator	Charles Smith	\$94.61	Field	123.43%	0.00%	9.0%	\$230.41
Intueor	IT Specialist	Tarek Fahmy	\$62.25	Field	123.43%	0.00%	9.0%	\$151.60
Intueor	Project Control Scheduler	Parthiv Varma	\$80.28	Field	123.43%	0.00%	9.0%	\$195.51
Intueor	SME: Project Controls	Steve Lavelle	\$98.12	Home	123.43%	0.00%	9.0%	\$238.96
Intueor	Sr Project Controls Engineer	Jordan Taylor	\$92.25	Field	123.43%	0.00%	9.0%	\$224.66

Downtown Transbay Extension  
Program Management and Construction Management Services  
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
JHU Enterprises	ROW Manager	John Updike	\$215.00	Field	0.00%	0.00%	0.0%	\$215.00
KMC Construction Consulting	Independent Cost Estimator	Kelly McNutt	\$189.00	Home	76.55%	0.00%	9.0%	\$363.71
Luster National, Inc.	Administrative Analyst	John Luster	\$88.94	Field	133.01%	0.04%	9.0%	\$225.92
Luster National, Inc.	Assistant Contracts Administrator	Dan Coffee	\$96.68	Field	133.01%	0.04%	9.0%	\$245.58
Luster National, Inc.	Document Control Manager	Kara Turner	\$82.80	Field	133.01%	0.04%	9.0%	\$210.33
Luster National, Inc.	Quality Assurance Auditor	Bobby Butler	\$54.13	Field	133.01%	0.04%	9.0%	\$137.50
M Lee Corp.	Cost Estimator	Asia Kan	\$87.50	Field	110.60%	0.00%	9.0%	\$200.86
M Lee Corp.	Senior Cost/Schedule Analyst	Martin Lee	\$98.50	Home	128.80%	0.00%	9.0%	\$245.65
Mott MacDonald	4th & King Site Work Package Lead	Scott Waldron	\$59.63	Field	142.51%	0.00%	9.0%	\$157.62
Mott MacDonald	Assistant Resident Engineer	Ali Iqbal	\$125.46	Field	142.51%	0.00%	9.0%	\$331.64
Mott MacDonald	Assistant Resident Engineer	Eleanor Sillerico	\$102.97	Field	142.51%	0.00%	9.0%	\$272.19
Mott MacDonald	Assistant Resident Engineer	Shawna Von Stockhausen	\$89.94	Field	142.51%	0.00%	9.0%	\$237.74
Mott MacDonald	BIM Lead	Abraham Rodriguez	\$80.56	Home	166.49%	0.00%	9.0%	\$234.01
Mott MacDonald	Chief Tunneling Engineer **	Derek Penrice	\$137.69	Field	142.51%	0.00%	9.0%	\$363.96
Mott MacDonald	Digital Delivery Lead	Jay Mezher	\$117.63	Field	142.51%	0.00%	9.0%	\$310.94
Mott MacDonald	Graphics support	Stacy Lehrer	\$45.36	Home	166.49%	0.00%	9.0%	\$131.76
Mott MacDonald	Inspector - Civil	Eduardo Salvador	\$90.00	Field	142.51%	0.00%	9.0%	\$237.90
Mott MacDonald	Inspector - Systems	Bindy Dhillon	\$74.37	Field	142.51%	0.00%	9.0%	\$196.59
Mott MacDonald	Inspector - Tunnel	Carl Gellor	\$83.58	Field	142.51%	0.00%	9.0%	\$220.93
Mott MacDonald	Integration Manager	Dave Hunt	\$115.00	Field	142.51%	0.00%	9.0%	\$303.99
Mott MacDonald	Main Civil BIM Coordinator	Abraham Rodriguez	\$80.56	Home	166.49%	0.00%	9.0%	\$234.01
Mott MacDonald	Requirements Manager	Mandy Boyal	\$93.75	Field	142.51%	0.00%	9.0%	\$247.81
Mott MacDonald	Risk Analyst	David Chesser	\$60.16	Home	166.49%	0.00%	9.0%	\$174.75
Mott MacDonald	Risk Manager	Joe O'Carroll	\$147.14	Home	166.49%	0.00%	9.0%	\$427.40
Mott MacDonald	SME: Construction Claims (Analyst/Admin/Eng)	Paul Hetu	\$103.37	Home	166.49%	0.00%	9.0%	\$300.26
Mott MacDonald	SME: Engineering	Ian Ong	\$125.45	Home	166.49%	0.00%	9.0%	\$364.40
Mott MacDonald	SME: Engineering	Mark Ramsey	\$145.58	Home	166.49%	0.00%	9.0%	\$422.87
Mott MacDonald	SME: Engineering	Martin Walker	\$109.37	Home	166.49%	0.00%	9.0%	\$317.69
Mott MacDonald	SME: Engineering	Noel Vivar	\$82.59	Home	166.49%	0.00%	9.0%	\$239.90
Mott MacDonald	SME: Engineering	Randall Essex	\$188.00	Home	166.49%	0.00%	9.0%	\$546.09
Mott MacDonald	SME: Instrument Specialist	Michael Piepenburg	\$111.81	Home	166.49%	0.00%	9.0%	\$324.78
Mott MacDonald	SME: Procurement	Mary Cay O'Malley	\$144.98	Home	166.49%	0.00%	9.0%	\$421.13
Mott MacDonald	SME: Procurement	Steve Dowell	\$89.97	Home	166.49%	0.00%	9.0%	\$261.34
Mott MacDonald	SME: Project Controls	Michael Gaunt	\$115.39	Home	166.49%	0.00%	9.0%	\$182.94
Mott MacDonald	Systems Integration Lead	Joe Bayat	\$136.90	Field	142.51%	0.00%	9.0%	\$361.88
Mott MacDonald	Systems Integration Manager	Ben Williams	\$96.23	Field	142.51%	0.00%	9.0%	\$254.37
Mott MacDonald	Technical Editor	Karen Saux	\$80.50	Home	166.49%	0.00%	9.0%	\$233.83
Mott MacDonald	Track & Systems Package Lead	Raquel Rhoads	\$79.11	Field	142.51%	0.00%	9.0%	\$209.12
Mott MacDonald	Visualization Lead	Naomi Seto	\$62.56	Home	166.49%	0.00%	9.0%	\$181.72

Downtown Transbay Extension  
Program Management and Construction Management Services  
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
Pendergast Consulting Group	Community Outreach Specialist	Paul Pendergast	\$89.73	Home	121.00%	0.00%	9.0%	\$216.15
Saylor Consulting	Estimator	Drew Erickson	\$135.00	Home	148.92%	0.00%	9.0%	\$366.29
Saylor Consulting	Independent Cost Estimator	Brad Saylor	\$135.00	Home	148.92%	0.00%	9.0%	\$366.29
Towill	Survey Party (2-man)	Towill	\$159.12	Field	183.45%	0.20%	9.0%	\$491.94
Towill	Surveyor	Towill	\$104.00	Field	183.45%	0.20%	9.0%	\$321.53
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Rita Poon	\$48.44	Field	104.23%	0.22%	9.0%	\$107.94
WSP	Assistant Office Engineer	Frankie Kakar	\$75.09	Field	104.23%	0.22%	9.0%	\$167.32
WSP	Assistant Resident Engineer	Jake Jones	\$107.36	Field	104.23%	0.22%	9.0%	\$239.23
WSP	Construction Safety - Heavy Civil	James Gomez	\$122.87	Field	104.23%	0.22%	9.0%	\$273.78
WSP	Contracts Manager	Cynthia Holt	\$96.52	Field	104.23%	0.22%	9.0%	\$211.00
WSP	Deputy Construction Manager	Andy Klieber	\$142.65	Field	104.23%	0.22%	9.0%	\$314.82
WSP	Deputy Project Control Manager **	Hans Hoppe	\$145.16	Field	104.23%	0.22%	9.0%	\$323.46
WSP	Estimator	Tim Curtain	\$104.28	Home	140.30%	0.32%	9.0%	\$273.47
WSP	Information Management Clerk	TBDf	\$35.00	Field	104.23%	0.22%	9.0%	\$77.99
WSP	Inspector - Civil	Kelsey Littell	\$79.78	Field	104.23%	0.22%	9.0%	\$177.77
WSP	Inspector - Communications	Gino Spadafore	\$108.09	Field	104.23%	0.22%	9.0%	\$240.86
WSP	Inspector - Communications	Taiwo Gray	\$80.74	Field	104.23%	0.22%	9.0%	\$179.91
WSP	Inspector - Electrical	Taiwo Gray	\$80.74	Field	104.23%	0.22%	9.0%	\$179.91
WSP	Inspector - Mechanical	Filip Lyashenko	\$60.23	Field	104.23%	0.22%	9.0%	\$134.21
WSP	Inspector - Mechanical	Filip Lyashenko	\$60.23	Field	104.23%	0.22%	9.0%	\$134.21
WSP	Inspector - Plumbing	Michael Macniven	\$87.80	Field	104.23%	0.22%	9.0%	\$195.64
WSP	Inspector - Plumbing	Michael Macniven	\$87.80	Field	104.23%	0.22%	9.0%	\$195.64
WSP	Inspector - Structural	Brice Ehoff	\$81.39	Field	104.23%	0.22%	9.0%	\$188.62
WSP	Lead Inspector	David Ho	\$75.60	Field	104.23%	0.22%	9.0%	\$175.20
WSP	Main Civil Tunnel Package Lead	Sangmin Kim	\$105.79	Field	104.23%	0.22%	9.0%	\$235.73
WSP	Office Engineer	Chelsey McGrew	\$77.51	Field	104.23%	0.22%	9.0%	\$139.07
WSP	Quality Assurance Manager	Sissel Berntsen-Heber	\$137.01	Field	104.23%	0.22%	9.0%	\$305.30
WSP	Rail Activation Manager	Gary Kennerly	\$132.81	Field	104.23%	0.22%	9.0%	\$295.94
WSP	Rail Coordination Manager	Keith Seymour	\$110.75	Field	104.23%	0.22%	9.0%	\$237.38
WSP	Senior Cost/Schedule Analyst	Ed Rollerson	\$96.90	Home	140.30%	0.32%	9.0%	\$254.12
WSP	SME: Dewatering	Robert Roat	\$90.73	Home	140.30%	0.32%	9.0%	\$237.94
WSP	Stations Fitout Package Lead (and Building Demo Lead)	Douglas Keys	\$98.77	Field	104.23%	0.22%	9.0%	\$217.98
WSP	Third Party Coordinator	Zylah Doria	\$90.04	Field	104.23%	0.22%	9.0%	\$200.64
WSP	Utilities BIM Coordinator	Sergio Arellano	\$86.41	Field	104.23%	0.22%	9.0%	\$192.55



**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). **General and administrative (G&A)** means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.
- (k). **Government** means the United States of America and any executive department thereof.
- (l). **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.
- (m). **Recipient** means the TJPA or another entity that provides fund to the TJPA as a subgrantee.
- (n). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (o). **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.
- (p). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (q). **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 or damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**19. LOBBYING**

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

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

- (a). The contractor shall submit the “New Restrictions on Lobbying Certification” if the regulation is applicable to the particular agreement.
- (b). (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

- (2). If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form- LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. Such forms are forwarded from tier to tier up to the TJPA.

## **20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT**

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

- (a). **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b). **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (c). **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

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

## **21. SEISMIC SAFETY REQUIREMENTS**

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

The Contractor agrees that any new building or addition to an existing building that is the subject of this Agreement will be designed and constructed in accordance with the standards for Seismic Safety required

in U.S. DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance with such regulations to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Agreement, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **22. BONDING REQUIREMENTS**

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

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

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

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

- (a). **Bid Security**  
A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.
- (b). **Rights Reserved**  
In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income

generated thereby which has been retained by the TJPA) shall prove inadequate to fully recompense the TJPA for the damages occasioned by default, then a bidder agrees to indemnify the TJPA and pay over to the TJPA the difference between the bid security and the TJPA's total damages, so as to make the TJPA whole.

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

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

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

(a). Performance Bonds

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

(b). Payment Bonds

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

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

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

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

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

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

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

Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

- (c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.
- (d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  - 1. The penal amount of payment bonds shall equal:
    - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
    - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
    - (iii) \$2.5 Million if the Agreement price is increased.

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

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

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

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

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

- (a). The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- (b). The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

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

**\*\*** *This requirement applies to any Agreement for construction greater than \$2,000.*

*“Construction,” for purposes of this requirement, includes “actual construction, alteration and/or repair, including painting and decorating.” (29 CFR Section 5.5[a]).*

(a). **Minimum Wages**

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

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

- (2). (A). The TJPA CFO (or their designee) 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 TJPA CFO (or their designee) 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 TJPA CFO (or their designee) 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 TJPA CFO

(or their designee) 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 TJPA CFO (or their designee) or will notify the TJPA CFO (or their designee) 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 TJPA CFO (or their designee) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TJPA CFO (or their designee) shall refer the questions, including the views of all interested parties and the recommendation of the TJPA CFO (or their designee), 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 TJPA CFO (or their designee) or will notify the TJPA CFO (or their designee) 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 TJPA CFO (or their designee) 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 TJPA CFO (or their designee) 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 TJPA CFO (or their designee) 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 TJPA CFO



(or their designee) 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 TJPA CFO (or their designee) or will notify the TJPA CFO (or their designee) 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 TJPA CFO (or their designee) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TJPA CFO (or their designee) shall refer the questions, including the views of all interested parties and the recommendation of the TJPA CFO (or their designee), 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 TJPA CFO (or their designee) or will notify the TJPA CFO (or their designee) 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 6/5/2024

Signature 

Company Name AECOM Technical Services, Inc.

Title Sr. Vice President, Transportation West Coast

*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 6/5/2024

Contractor Name AECOM Technical Services, Inc.

Authorized Representative Name Andrew Liu

Signature 

Title Sr. Vice President, Transportation West Coast

**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 6/5/2024

Contractor Name AECOM Technical Services, Inc.

Authorized Representative Name Andrew Liu

Signature 

Title Sr. Vice President, Transportation West Coast

**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 6/5/2024

Contractor Name AECOM Technical Services, Inc.

Authorized Representative Name Andrew Liu

Signature 

Title Sr. Vice President, Transportation West Coast

**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: AECOM Technical Services, Inc.

Authorized Representative Name: Andrew Liu

Authorized Representative Title: Sr. Vice President, Transportation West Coast

Authorized Representative Signature: 

Date: 6/5/2024

**Attachment 2**

**MODEL**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
TJPA and AECOM TECHNICAL SERVICES, INC.**

THIS AGREEMENT ("Agreement") is entered into as of the \_\_\_ day of \_\_\_ 20\_\_\_, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and ~~Contractor Name~~AECOM Technical Services, Inc., a California corporation ("Contractor").

**Recitals**

A. The TJPA requires \_\_\_\_\_Program Management and Construction Management Services ("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 Contractor acknowledges and agrees that the TJPA does not expressly or impliedly guarantee that any or all of the total contract will be funded or will be authorized to the Contractor. The Contractor acknowledges and agrees that funding may occur in phases. The Contractor further acknowledges and agrees that the nature of the work under this Agreement and the limitations of the TJPA's funding require that the TJPA authorize the Contractor to perform only limited scopes of work based on the immediate needs of the Program. Finally, the Contractor acknowledges and agrees that due to the above described funding uncertainties, the Contractor shall only provide services and receive compensation if and when such funding is authorized and that the determination regarding if and when the Contractor will provide services is within the sole discretion of the TJPA.

~~D.E.~~ 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.F.~~ 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. ~~[or] The Executive Director is authorized under TJPA procurement policy to execute this Agreement for said services by the Contractor.~~

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 ~~—five (5) 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 — [quantity of options] for two (2) additional — year [number of consecutive terms of two (2) years per each at the identical terms set forth in this Agreement, except for any terms that are modified by the mutual agreement of the parties. The TJPA may exercise an extension option] options at the TJPA's sole and absolute discretion by providing to the Contractor written notice of such extension on or before the expiration date of this Agreement, and (ii). The TJPA's exercise of any such extension option shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by the TJPA in the manner required by its policies.~~

## 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.

~~OR~~

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

## 4. Services the Contractor Agrees to Perform

### a. Procedure for Developing Scope of Services

The Contractor agrees to perform the services listed in Appendix A, ~~(Scope of Services),~~ attached hereto and incorporated by reference as though fully set forth within. ~~Each NTP~~ ~~OR~~ ~~RFS~~

~~The Scope of Services consists of a series of tasks that the TJPA may authorize under Annual Work Plans/NTPs or a combination of these documents. The following process shall relate be used to a specified implement the Annual Work Plans/NTPs:~~

(i) The TJPA will initiate each Annual Work Plan/NTP by requesting an Annual Work Plan/NTP proposal. The proposal request will describe the actual tasks to be performed by the Contractor based on the scope of work in Appendix A (Scope of Services), the schedule for performance of these tasks, and the required deliverables.

(ii) The Contractor will prepare and submit to the TJPA an Annual Work Plan/NTP proposal, outlining in detail its approach to performing the requested work. The proposal will include, at a minimum, the following:

- (a) A detailed description of the work to be performed by task (including any subtasks), and the means and methods that will be used to perform the work;
- (b) A work breakdown structure for performing the required tasks;
- (c) A schedule (in both electronic and written format) including milestones for completion for each task (including any subtask) and deliverables;
- (d) A management plan that lists personnel (including any subcontractors) assigned to each part of the Services, and a not to exceed maximum price under that NTP ~~(OR) RFS. No NTP (OR) RFS can be amended,~~ work, along with a rationale for the proposed staffing plan;
- (e) A budget plan, including the following information for the Contractor and all subcontractors included in the proposal:
  - 1. A detailed cost estimate for each task (and any subtask);
  - 2. Estimated hours and hourly rates (as described in Appendix B) by assigned personnel;
  - 3. Estimated other direct costs (including subcontractors) (as described in Appendix B); and
  - 4. Cash flow plan
- (f) List of work products that will be delivered as part of the Annual Work Plan/NTP.

(iii) The TJPA will review the proposal and promptly negotiate with the Contractor the scope, approach to completing the work (including staffing plan and estimated hours), deliverables and schedule requirements.

(iv) Upon completion of negotiation and meeting all Annual Work Plan/NTP prerequisites, the TJPA will direct the Contractor in writing to proceed with the work after the TJPA obtains appropriate governmental approvals. The Contractor may not commence any work without written authorization from the TJPA to proceed.

(v) In the event that the TJPA and the Contractor cannot reach agreement on the terms of any Annual Work Plan/NTP, the TJPA may either cancel the request or have the work accomplished through other available resources. In the alternative, if the TJPA desires the Contractor to undertake and/or complete certain work, the TJPA may direct the Contractor to proceed with the work under such conditions as the TJPA may require to meet the schedule, budget, or other Program requirements. Under no circumstances may the Contractor refuse to undertake work that the Contractor is qualified to perform and which is consistent with the Services if so directed in writing. The TJPA and the Contractor shall continue to negotiate any outstanding terms while the work is being performed. The TJPA shall not deny the Contractor reasonable compensation for such approved work performed.

(vi) If the Contractor proceeds to do work that is out of scope of approved Annual Work Plans/NTPs without first obtaining the TJPAs written approval in accordance with the above procedures,

regardless of the amount or value of the work, the TJPA shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the TJPA's comments or concerns, expediency, schedule constraints, or other considerations will not be acceptable reasons to proceed with unauthorized work without the TJPA's prior written approval.

\_\_\_\_\_ The following shall not be considered out-of-scope work, but shall be considered incidental to the Scope of Services outlined in Appendix A: (1) All work required to comply with local, state and federal codes, regulations and standards, as interpreted by local, state or federal agencies having approval or sign-off authority for this Program; and (2) All work required to correct deficiencies and errors, including work related to resubmittals of work product that are evaluated reasonably by the TJPA to be incomplete or inadequate.

(vii) The TJPA's decision to authorize any work under Annual Work Plans/NTP will be at the TJPA's sole discretion and largely depend on (1) the TJPA's evaluation of the Contractor's services and work products previously authorized and completed or in-progress (i.e., whether the services and products are of satisfactory quality to the TJPA and whether such services and products were completed within the agreed-upon budget and within a reasonable schedule); (2) approval from and/or compliance with requirements of the FTA and other funding agencies; and (3) the availability of funding.

**b. Key Personnel and Staffing**

Work under this Agreement shall be performed only by competent personnel and staffing under the supervision of and/or in the employment of the Contractor.

The Contractor's Key Personnel are specified in Appendix A-1 (Key Personnel). The Contractor agrees to commit and assign the Program Contract Manager to manage this Program for the Contractor and to serve as the single official contact on behalf of the Contractor in all matters related to the Program for the duration of the Contract. The Contractor agrees that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract.

The Contractor shall advise the TJPA immediately any time one of the Key Personnel deviates from its committed role to the Program. The TJPA may in turn require the Contractor to provide a remedy and/or corrective actions for such deviations.

If the Contractor proposes substitutions for any of the Key Personnel who are listed in Appendix A-1, the Contractor shall propose a replacement in writing to the TJPA's Executive Director or designee for approval. Substitutions will not be approved ~~except in writing and for~~ extenuating circumstances (e.g., illness or departure from company). If the performance of any person assigned to a Key Personnel position or staffing is determined to be unsatisfactory by the TJPA, the TJPA reserves the right to direct the Contractor to replace that person and/or take any other appropriate remedial action without prejudice to the TJPA or the services contractor is obligated to perform under this Agreement.

The Contractor shall replace any Key Personnel departing from the Program or departing from their assigned role in the Program with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days after the departure. Failure to replace Key Personnel shall be cause for the TJPA to suspend invoice payments. Furthermore, the Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Contractor shall bear any costs related to and be held fully responsible for any training, re-training, duplicate staffing, inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Program or departing from their assigned role in the Program before the end of the

term of the Agreement. The Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training, re-training, duplicate staffing and learning on the job, etc.

**c. Current Workload and Available Resources**

The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work immediately upon receipt of NTP. In addition, the Contractor shall make good faith efforts to have all contracts signed by an authorized representative of the TJPA with subcontractors within three (3) weeks of Annual Work Plan/NTP.

To minimize the potential

**d. Information and Data**

The Contractor shall request in writing any information and data it will require from the TJPA for its work. The Contractor shall identify the timing and priority for which this information and data will be required in its response to a request for proposal for an Annual Work Plan/NTP. The Contractor and the TJPA shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Annual Work Plan/NTP.

**e. Contractor's Performance**

The Contractor shall meet with the TJPA on a quarterly basis to evaluate the Contractor's performance under the Agreement with respect to the following:

- (i) Contractor's adherence to this Agreement.
- (ii) Quality of interest performance of Key Personnel and other staff assigned to the Program by the Contractor and its subcontractors.
- (iii) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the TJPA's staff and other contractors, including design, grant management, financial, construction management and other professionals.
- (iv) Management of authorized budget for Annual Work Plans/NTPs.
- (v) Adherence to agreed schedule.
- (vi) Quality of deliverables.
- (vii) Monitoring, reporting and updating of progress of assigned work.
- (viii) Timeliness in resolving issues, including issues arising from performance evaluations.
- (ix) Working relationship between Contractor's team and other stakeholders.

Should the TJPA be dissatisfied with any of the above categories of Contractor performance, the TJPA will render a negative evaluation on the Contractor's performance for the quarter preceding the evaluation. In such cases, the Contractor shall be required to formulate and deliver to the TJPA within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to the TJPA on a monthly basis until the problem areas have been resolved or brought under control. The Contractor's receipt of more than two negative quarterly performance evaluations during the term of this Agreement will be considered by the TJPA when determining whether to authorize the Contractor to proceed with future phases of the Agreement.



For each ~~unfair~~ category of Services undertaken by Contractor (e.g., scheduling, reporting, accounting), Contractor shall perform such Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in California on large, complex regional transportation projects.

**f. Transmittal of Products**

At a time when requested by the TJPA's Executive Director or their designee, and after completion of each task and subtask, the Contractor shall transmit to the TJPA all documents and work product (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Program. Documents and work product include, but are not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work product for recordkeeping purposes.

The Contractor's Key Personnel shall have thoroughly reviewed and approved all documents and work product and signed off as such prior to transmitting to the TJPA.

**g. Reproduction of Products**

The Contractor shall arrange and provide for all printing (or other required reproduction) of all documents and work product produced in the course of its and its subcontractor's work. The TJPA shall determine the documents and work product to be reproduced and the type, quality, and quantity of the reproduction. The cost of reproduction shall be treated as a reimbursable expense under this Agreement. The Contractor shall make its best efforts to obtain ~~competitive advantage~~ quotations for any reproduction cost exceeding \$500.

**h. Design**

Except where the TJPA expressly requests the Contractor to perform design services in an Annual Work Plan/NTP, the Services to be performed by Contractor shall not impose upon it any obligation to assume any responsibilities, duties, services, or activities assumed or required to be rendered or performed by any Architect, Engineer, or Construction Contractor employed by, or associated with, the TJPA in relation to this Program. In performing constructability review, value engineering, verification of existing conditions, hazard analysis, safety analysis and cost effectiveness or any other review involving the drawings and/or specifications for the Program, the Contractor does not undertake to perform any design work nor does it accept responsibility for any of the design features or design of the Program, which shall remain the sole responsibility of the Architect, Engineer, or Construction Contractor, as appropriate.

**i. Safety**

(i) Contractor's Responsibility for Safety of its Employees. The Contractor is responsible for the safety of the Contractor's employees and the employees of the Contractor's subcontractors.

(ii) Contractor's Monitoring of the Work of Construction Contractors for Contract Compliance. Contractor shall be required to monitor and document the work of construction contractors, including their subcontractors, suppliers of any tier (collectively, the "Construction Contractor"), as identified in Appendix A (Scope of Services) and subsequent amendments, for compliance with



applicable contract documents (including without limitation, plans, drawings and specifications, quality, and health and safety plans), federal, state and local laws, rules and regulations pertaining to health and safety, including federal and/or state OSHA rules and regulations. Contractor shall perform such responsibilities for the sole purpose of monitoring contract and regulatory compliance on behalf of the TJPA. Contractor shall not supervise, direct, have control over, or have responsibility for construction means, methods, sequences, techniques of the Construction Contractor. In no event shall such monitoring responsibilities be construed as imposing on Contractor any duties or responsibilities to employees of Construction Contractor.

(iii) Indemnification. The TJPA will include Contractor in the scope of the general indemnity of original construction contractor under contract to the TJPA. Due to Contractor's unique project management role, the risk of inadvertent omission of such indemnification requirements rests with Contractor.

**j. Hazardous Materials**

Nothing in this Agreement shall be construed or interpreted as requiring the Contractor to be or assume the status of an owner, operator, generator, transporter, storer, or any other potentially responsible party as defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state, or local statute, regulations, order or administrative finding for the enforcement of such act or statute, governing the treatment, storage, transportation, reporting and disposal of hazardous substances.

For purposes of this Agreement, the term "hazardous substance" shall mean and include, but shall not be limited to, any element, constituent, chemical substance, compound, or mixture, which are defined in or induced under or regulated by any federal, state or local statute, regulation, order or administrative finding for enforcement of such statute, regulation, or order pertaining to environmental regulation, contamination, clean-up or disclosure, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Toxic Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational Safety and Health Act, and the Superfund Amendments and Reauthorization Act of 1986.

**k. Third Party Litigation**

As part of its scope of work, the Contractor agrees to testify at the TJPA's request if litigation is brought by a third party against the TJPA in connection with the Program. Unless the action is brought by the Contractor, or is based upon the Contractor's negligence, the TJPA will compensate the Contractor for the preparation and the testimony at the Contractor's standard hourly rates.

**l. Program Direction**

The work to be performed by the Contractor under this Agreement shall be subject to the direction of the Executive Director of the TJPA or their designee. As used in this Agreement, the term "program direction" shall include but not be limited to the following:

(i) Directions to the Contractor, which shift work emphasis between tasks, require pursuit of certain activities, or otherwise provide information and program guidance to the Contractor in order to accomplish the Scope of Services described in Appendix A, and in the current Annual Work Plan/NTP.



(ii) Review and, where required, approval or acceptance of submittals or other products prepared by the Contractor in the performance of its services.

The Contractor acknowledges and agrees that it shall not enter direct any request for clarification or other communication concerning program direction first to the Executive Director or their designee. The Executive Director or their designee is the designated TJPA employee to provide direction to all Key Personnel and staffing assigned to the Program.

**m. Submittals and Responses**

The TJPA and the Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Annual Work Plan/NTP.

The TJPA's review and comments on the Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the TJPA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state, and federal codes, regulations, and standards.

If the Contractor considers certain review comments or directives, either written or oral, by the TJPA to require work efforts not included in approved Annual Work Plans/NTPs, the Contractor shall provide the TJPA with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures elsewhere in this Agreement.

**n. Intern Mentoring Program**

The Contractor shall cooperate with the TJPA to either expand its adopted intern mentoring program through a professional architect/engineering/management organization's intern mentoring program, or the Contractor shall create an intern mentoring program specifically for this Program. The purpose of the intern mentoring program shall be to involve local youth or residents interested in exploring professional careers in architecture, engineering, construction management, or related professional services, into the professional services work of the Contractor on the Program. The intern mentoring program will be designed to engage, inform, and challenge youth, and to enlighten and motivate students toward professional careers in architecture, engineering, construction management, and related professional services. The program will include opportunities throughout the period of the Program for local high school youth or local residents to participate as a volunteer or paid intern in the conduct of substantive professional services work of the Contractor on the Program. The Contractor will contact and seek intern applicants from local schools and community-based organizations. The Contractor shall report to the TJPA those individuals participating in the intern mentoring program, and their activities on the Program.

**5. Compensation** ~~a contract with any property owner with respect to any property that is planned for acquisition by the TJPA on Appendix E~~

**a. Generally**

All compensation due to the Contractor for all services performed under this Agreement shall be computed in conformance with the provisions of Appendix B attached hereto, and any properties that are subsequently added to this list.

**5. Compensation**

~~All work~~The maximum amount payable under this Agreement (“Contract Limit” or “Ceiling Price”) shall not exceed two hundred ninety-seven million three hundred thirty-five thousand four hundred twenty Dollars (\$297,335,420) (\$158,165,635 over the base term and \$139,169,785 over the option periods if exercised).

~~Billing and reimbursement~~ under this Agreement shall be ~~compensated on an [choose one] hourly [or] fixed fee by deliverable basis, subject to any maximum price set forth in a particular NTP /OR/ RFS. In no event shall the total~~ consistent with Appendix B to this Agreement

~~Notwithstanding any contrary provision of this Agreement, the Contractor is not obligated to perform any services once the Contract Limit has been reached unless authorized by a mutually agreed upon modification to this Agreement, and the TJPA is not obligated to compensate the Contractor for services performed after the Contract Limit is reached unless authorized by modification to this Agreement.~~

~~The hourly rates (including wages, indirect costs, general and administrative expenses, and profit) and other direct costs associated with this Agreement shall be subject to the rate requirements set forth below and in Appendix B. The hourly rates and other direct costs shall be negotiated and established in each Annual Work Plan/NTP agreement.~~

**b. Actual Compensation**

~~Actual compensation under this Agreement exceed [amount specified here should be for original term and not include option term] \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The breakdown of the Contractor’s fees appears in Appendix B. Fees shall be determined as set forth in an Annual Work Plan/NTP and Appendix B.~~

~~— [insert the appropriate reference consistent with 5(a) above] 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. [if this is a fixed fee by deliverable payment structure, the fee amount per deliverable should not change over the term of the contract]~~

No charges shall be incurred under this Agreement, nor shall any payments become due to the Contractor until ~~the Services~~ reports, services, or both, required under this Agreement ~~or under a specific Annual Work Plan/NTP~~ are received from the Contractor and approved by the Executive Director as being in accordance with this Agreement. The TJPA, in its sole discretion, 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.

Compensation shall be further subject to the following requirements:

(i) Conform with (a) the work to be performed pursuant to an accepted Annual Work Plan/NTP or approved by the TJPA as compensable out of scope work or ordered by the TJPA pursuant to this Section 5; (b) any compensation limits or sublimits set forth in such Annual Work Plan/NTP or written approvals, and this Agreement; and (c) all other terms of this Agreement.

(ii) Be necessary in order to accomplish the work.

(iii) Be reasonable for the services to be performed.



(iv) Be actual net costs or prices to the Contractor or its subcontractors at any tier, (e.g., the cost or price less any refunds, rebates, or other items of value received by Contractor or its subcontractors at any tier, that have the effect of reducing the cost or price actually incurred). As used herein, the term “costs” shall include the following:

(a) Those Program costs recorded by the Contractor that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.

(b) Those Program costs incurred in conformance with Appendix B, but not necessarily paid, but only if the Contractor is not delinquent in its payment of such costs which it is obligated to pay in providing services on this Program.

(c) The amount of reimbursement that has been paid by the Contractor for subcontracted services under similar cost standards.

**c. Rates**

Within thirty (30) days after award of this Agreement, the Contractor will submit information necessary to establish Rates for the performance of services under this Agreement. The TJPA shall not approve any invoice or make any payment under this Agreement until such time as the Rates are established. The parties will negotiate in good faith and enter into a Payment Terms and Rate Agreement in substantially the form attached as Appendix B (herein called “rate agreement”) on an annual or multi-year basis for the work to be performed for each of the Contractor’s fiscal year(s). At the end of the Contractor’s fiscal year(s), should the parties fail to negotiate a new rate agreement, the Contractor agrees to accept the provisions of the previous rate agreement until such time as a new rate agreement is accepted. Any invoices submitted prior to the execution of the rate agreement will be subject to the existing previously negotiated rates.

**d. Disallowed Or Otherwise Not Recognized Costs**

The Contractor understands and agrees to the following:

(i) That any compensation or reimbursement received under this Agreement does not constitute a final decision by the TJPA as to the allowability of such compensation or reimbursement, and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement or of the Contractor’s obligations under the Agreement (including, but not limited to, requirements of the Agreement to be included in the Contractor’s subcontracts).

(ii) That unless approved otherwise by the Executive Director or their designee, the TJPA will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed. Any audit by the TJPA must be commenced within three (3) years after the termination, completion or expiration of this Agreement. Once commenced, any audit performed by the TJPA shall be completed in a reasonable amount of time.

(iii) If the TJPA determines that the Contractor or its subcontractor(s) is not entitled to either the compensation or reimbursement requested or received, the TJPA will notify the Contractor stating the reasons therefore.



(iv) Completion of the work under this Agreement will not alter the Contractor's or its subcontractors' obligation to return any funds due the TJPA as a result of later refunds, corrections, or other transactions, nor alter the TJPA's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

(v) 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 Contractor under this Agreement.

**e. Reimbursable Expenses**

The TJPA shall reimburse the Contractor only for those authorized expenses identified in Appendix B to this Agreement.

**f. Payment; Invoice Format**

The Contractor shall be compensated and reimbursed by the TJPA on the basis of invoices submitted every month for services performed during the preceding month. Invoices shall be submitted within approximately thirty (30) days after the end of said calendar month. For the end of the fiscal year, monthly invoices shall include up to the last day of the calendar month ending June 30th; invoices starting the next fiscal year beginning July 1st shall be included in the next calendar month invoice cycle. 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 charges for each individual assigned under this Agreement shall be listed separately. Further, Invoices furnished by the Contractor under this Agreement shall be in a form acceptable to the TJPA and each invoice shall include:

- Contract Number
- A unique invoice number
- Annual Work Plan/NTP Number
- Name and position of employee
- Description of the work performed
- Hours worked by employee
- Rate per employee
- Cost by employee
- Other Direct Costs
- Subcontractor Costs supported by itemization in the same format described above
- Fixed-Fee for current invoice period and Fixed-Fee paid to date
- Total Costs
- Percent of Schedule Completed and Budget Expended
- DBE/SBE Progress Payment Report (as an attachment)

**g. Invoice Disputes**

Should the TJPA contest any portion of an invoice, the disputed portion shall be held for resolution, but the uncontested balance shall be processed for payment. The TJPA shall furnish an explanation for each contested cost item. The TJPA may, at any time, conduct an audit of any and all



records kept by the Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices, or alternatively, will be refunded by the Contractor.

**h. No Late Charges**

The TJPA shall make payment to the Contractor at the address specified in the section entitled "Notices to the Parties." The TJPA shall promptly route to the TJPA funding agencies all proper invoices submitted by the Contractor. The TJPA shall make a good faith effort to pay undisputed amounts in such invoices within thirty (30) days after their approval by the necessary and appropriate TJPA funding agencies. However, in no event shall the TJPA be liable for interest or late charges for any late payments. The Contractor acknowledges that the provisions of Civil Code § 3320 and Public Contract Code § 7107 do not apply to the Contractor or this Agreement, and to the extent they apply, the Contractor waives the protections of these and similar statutes to the greatest extent permitted by law.

**i. Changes To Scope or Annual Work Plans/NTP**

The TJPA reserves the right to order modifications/change orders to the Scope of Services (as set forth in Appendix A), or the Annual Work Plans/NTPs. Modifications/change orders may consist of additions, deletions, or other change in the Contractor's Services. Modifications/change orders shall specify the changes ordered and the adjustment of compensation and completion time required, if any, for the modified scope. All modifications/change orders shall be incorporated in an amended Annual Work Plan/NTP. The TJPA and the Contractor shall negotiate and execute all such modifications/change orders.

The Contractor understands and agrees that Contractor will not receive additional compensation or reimbursement for costs incurred prior to the effective date of a duly executed modification/change order or for any costs associated with negotiating the modification/change order. The Contractor's execution of the modification/change order shall constitute a waiver of claims for additional compensation or extension of time for the specified scope or work, except as set forth in the modification/change order.

When time does not allow for a modification/change order to be negotiated, or in the event that the TJPA and the Contractor cannot reach agreement on such modification/change order, the TJPA may issue a unilateral change order instructing the Contractor to proceed with a change in the Contractor's Services based on the TJPA's estimate of cost and time to perform the change in the work. Upon receipt of a unilateral change order, the Contractor shall proceed with the ordered work. However under no circumstances shall the Contractor be required to perform work that is not consistent with the Services on a unilateral basis.

Should the Contractor disagree with any terms or conditions set forth in a unilateral change order, the Contractor shall submit a change order request within seven (7) days after receipt of the unilateral change order. If such a request is not submitted as required, the Contractor waives all rights to additional compensation for such work, and payment constituting full compensation for work included in the unilateral change order will be made as set forth in the unilateral change order. If the Contractor timely submitted a change order request as set forth above following receipt of a unilateral change order within ninety (90) days after completion of the unilateral change order work, the parties will meet informally in an effort to resolve any outstanding compensation issues.

~~a. In no event shall the TJPA be liable for interest or late charges for any late payments.~~  
In addition to the requirements set forth in the preceding paragraph, the Contractor waives all costs exceeding the TJPA's estimate for the unilateral change order work unless the Contractor submits a written notice of a dispute within seven (7) days after one of the following, whichever occurs first: (1) the

Contractor submits an invoice for completion of the work under the unilateral change order; or (2) the Contractor's receipt of written notice from the TJPA that the TJPA accepts or otherwise considers the unilateral change order work completed.

## 6. **Guaranteed Maximum Costs**

a. The ~~TJPA's~~ TJPA's payment obligation hereunder shall not at any time exceed the amount certified by the Chief Financial Officer for the purpose and period stated in such certification, or the maximum price set forth in an Annual Work Plan/NTP ~~/OR/ RFS~~ with respect to the work covered under that Annual Work Plan/NTP ~~/OR/ RFS~~.

b. Except as may be provided by laws governing emergency procedures, ~~officers and employees of the TJPA~~ TJPA representatives 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 Annual Work Plan/NTP ~~/OR/ RFS~~ 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 and this Agreement.

~~Officers and employees of the TJPA~~ TJPA representatives 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~~ Agreement or Annual Work Plan/NTP ~~/OR/ RFS~~ 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 Annual Work Plan/NTP ~~/OR/ RFS~~ 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."~~

## 7. **Intentionally Omitted**

## 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.~~ statutory penalties set forth in the code. 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.~~

#### **9. Suspension and Debarment**

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; the TJPA does not retain the right to control the means or the method by which the Contractor performs work under this Agreement.

### 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~~TJPA's financial liability so that the ~~TJPA's~~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~~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~~ Worker's Compensation, in statutory amounts, with ~~Employers'~~ 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 ~~\$32,000,000~~ 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 ~~\$+10,000,000~~ each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

~~(5) Umbrella Liability Insurance with limits not less than \$10,000,000 each occurrence and \$10,000,000 aggregate, which coverage shall respond in excess of the coverage described in Section 15(a)(2) and Section 15(a)(3) above.~~

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-~~7~~ (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.

~~The Contractor. Each insurance policy required above shall provide thirty (30) days' advance written that coverage shall not be canceled, except with 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~~ (1) the retroactive date must be shown, and must be before the date of the Agreement or the beginning of contract work, (2) the insurance must be maintained continuously throughout the term of this Agreement, and without lapse, for a period of at least 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, and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years beyond the expiration of this Agreement.

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~~ Services 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~~ a current rating comparable to A.M. ~~Best~~ Best's rating of no less than A-; VII or higher, that are authorized to ~~conduct~~ 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~~ 2) for the Professional Liability Insurance, make available for the TJPA's inspection a complete, certified copy of the declarations and applicable policy language, including all applicable conditions, exclusions, definitions, terms, endorsements and any other applicable language, effecting coverage required by this Article 15, which copy may be redacted to exclude proprietary information. Failure to maintain insurance shall constitute a material breach of this Agreement.

~~Regarding Workers'~~ h. The Compensation, the Contractor hereby ~~agrees grants to waive~~ the TJPA a waiver of any right to subrogation which any insurer of the Contractor may acquire ~~from against~~ the Contractor/TJPA by virtue of the payment of any loss. ~~under such insurance.~~ The Contractor agrees to obtain any endorsement that may be necessary to ~~effect affect~~ this waiver of subrogation. The Workers' Compensation policy shall be endorsed with, but this provision applies regardless of whether or not the TJPA has received a waiver of subrogation in favor of the TJPA for all work performed by the Contractor, its employees, agents and subcontractors; endorsement from the insurer.

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.

#### ~~16.1.~~ i. Indemnification

##### ~~a. General Indemnity~~

*~~{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.~~

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

~~The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.~~

~~k. The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the Contractor shall ensure that the TJPA is an additional insured on insurance required from subcontractors.~~

## **16. Indemnification**

### **a. General Indemnity**

To the fullest extent permitted by law, ~~and consistent with California Civil Code § 2782.8(a),~~ 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 (collectively, "claims") to the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.

~~Consistent with California Civil Code § 2782.8(e), if there is subsequently procured a project-specific general liability policy that insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis, then Contractor's duty and cost to defend the TJPA shall not be limited by "the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor."~~

### **b. Limitations**

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

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

~~(3) 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.~~

c. 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~~ Contractor's services under this Agreement.

**17. Incidental and Consequential Damages**

**17. The Liability of Contractor shall be responsible**

~~Contractor's liability to the TJPA for incidental and consequential all damages to the TJPA resulting in whole or in part that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, shall first be satisfied by the proceeds of any Project-wide liability insurance coverage procured by the TJPA, and, if such coverage is not procured or is insufficient or otherwise inapplicable, then from the Contractor's acts or omissions. Nothing in proceeds of any applicable insurance required by Article 15 of this Agreement. Contractor's aggregate liability to the TJPA that is not satisfied by the proceeds of any Project-wide liability insurance coverage, however, 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 not exceed the sum of \$20,000,000.00, inclusive of any amounts paid by Contractor's insurance required by Article 15 of this Agreement.~~

**18. Liability of TJPA**

The ~~TJPA's~~ 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. Delays and Extensions of Time**

The Contractor acknowledges and agrees that its delay in prosecuting the work may result in monetary damages to the TJPA. The Contractor acknowledges and agrees that the TJPA will hold the Contractor responsible and liable for any delay costs to the extent caused by the Contractor.

In the event the Contractor is delayed in the timely prosecution of this Agreement by the TJPA's vendors, suppliers, officers, or employees, or by Uncontrollable Forces through no fault or lack of diligence on the part of the Contractor, the Contractor shall present a written request to the TJPA Executive Director for an extension of time of the performance of the work, together with supporting documents, within thirty (30) calendar days of commencement of the delay of the work. The Contractor shall be deemed to have waived the right to request a time extension if not requested within this period, and shall not have a cause to make a claim of the same TJPA-caused delay at a later date. Approval of such extension of time by the TJPA Executive Director shall not be unreasonably withheld and shall be added to the time for completion of the work.

Any such extensions of time shall be the exclusive remedy to the Contractor for TJPA-caused delays, with the exception of TJPA-caused delays in excess of one hundred twenty (120) days, in which case the Contractor may propose an equitable adjustment.

#### **49. Neither the 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.

TJPA nor the Contractor shall be considered to be in default in the performance of any obligation under this Agreement (other than an obligation to make payment for invoices rendered pursuant to this Agreement) when a failure of performance is the result of Uncontrollable Forces. The term "Uncontrollable Forces" means any cause or causes beyond the control of the TJPA or the Contractor which renders either party unable to perform such obligation. These causes include, but are not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, drought, fire, pestilence, lightning and other natural catastrophes; epidemic, war, riot, civil disturbance or disobedience, sabotage strike, lockout, labor disturbances, and restraint by court order or public authority. Nothing contained in this Section shall be construed as requiring the TJPA or the Contractor to settle any strike, lockout or labor of dispute in which it may be involved, or to accept any permit, certificate or other authorization, or to enter into other contracts or commit to a financing arrangement, which contain conditions or terms which the TJPA or the Contractor determines are unduly burdensome. However, to the extent the Contractor is or becomes aware of Uncontrollable Forces that could or will impact the Program, the Contractor is required to use all reasonable effort to mitigate the harm and damages which would be caused to the Program by such Uncontrollable Forces.

#### **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 the 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'~~~~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'~~~~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 the 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, but in no case shall termination become effective less than fourteen (14) days from the date of the notice.

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.

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



## 22. Rights and Duties Upon Termination or Expiration

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

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

## 23. Notices to the Parties

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

To TJPA: Executive Director  
Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
(415) 597-4620  
[info@tjpa.org](mailto:info@tjpa.org)

To Contractor: Name of Contact  
Contractor Name  
Address  
Phone number  
Email address

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

## 24. Proprietary or Confidential Information of the TJPA

The Contractor agrees that all information disclosed by the TJPA to the Contractor shall be held in confidence and used only in performance of this Agreement, except to the extent the use or disclosure is: (i) authorized by this Agreement; (ii) made after the Contractor receives advance written approval from the TJPA; or (iii) required by law or judicial order.

**25. San Francisco Protection of Private Information**

~~The Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the If this Agreement requires the TJPA to disclose “Private Information” to the Contractor within the meaning of 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 Chapter 12M, the Contractor agrees to all of the following:~~

~~and~~

~~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 shall use such information; or~~

~~(3) The disclosure is required by law or judicial order.~~

~~a. Any disclosure or use of Private Information authorized by this Agreement shall be only in accordance with any conditions or the 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.~~

~~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 Chapter 12M and in this Agreement and only as necessary in performing the services. The Contractor is subject to the enforcement and location of birth, and names of relatives or (2) the law forbids any person from disclosing-penalty provisions in Chapter 12M.~~

~~b. 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 deliverables, including drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files (electronic native 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. The Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

## 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.~~

**30. Intentionally Omitted**

**31. Intentionally Omitted**

**32. Subcontracting**

Subject to specific direction in any Annual Work Plan/NTP, the Contractor is permitted to subcontract portions of this work under this Agreement ~~to the following: \_\_\_\_\_~~ as set forth in Appendix A-2 (Subcontractors). 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.

Any intended substitution of subcontractors listed in Appendix A-2 to this Agreement shall be submitted to the TJPA's Executive Director or their designee prior to the substitution of any subcontractor performing any work under the terms of this Agreement. In the event that a DBE/SBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original DBE/SBE subcontractor with another DBE/SBE subcontractor. No substitution of subcontractors shall be made at any time without the prior written approval of the TJPA Board of Directors.

**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. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

**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. **San Francisco** Limitations on Contributions

Through execution of this Agreement, the Contractor acknowledges that ~~it is familiar with its obligations under~~ Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, ~~or is seeking a contract 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~~ relected official 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~~ submission of ~~negotiations~~ a proposal for the ~~Agreement~~ contract until the later of either the termination of negotiations for such Agreement or ~~six~~ twelve 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~~ The prohibition on contributions applies to each prospective party to the ~~Agreement~~ contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ~~20 percent~~ 10% in the Contractor; any subcontractor listed in the bid or ~~Agreement~~ contract; and any committee that is sponsored or controlled by the Contractor. ~~Additionally, the~~ The Contractor ~~acknowledges~~ certifies that ~~the Contractor must inform it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 required to be informed to the TJPA.~~

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

~~\_\_\_\_\_ In accordance with San Francisco Administrative Code Chapter 12G performing the services, the Contractor may not shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the TJPA for this Agreement from being expended to 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 is subject to the enforcement and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and penalty 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 in Chapter 12G.~~

### 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~~ 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~~ employee 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 Section 12B.2.

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.

~~— 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.~~

e. Intentionally Omitted

f. Consideration of Salary History

The Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K.

#### 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 ~~twenty-five percent (25%)~~ (25%). 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.

Commented [RM1]: Noted

### 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:~~

~~c. The reference to Section 7108.5 of the California Business and Professions Code in Subsections (a) and (b) applies to the extent said provision is ever determined to apply.~~

### 43. San Francisco Minimum Compensation

~~If San Francisco Administrative Code Chapter 12P applies to this Agreement, the Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time~~



off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

#### **44. San Francisco Healthcare Accountability Ordinance**

If San Francisco Administrative Code Chapter 12Q applies to this Agreement, the Contractor shall comply with the requirements of Chapter 12Q.

~~For each hour worked by a Covered Employee during a Pay Period on work funded under the TIPA 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.~~

a. ~~The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TIPA 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.~~

b. ~~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 TIPA shall determine whether such a breach has occurred.~~

e. ~~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 TIPA 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;~~

~~The right to terminate this Agreement in whole or in part;~~

(3) ~~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~~

(4) ~~The right to bar the Contractor from entering into future contracts with the TIPA 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 TIPA. Any amounts realized by the TIPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.~~

d.—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.

e.—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.

f.—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.

g.—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.

h.—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.

i.—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.

j.—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.

k.—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.

—For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the Health Care Accountability Ordinance (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.

a.—Notwithstanding the above, if the Contractor is a small business as defined subject to the enforcement and penalty provisions in Section Chapter 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

b.—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.

Any subcontract Subcontract entered into by the Contractor shall require the subcontractors any subcontractor with 20 or more employees 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.

~~d. 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.~~

~~San Francisco~~

~~e. 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.~~

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

~~g. 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.~~

~~h. 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.~~

~~i. 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.~~

~~j. 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.~~

~~k. 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

~~. Incorporation of Administrative Code Provisions by Reference~~

~~The If applicable to this Agreement, the Contractor must comply with all of the provisions of the First Source Hiring Program, 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, and the Contractor is subject to the enforcement and penalty provisions in Chapter 83.~~

~~a. 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.~~

~~b.—Hiring Decisions~~

~~The Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is “qualified” for the position.~~

~~e.—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.~~

~~d.—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.~~

~~e.—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. San Francisco Consideration of Criminal History in Hiring and Employment Decisions**

~~—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.~~

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.

~~a.—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.~~

~~b.—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.~~

~~d.—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.~~

~~e.—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~~ The provisions of San Francisco Administrative Code Section §12F.5, are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the TJPACity urges companies doing business in Northern Ireland to move towards resolvingresolve employment inequities, and encourages such companies to abide by the MacBride Principles. ~~The TJPA, and~~ 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.~~

#### **49. Intentionally Omitted**

#### **50. San Francisco 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 Arsonic~~**

~~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.

~~51. 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.).~~ Intentionally Omitted

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

The Contractor shall comply with the San Francisco Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

### **53. Intentionally Omitted**

### **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, and Use of Electronic Signatures**

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.

Unless otherwise prohibited by law or TJPA policy, the parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA.

### **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.

### **65. Cooperative Drafting**

This Agreement has been drafted through a cooperative effort of TJPA and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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:

\_\_\_\_\_  
Adam Van de Water, 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

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

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

[Appendix A: Scope of Services](#)  
[Appendix A-1: Key Personnel](#)  
[Appendix A-2: Subcontractors](#)



[Appendix B: Form of Cost Reimbursement and Rate Agreement](#)  
[Appendix C: Additional Insureds](#)  
[Appendix D: USDOT Requirements for Agreements with the TJPA](#)

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



APPENDIX ~~[Attach Scope of Services]~~ A-1

KEY PERSONNEL



**APPENDIX A-2**  
**SUBCONTRACTORS**

## 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.~~

### FORM OF COST REIMBURSEMENT AND RATE AGREEMENT



**APPENDIX C**  
**ADDITIONAL INSURED**

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).~~ **General and administrative (G&A)** means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(k). **Government** means the United States of America and any executive department thereof.

~~(l).~~ **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.

~~(m).~~ **Recipient** means the TJPA or another entity that provides fund to the TJPA as a subgrantee.

~~(n).~~ **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

~~(o).~~ **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.

~~(p).~~ **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

~~(q).~~ **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~~ TJPA CFO (or their designee) 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~~ TJPA CFO (or their designee) 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~~ TJPA CFO (or their designee) 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~~TJPA CFO (or their designee) 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~~TJPA CFO (or their designee) or will notify the ~~contracting officer~~TJPA CFO (or their designee) 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~~TJPA CFO (or their designee) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the ~~contracting officer~~TJPA CFO (or their designee) shall refer the questions, including the views of all interested parties and the recommendation of the ~~contracting officer~~TJPA CFO (or their designee), 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~~TJPA CFO (or their designee) or will notify the ~~contracting officer~~TJPA CFO (or their designee) 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~~TJPA CFO (or their designee) 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~~TJPA CFO (or their designee) 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~~ ~~(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the~~ contracting officer TJPA CFO (or their designee), 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 TJPA CFO (or their designee) 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 TJPA CFO (or their designee), or will notify the contracting officer TJPA CFO (or their designee) 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 TJPA CFO (or their designee) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer TJPA CFO (or their designee) shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer TJPA CFO (or their designee), 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 TJPA CFO (or their designee) or will notify the contracting officer TJPA CFO (or their designee) 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: \_\_\_\_\_

**APPENDIX E**

**PROPERTIES PLANNED FOR ACQUISITION**

The parcels listed below are planned to be acquired (**full, partial or easement**) as part of the Transbay Program. This list is subject to change by the TJPA.

Private Parcels		
Address/Street	Block	Lot
201 Mission St.	3718	026
191 Second St.	3721	22
181 Second St.	3721	23
171 Second St.	3721	25
217 Second St.	3736	95
205-215 Second St.	3736	96
201 Second St.	3736	97
589 Howard St.	3736	098
235 Second St.	3736	123
180 Townsend St.	3788	013
699 Third St.	3788	014
301 Brannan St.	3788	37
35 Stanford St. / 634 Second St.	3788	38
640 Second St.	3788	02
650 Second St.	3788	49-73
670 Second St.	3788	43
678-680 Second St.	3788	44
130 Townsend St.	3788	8
136 Townsend St.	3788	9
144-146 Townsend St.	3788	9A
148-154 Townsend St.	3788	10
164 Townsend St.	3788	74-85
166-178 Townsend St.	3788	12



**Program Management and Construction Management Services  
Selection Committee Report  
April 2024**

**Executive Summary and Recommendation**

In response to Request for Proposals (RFP) No. 23-03 for Program Management and Construction Management Services, issued on June 26, 2023, the Transbay Joint Powers Authority (TJPA) received three (3) proposals by the due date of September 22, 2023. A selection committee convened on October 11, 2023 to evaluate the proposals and shortlisted all three (3) respondents to be considered. On October 27, 2023, the committee conducted oral interviews with the three (3) scoring respondents and finalized its scoring for the program management and construction management services RFP.

Based on the criteria outlined in the RFP, the selection committee recommends that the Transbay Joint Powers Authority (TJPA) negotiate an agreement with Portal Connectors (AECOM, Mott MacDonald, and WSP) for program management and construction management services:

**Background**

The TJPA sought proposals from professional and qualified firms to provide program management and construction management (PMCM) services for the Transbay Program Downtown Rail Extension (DTX)/Portal construction projects. The selected Respondents will work closely with the TJPA’s staff and other consultants to provide the Services. The contract to be negotiated will be for an initial five-year term with options to extend the term for up to two (2) additional two-year terms.

**Schedule**

- |   |                    |
|---|--------------------|
| 1) RFP Issued                             | June 26, 2023      |
| 2) Deadline for Submission of Questions   | August 2, 2023     |
| 3) Answers to Written Questions Posted    | August 15, 2023    |
| 4) Proposals due                          | September 22, 2023 |
| 5) Selection committee evaluation meeting | October 11, 2023   |
| 6) Interviews                             | October 27, 2023   |

### **Selection Committee Members**

- Alfonso Rodriguez, TJPA DTX Project Director
- Carl Holmes, San Francisco County Transportation Authority (SFCTA) Deputy Director, Capital Projects
- Edmond Sum, TJPA Chief Engineer
- Rebecca Mincio, TJPA DTX Project Controls Manager
- Robert Barnard, Peninsula Corridor Joint Powers Board (Caltrain) Deputy Chief, Design and Construction

### **RFP Outreach**

The TJPA posted the RFP on its website for the public to view, posted the RFP publicly for nationwide electronic bidding and sent announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. The RFP announcement is enclosed as Attachment A. In total, the announcement was sent to 847 (iContact) architectural/engineering, program management, construction management service firms and contacts nationwide.

The TJPA received three (3) proposals on or before the RFP submission date, from:

- Arcadis (Arcadis, Jacobs, and COWI)
- Portal Connectors (AECOM, Mott MacDonald, and WSP)
- Transit Connect Partners (PGH Wong and EPC Consultants Inc. JV)

### **Selection Committee Written Proposal Evaluation**

The selection committee met on October 11, 2023 to review the written proposals and evaluate strengths and weaknesses using the criteria listed in the RFP (and reproduced on the written proposal score sheet) (Attachment B). Each committee member individually filled out written scoring sheets. The TJPA Contracts Compliance Officer tabulated and verified the scores. Based upon the written evaluation scoring, all three (3) firms were invited to participate in interviews.

### **Selection Committee Interviews**

On October 27, 2023, the committee conducted oral interviews with all three (3) scoring firms. Each firm had ninety minutes to present and answer questions from the selection committee relevant to the needs of TJPA. Following each interview, the committee discussed the strengths and weaknesses of each firm, and then individually completed and signed interview scoring sheets (Attachment C) and submitted them to the TJPA Contract Compliance Officer for tabulation.

### **Recommendation**

**Portal Connectors (AECOM, Mott MacDonald, and WSP)** was ranked highest by the selection committee and is being recommended to serve the TJPA in the capacity of PMCM. Scores are shown in Attachment D.

\*\*\*\*\*

All proposals submitted in response to this RFP are available for review at TJPA offices. Proposals will be retained for two (2) years, except for the selected consultant's proposal which will be maintained on permanent record.

## **Attachments**

Attachment A, RFP Announcement

Attachment B, Form of Written Scoring Sheet

Attachment C, Form of Interview Scoring Sheet

Attachment D, Overall Scoring Matrix

## **Reference**

Request for Proposals No. 23-03 Program Management and Construction Management Services issued by the Transbay Joint Powers Authority on June 26, 2023.

**Attachment A**  
**ANNOUNCEMENT**

**RFP 23-03 Program Management/Construction Management Services**

The Transbay Joint Powers Authority (TJPA) is issuing a Request for Proposals (RFP) for Program Management and Construction Management services in support of delivering Transbay Program Phase 2 – Downtown Extension (DTX) now known as The Portal. TJPA is seeking firms with qualifications and expertise in providing a complete range of program management and construction management services for large-scale transit and urban infrastructure projects. Completing Phase 2 will fill the critical gap for Peninsula commuters and travelers on Caltrain and the State of California’s future high-speed rail system into the heart of downtown San Francisco. The project will connect eleven transit systems through the Salesforce Transit Center, improving transit connections and contributing to the State’s goal of reducing greenhouse gas emissions and vehicle miles traveled.

<https://www.tjpa.org/about-tjpa/doing-business/contract-opportunities/23-03-program-managementconstruction-management>

Proposals in PDF format must be received by the TJPA at [RFP@tjpa.org](mailto:RFP@tjpa.org) no later than **2:00 pm Pacific Time on Friday, September 22, 2023**. Proposals that are not received by the time and date specified or do not contain all the required information and completed forms shall be deemed non-responsive and rejected without consideration.

Questions may be submitted to [RFP@tjpa.org](mailto:RFP@tjpa.org) by the Submission of Questions deadline no later than **2:00 pm Pacific Time on Wednesday, August 2, 2023**.

## Attachment B

### EVALUATION SCORE SHEET RFP 23-03: Program Management/Construction Management Services

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

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

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

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
Management approach <i>[maximum 40 points]</i>		
Community engagement and outreach strategy <i>[maximum 10 points]</i>		
Qualifications and Experience of the Respondent's Assigned Key Personnel <i>[maximum 35 points]</i>		
References <i>[maximum 15 points]</i>		

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



## Attachment C

### INTERVIEW SCORE SHEET RFP 23-03: Program Management/Construction Management Services

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

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

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

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<b>Presentation</b>		
<p><b>Question 1</b> - It is our intention to instill a culture of “one culture, one team” across the various delivery methods, disciplines, and entities required to deliver The Portal program. Explain how your team will work to break down boundaries, maintain communication, and address tensions to deliver this goal. How would your Team assist in developing an integrated project team environment as envisioned by The Portal?</p> <p><i>[maximum 10 points]</i></p>		
<p><b>Question 2</b> - Discuss your approach to providing sustainable engagement and support throughout the project timeline through succession planning. How did you select the members of your team and your subconsultants? Have you worked with them before on other projects?</p> <p><i>[maximum 10 points]</i></p>		

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<p><b>Question 3</b> - Briefly summarize the proposed interaction and reporting levels between the TJPA staff and the proposed "Key Personnel". What assurances can be provided that the "Key Personnel" proposed on your team's organization chart will be on the project if your team is selected?</p> <p><i>[maximum 10 points]</i></p>		
<p><b>Question 4</b> - Interface and configuration management are critical success factors for The Portal. With multiple contracts and delivery models, multiple complex systems, and potentially multiple entities managing contract packages, how will your team ensure that requirements are tracked from identification through design, procurement, construction, testing, commissioning, and startup to provide a fully integrated functioning result.</p> <p><i>[maximum 10 points]</i></p>		
<p><b>Question 5</b> - The Portal is not using a Design-Build-Operate-Maintain delivery model. However, what is designed and delivered today must operate safely, efficiently, and reliably for generations to come. How will your team ensure that decisions are made at every level that balance the one-time design and capital costs with the long-term operational and maintenance costs to implement the project at the lowest life-cycle expenditure of public funds?</p> <p><i>[maximum 10 points]</i></p>		

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<p><b>Question 6</b> - What methods or metrics will you use to manage all project costs for design, construction, construction management, and project management? Describe how you had to actively initiate a change to recover or mitigate potential or real cost impacts.</p> <p><i>[maximum 10 points]</i></p>		
<p><b>Question 7</b> - What methods or metrics do you use to manage the overall project schedule? Describe how you have mitigated a significant potential or real schedule delay/impact.</p> <p><i>[maximum 10 points]</i></p>		
<p><b>Question 8</b> - What is your approach and implementation to digital delivery and technology to enhance project delivery, reduce risk, and improve overall schedule?</p> <p><i>[maximum 10 points]</i></p>		
<p><b>Question 9</b> - Describe your experience in working on a transit extension project where you had to make sure that the systems integration was acceptable to operate for revenue service. What protocols did you have in place to ensure a revenue service date soon after construction? Or what steps did you take to resolve systems issues timely to achieve revenue service?</p> <p><i>[maximum 10 points]</i></p>		

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<p><b>Question 10</b> - What is your approach to making sure that the operator(s) will be able to operate and maintain the Portal extension when it is ready for revenue service? Describe your experience in keeping the operator(s) engaged during the design and construction of transit/infrastructure extensions.</p> <p><i>[maximum 10 points]</i></p>		

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

## Attachment D

### Written Evaluation Scores (100 points max)

Firm	Panelist A	Panelist B	Panelist C	Panelist D	Panelist E	Average Score
Arcadis	89	86	69	75	77	79.2
Portal Connectors	96	88	70	88	89	86.2
Transbay Connect Partnership	87	92	74	79	80	82.4

### Interview Evaluation Scores (100 points max)

Firm	Panelist A	Panelist B	Panelist C	Panelist D	Panelist E	Average Score
Arcadis	70	81	64	61	64.5	68.1
Portal Connectors	79	82	70	81	92	80.8
Transbay Connect Partnership	78	86	86	75	72	79.4

### Combined Written and Interview Evaluation Scores (200 points max)

Firm	Panelist A	Panelist B	Panelist C	Panelist D	Panelist E	Average Score
Arcadis	159	167	133	136	141.5	147.3
Portal Connectors	175	170	140	169	181	167
Transbay Connect Partnership	165	178	160	154	152	161.8

April 26, 2024

Board of Directors  
Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Email: info@tjpa.org

Subject: RFP #23-03 Program Management and Construction Management Services –  
Protest

Dear Board Members:

The Transit Connect Partners (TCP) received notification of the TJPA's Intent to Award a contract to AECOM for PM/CM services for The Portal. In accordance with the procedures set forth in RFP 23-03, TCP submitted a protest to the TJPA Executive Director on April 19, 2024. The protest is attached. The decision to protest is not one we reached easily or trivially. As we pieced together all the actions involving AECOM during the pursuit, it became clear that we must raise these issues to the TJPA, as we initially did in our letter to TJPA on February 29, 2024.

#### **VIOLATIONS OF "CONE OF SILENCE"**

The most egregious is a violation of the "Cone of Silence", which gave AECOM the opportunity to privately and directly lobby TJPA Executive Staff.

After issuance of the RFP and within the "Cone of Silence", AECOM held a private event the evening of August 16, 2023, at the Transbay Transit Center, of which some invitees understood was an event for The Portal pursuit. During presentations by members of the AECOM team, speakers touted AECOM's efficacy in delivering projects in San Francisco, emphasized the importance of The Portal project as an iconic project in San Francisco, and invited LBEs to speak with staff about joining the team.

TJPA staff, including the Executive Director, who is responsible for resolving protests and disputes regarding this pursuit, were present. This is a violation of the provisions in the RFP and per the RFP, an immediate call for the disqualification of AECOM.

*Additionally*, members of the industry informed us that within the Cone of Silence period, AECOM conducted a "Lessons Learned on Progressive Design-Build Tunnel Projects" session. We were told that AECOM, Mott MacDonald, WSP, and HNTB participated and presented their experiences to the TJPA Program Team, two of whom were on the selection panel. This afforded further access to present their qualifications and experiences to members of the selection panel. None of the highly qualified competing firms were invited to this event despite their significant experience in Progressive Design-Build.

#### **BIASED PANEL SCORING**

We received a redacted copy of the panel scores. It would be relevant to know if the two members of the selection panel who are also on the Program Team scored AECOM highest. If so, influence from the "Lessons Learned" or their daily working relationship with AECOM on Phase One of the Transbay Program become critically important to the impartiality of the scoring. Their participation and influence of the selection is an unfair bias on the part of the selection panel. The San Francisco Contracts Monitoring Division precludes City Project Managers and Project Staff from sitting on selection panels, especially when there is an incumbent, to avoid unfair bias in the selection process.

#### **CONFLICT OF INTEREST**

We believe AECOM cannot deliver unbiased services to the TJPA, given their role as Program Manager for the California High Speed Rail Authority. During stakeholder engagement and program delivery they will be negotiating with themselves. Two major programs like these could

not be effectively firewalled within any organization, and it stands to reason that the program with the largest contract value would receive preferential treatment.

#### **SUPPORT OF LOCAL BUSINESS COMMUNITY**

Finally, though not grounds for protest, it is a matter of frustration that Bay Area public agencies state a desire to support their local business communities, especially those historically subjected to institutional biases. The TCP is a team led by a Joint Venture of two native San Francisco based companies who have been headquartered in S.F. for a combined 70 years. Both are 100% minority-owned graduates of the City's HRC program. Both companies have achieved national prominence by leading billions of dollars of transit and tunnel projects throughout the US, and especially here in the Bay Area since 1990. Our key personnel for this project are all long-standing Bay Area residents who live, shop, and raised their families here – they are passionate about delivering this project. There is no need to import staff from other areas of the country.

#### **CONCLUSION**

If not for the unfair practices of AECOM during the pursuit, we believe that TCP would have been selected for this opportunity. That aside, AECOM's violation of the "Cone of Silence" is grounds for its disqualification.

We hope that the TJPA will diligently investigate the issues and circumstances raised in the protest (attached) and present those findings to you.

We look forward to TJPA making a decision that is consistent with Federal, State and Local policies regarding conflicts of interest, and the important Policy Objectives presented when you passed Board Policy No. 022 in October of 2023.

Thank you for your attention to this matter.

Sincerely,

Transbay Connect Partnership



Emilio Cruz  
Program Contract Manager

# KING & SPALDING

King & Spalding LLP  
1650 Tysons Blvd  
Suite 400  
McLean, VA 22102  
Tel: +1 703 245 1000  
Fax: +1 703 245 9900  
www.kslaw.com

Steven Cave  
Partner  
Direct Dial: +1 703 245 1017  
Direct Fax: +1 202 626 3737  
scave@kslaw.com

April 19, 2024

## *Sent via Electronic Mail and Hand Delivery*

Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Email: info@tjpa.org

Re: Protest Submission for Transbay Joint Powers Authority  
Program Management and Construction Management Services RFP #23-03

Mr. Van de Water,

Transbay Connect Partnership (“TCP”) submits this protest asserting that the Transbay Joint Powers Authority (“TJPA”) acted unreasonably by: (i) failing to disqualify AECOM and ignoring evidence that AECOM violated certain standards of conduct under the TJPA Procurement Policy and the terms of the Solicitation under Request for Proposal #23-03 (“RFP” or “Solicitation”); (ii) including individuals who had an improper bias on the evaluation committee; (iii) issuing an intent to award to AECOM a contract that violates California Government Code Section 1090 (“Section 1090”), and that is inconsistent with the purpose of TJPA Board Policy No. 022 Organizational Conflict of Interest.

More specifically:

- AECOM violated the communications prohibition and policies governing conflicts of interest during two private events hosted by AECOM;
- Two of the five evaluation committee members have maintained a close and daily ongoing working relationship with AECOM, which resulted in improper bias;
- Issuance of the Notice of Intent to Award the contract violates Board (Procurement) Policy 001, which prohibits award to an entity “(1) who, because of other activities, relationships, or contracts, are unable, or potentially unable, to



render impartial assistance or advice to the TJPA; (2) whose objectivity in performing contract work may be impaired; or who have an unfair competitive advantage;

- Issuance of the Notice of Intent to Award this contract to AECOM violates the purpose of TJPA Board Policy No. 022, Organizational Conflict of Interest;
- AECOM is likely ineligible to serve this role due to the restrictions imposed by Section 1090 because its contractual relationship and history managing the California High Speed Rail Authority (“CAHSR”) Project and the TJPA Program means AECOM will have participated in the “making” of the contract; and
- Evaluation criteria was skewed toward the incumbent.

These actions violate various standards of conduct, which require AECOM’s “immediate disqualification.” For the reasons stated below, this protest must be sustained, and the Notice of Intent to Award a contract to AECOM must be revoked, resulting in award to TCP as the next highest rated offeror.

## **I. FACTUAL BACKGROUND**

### **A. The Solicitation**

TJPA is a joint powers agency created on April 4, 2001, through the Joint Powers Agreement—an agreement which gives TJPA the power to make and enter contracts. *See generally* Joint Powers Agreement, 2 (April 4, 2001).<sup>1</sup> TJPA was created to develop, construct, operate, and manage a new transportation terminal and associated facilities in San Francisco, California. *See id.* at 1–2; *see also* RFP at 2. On June 26, 2023, the TJPA released Request for Proposal #23-03 (“RFP” or “Solicitation”) for services related to the Transbay Joint Powers Program (referred to as the “Transbay Program”), Phase 2 – Downtown Extension (“DTX”) otherwise known as the Portal. RFP at 1. The Solicitation contemplated a five-year base term with two two-year options. RFP at 1.

The Transbay Program is a major infrastructure investment project constructed in two phases: Phase 1 and Phase 2. For the completed Phase 1, TJPA constructed and designed the above-grade portion of the Transit Center. RFP at 3. For Phase 2, TJPA issued the Solicitation seeking design and construction services for the DTX tunnel, the build-out for the below-grade train station at the Transit Center, an underground station, a pedestrian tunnel connecting the Transit Center to the Embarcadero BART/Muni Metro station, and a bus facility. RFP at 3–4.

The Solicitation sets forth various standards of conduct for entities submitting a proposal, and for the TJPA personnel involved in the Solicitation. Most critically, the Solicitation prohibits offerors from communicating with TJPA Staff and selection panel members about the

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<sup>1</sup> The Transbay Joint Powers Authority (“TJPA”) was created by the City and County of San Francisco, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, the California High Speed Rail Authority, and Caltrans (ex officio). Joint Powers Agreement, 1 (April 4, 2001). This agreement authorized TJPA to have several powers including but not limited to the ability to “be sued in its own name.” *See id.*

RFP from June 26, 2023 (the Solicitation issuance date) until the date on which TJPA issues a notice of intent to award or cancels the procurement. *See* RFP at 11 (stating that “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.”). The RFP states that violations of this rule will result in immediate disqualification from the procurement. *See* RFP at 11 (“Any violations of the above restriction will result in the immediate disqualification of the Respondent making said contact from further participation in the Transbay Program.”). Exceptions to TJPA’s “no communications” rule are limited: (1) sending TJPA RFP questions (by August 2, 2023), (2) notifying TJPA of issues with the Solicitation itself, and (3) confirming receipt of proposal submission(s). *See id.*

The Solicitation requires TJPA to evaluate offers of qualified Respondents in two distinct steps. *See* RFP at 9. The first step requires offerors to submit a written proposal, satisfying the minimum requirements under Section 4 (Minimum Required Skills and Experience), which is scored against four (4) factors: (1) Management approach, (2) Community engagement and outreach strategy, (3) Qualifications and Experience of the Respondent’s Assigned Key Personnel, and (4) References. *See* RFP at 9 (Section 6.1); *see also* RFP at 4 (Section 4).

The selection committee evaluated offerors against these factors and scored proposals as follows:

	Maximum Points
Management approach	40 points
Community engagement and outreach strategy	10 points
Qualifications and Experience of the Respondent’s Assigned Key Personnel	35 points
References	15 points

RFP at 9. Offerors meeting a minimum score proceeded to the second step—an oral interview. *See* RFP at 9–10.

The second step of the evaluation process included an invitation from TJPA to attend an oral interview in San Francisco. *See id.*<sup>2</sup> The oral interview consisted of a presentation from the offeror and answering questions concerning its respective proposal. *See id.* Key personnel were required to actively participate in the presentation and answer the selection committee’s questions. *See id.* Based on the oral interview, the TJPA selection committee assigned up to 100 points to each final respondent. *See id.*

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<sup>2</sup> Section 6.2 states that Transbay Joint Powers Authority (“TJPA”) “may” invite the Final Respondents to participate in an oral interview; however, this section is written with the knowledge that TJPA did exercise that option by requesting those final respondent(s) which satisfied minimum requirements to attend an oral interview. Transbay Joint Powers Authority Request for Proposal #23-03, 9–10 (June 26, 2023).

Finally, the selection committee combined each respondent's scores from Step 1 (their written proposal) and from Step 2 (their oral interview). *See* RFP at 9. Offerors with the highest scores were selected to negotiate a contract with TJPA. *See* RFP at 10. If TJPA could not come to an agreement with the selected offeror, TJPA may negotiate with other final respondents in the order of their ranking (highest to lowest). *See id.* No agreement between the parties is binding without TJPA Board approval. *See id.* On September 22, 2023, offers were due under RFP #23-03 no later than 2:00 p.m. Pacific Time. *Id.*

## **B. Procedural History**

On July 10, 2023, TJPA held a pre-proposal conference. On July 18, 2023, TJPA held a "Meet the Primes" event to connect prime contractors with potential small business enterprises ("SBE") and disadvantaged business enterprises ("DBE").

The TJPA notified TCP that it had been selected to proceed to Step 2 of the evaluation and invited TCP to participate in an oral interview. On October 27, 2023, TCP presented its technical solutions and participated in an in-person oral interview in San Francisco. On November 1, 2023, TJPA sent TCP an email stating that the TJPA selection committee had decided to proceed with another offeror. On Friday, April 12, 2024, at 4:22 p.m., TJPA sent TCP an email informing the company of the Authority's intent to award a contract to AECOM Technical Services, Inc. Accordingly, this protest is timely submitted to TJPA in accordance with RFP #23-03, Section 13.1.

## **II. TIMELINESS**

TCP's protest is timely filed. In accordance with RFP #23-03, Section 13.1. Protesters must submit their protest "no later than five (5) [working] days following notification of proposed award." *See* RFP at 16; *see also* Transbay Joint Powers Authority, Protest Procedures, Board Policy No. 2 (updated Jan. 3, 2012). On April 12, 2024, TJPA notified TCP of its proposed award to AECOM, stating that TCP had "five (5) working days following the date of this notice to submit a protest." Thus, in accordance with RFP, Section 13.1, and the applicable laws, TCP has submitted a timely protest as it is within five working days following TJPA's notification of its proposed award.

## **III. LEGAL BACKGROUND**

The Joint Powers Agreement appointed the City and County of San Francisco as Administrator of TJPA. *See generally* Joint Powers Agreement, 3 (April 4, 2001). As Administrator, the City and County of San Francisco is responsible for carrying out the provisions of the Joint Powers Agreement and implementing the Transbay Program. *See id.* The Joint Powers Agreement authorizes TJPA, in its own name, to make and enter contracts. *See id.* at 2.

### **A. Standard of Review**

Reviewing contract awards made by public agencies includes “an examination of the proceedings to determine whether the [public agency’s] actions were arbitrary, capricious, entirely lacking in evidentiary support or inconsistent with proper procedure.” *See Cypress Sec., LLC v. City & Cnty. of San Francisco*, 109 Cal. Rptr. 3d 107, 114 (Ct. App. 2010). On review, a public agency’s decision is scrutinized to determine “whether the administrative agency has proceeded without, or in excess of jurisdiction” and “whether there was any prejudicial abuse of discretion.” *See Nat’l Identification Sys. v. State Bd. of Control*, 15 Cal. Rptr. 2d 257, 261 (Ct. App. 1992). An abuse of discretion occurs when the public agency “has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” *Id.* (quoting Code Civ. Proc., § 1094.5 subd. (b)). There is a rebuttable presumption that the public agency acted with substantial evidence. *See Ghilotti Constr. Co. v. City of Richmond*, 53 Cal. Rptr. 2d 389, 392 (Ct. App. 1996). The protester has the burden of demonstrating otherwise. *See id.*

### **B. Standards of Conduct and Conflict of Interest**

TJPA’s Board (Procurement) Policy 001, adopted on November 24, 2003, outlines the standards of conduct applicable to all TJPA procurements. *See generally* Transbay Joint Powers Authority, Procurement Policy, Board Policy No. 1 (updated April 14, 2022) (hereinafter “TJPA Procurement Policy”). One such standard is a communications prohibition, stating that when an RFP is issued (and made available to interested offerors) “there shall be no communications concerning the procurement between members of the TJPA Board of Directors, 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 expressly authorized in the procurement documents.” *See* TJPA Procurement Policy at 10. This policy is incorporated within the RFP and specifies that the “cone of silence” starts when the RFP is issued and stops when TJPA issues a notice of intent to award/notice of proposed award. *See id.*; *see also* RFP at 11.

Board (Procurement) Policy 001 states that “the TJPA shall not select contractors (1) who, because of other activities, relationships, or contracts, are unable, or potentially unable, to render impartial assistance or advice to the TJPA; (2) whose objectivity in performing contract work may be impaired; or (3) who have an unfair competitive advantage.” In addition to Board Policy 001, at the October 12, 2023 TJPA Board meeting, the Board adopted Board Policy No. 022, Organizational Conflict of Interest.<sup>3</sup> In that Board meeting, the rationale for Policy 022 was stated as follows:

“The Policy is intended to accomplish the following procurement goals:

- Promoting Integrity, transparency, competitiveness and fairness in the TJPA's design-build procurement of the Project.
- Preventing Proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to the TJPA's design-build procurement for the Project.

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<sup>3</sup> Board Policy 022 applies to Design-Build Procurements for the Downtown Rail Extension/The Portal.

- Providing guidance to enable Proposers to make informed decisions while conducting business with the TJPA.
- Protecting the validity of the TJPA's design-build procurement for the Project.”

The policy states the threshold for an organizational conflict of interest, which is created if any of the following exist:

- “Impairment or potential impairment of a Proposer's ability to render impartial assistance or advice to the TJPA or of its objectivity in performing work for the TJPA.
- An unfair competitive advantage for any Proposer bidding or proposing or offering on an TJPA design-build procurement, or
- A perception or appearance of impropriety or unfair competitive advantage with respect to TJPA's design-build procurement (regardless of whether any such perception is accurate).”

#### **IV. GROUNDS OF PROTEST**

##### **A. TJPA Failed to Consider AECOM’s Violation of Regulations and Various Standards of Conduct when the Company Engaged in Prohibited Communications with TJPA (Violation of the “Cone of Silence”)**

TJPA failed to follow its own rules governing communications between potential contractors and the Authority. If TJPA had followed its own rules regarding communication with the Authority, AECOM would have been disqualified from consideration for award.

On August 16, 2023, AECOM hosted an event advertised as a celebration of their small business partners in San Francisco, California (hereinafter referred to as the “August 16, 2023 event”). **Attachment A**, Invitation to AECOM: Honoring our Business Partners and Supporters Event (Aug. 16, 2023).<sup>4</sup> Members of the TJPA staff, including Adam Van de Water, the Executive Director, and Nila Gonzales, Chief of Staff, were present at this event.

EPC Consultants, Inc. (“EPC”) (a member of the TCP Joint Venture Team) and AECOM were joint venture partners for both the recently completed SFMTA Central Subway Project and in the pursuit for the Santa Clara Valley Transit Authority’s Program and Construction Management (PM/CM) proposal. EPC has been perhaps the most significant small business partner to AECOM in San Francisco for decades. Despite this longstanding collaborative history, EPC was not invited to this event where TJPA authorities were present, presumably because EPC was competing with AECOM under this Solicitation.

Though excluded by AECOM, certain personnel from EPC attended this event after being invited by a Local Business Enterprise (“LBE”) owner invitee. The LBE owner was under the impression that this event was an outreach event for the Solicitation in question. During the

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<sup>4</sup> Eventbrite, AECOM Small Business Celebration! (August 16, 2023) <https://www.eventbrite.com/e/aecom-small-business-celebration-tickets-686617129317?aff=oddtcreator> (last accessed April 19, 2024).

event, the AECOM team spoke on the criticality of the Portal project and touted AECOM's purported capabilities for the Solicitation - all while TJPA authorities were present.

TJPA's senior staff's participation at AECOM's private event and the AECOM team's presentation of its alleged capabilities for performing the Portal project violated the "cone of silence" established in the RFP. TJPA's Procurement Policy and the RFP prohibits offerors and TJPA from communicating during a specific time period. *See* TJPA Procurement Policy at 10; *see also* RFP at 11. The terms of the RFP state that when an RFP is issued (and made available to interested offerors) "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." *See* RFP at 11 (emphasis added). The "cone of silence" starts when the RFP is issued and remains in place until "TJPA issues a notice of intent to award/notice of proposed award of a contract (or cancels the procurement)." *See id.*

The RFP was issued on June 26, 2023, and the notice of intent to award was released on April 12, 2024. Accordingly, when AECOM hosted the event on August 16, 2023, communication concerning any aspect of the RFP was prohibited. TJPA staff members were present at AECOM's August 16, 2023 event, promoting AECOM's request for small business partnership and support for the work to be performed under a contract issued pursuant to the Solicitation at issue. Protesters are not required to have knowledge of the exact nature of the dialogue or communications at issue. *See* TJPA Procurement Policy at 10; *see also* RFP at 11. It is sufficient to cite these public interactions, including TJPA's staff's attendance at the August 16, 2023 event to promote small business participation under the Portal contract, to show that AECOM violated the applicable rules.

Consequently, AECOM violated<sup>5</sup> the standard of conduct stipulated within the Solicitation and TJPA's Procurement Policy. As such, TJPA should disqualify AECOM from the procurement. *See* RFP at 10 (stating that "[a]ny violations of the above restriction will result in the **immediate disqualification** of the Respondent making said contact from further participation in the Transbay Program." (emphasis added)); *see also* TJPA Procurement Policy at 10 ("Violations of these standards of conduct may result in immediate determination that a respondent is an irresponsible contractor and disqualified from participating in procurements; determination that an awarded contract is null and void; and/or imposition of penalties, sanctions, or other disciplinary actions provided by federal, state, and local law.").

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<sup>5</sup> AECOM's decision to host an event discussing the criticality of the Project during the period in which the parties were not supposed to discuss the Solicitation in any capacity also resulted in TJPA violating its own "cone of silence" rule.

## **B. Conflict of Interest Violations**

### **i. Numerous Events Hosted or Attended by AECOM Created Conflicts of Interest, which TJPA Unreasonably Ignored when Issuing an Intent to Award a Contract to AECOM**

In addition to violating communications restrictions, the August 16, 2023 AECOM event violated conflict of interest rules, undermining the public's confidence in the procurement process and raising significant questions about TJPA's ability to evaluate proposals objectively. TJPA's Procurement Policy prohibits employees from "participat[ing] in the selection, award, or administration of a contract for the TJPA if a conflict of interest, **real or apparent**, would be involved." *See* TJPA Procurement Policy at 9 (emphasis added). This standard does not require protesters to prove that a conflict of interest did in fact occur. *See id.*; *see also* San Francisco Campaign and Governmental Conduct Code, Art. III, Ch. 2, sec. 3.200(d)-(e) (stating that "City and County contracts should be, and should appear to be, awarded on a fair and impartial basis," and "**Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis.**" (emphasis added)). Indeed, it is enough for protesters to demonstrate that there was an appearance of a conflict of interest such that a public entity did not make a fair and impartial award.

TCP was informed by members of the industry that other companies attended an event hosted by AECOM to discuss "Lessons Learned in Progressive Design-Build of Projects," which included discussions during the procurement process. Once again, TCP is aware that TJPA staff attended, along with members of AECOM's team, specifically Mott MacDonald and WSP, as well as HNTB (not, in this instance, a competitor for the Solicitation), for their experience on the BART Silicon Valley Phase 2 Program on Progressive Design-Build. The discussion allowed AECOM to circumvent the legal, regulatory, and Solicitation restrictions to present their team's qualifications and experience to TJPA project staff, including members of the selection panel, in further violation of the Solicitation's restriction on communications and prohibitions against creating conflicts of interest. If this event was a bona fide industry forum, PGH Wong Engineering, Inc. ("PGH Wong") (a member of the TCP Joint Venture), as a national transit leader and locally headquartered firm and a member of the BART Silicon Valley Phase 2 Program's General Engineering Consultant Joint Venture, partnered with Mott MacDonald, should have been invited. EPC, AECOM's Joint Venture partner on Central Subway and a locally headquartered firm would have also (naturally and logically) been invited. Given that PGH Wong and EPC have comparable expertise in the niche area of Progressive Design-Build and that Arcadis and Jacobs (the third ranked team for the Solicitation), as international industry leaders and frequent AECOM partners, would have also been invited, AECOM appears to have specifically excluded competitors for the Solicitation from the event.

Once again, however, none of those companies were invited, allowing AECOM to promote its team's qualifications to TJPA during the procurement, in violation of the RFP, and giving AECOM unfair access and an advantage during the selection process. AECOM's decision not to invite any companies that were competing for the award under the Solicitation removes any doubt that the presentation was not actually targeting industry to share lessons learned.

Rather, it was targeted at TJPA and allowed AECOM and its team members to discuss prior experience and current knowledge in order to help convince TJPA that AECOM is the most qualified. It is difficult to imagine a more direct violation of the rules than this event.

**ii. Two Members of TJPA's Selection Panel Members Have Close Daily Working Relationships with AECOM, Which Creates an Appearance of a Conflict of Interest and Bias on the Selection Committee**

Two of the five panelists on the selection panel for the Solicitation – Alfonso Rodriguez and Rebecca Mincio – work closely with AECOM, the Program Management Consultant on the current Program Management/Program Control Services contract for the Transbay Program. Mr. Rodriguez is the Project Director, and Ms. Mincio is the Project Controls Manager. Both have worked with AECOM on this program on a daily basis since each began their tenure with TJPA. It is impossible to believe that these two panel members did not have, at a minimum, an unconscious bias related to AECOM. Given that they constituted 40% of the panel, there is, at a minimum, the appearance of a lack of impartiality, if not in fact a true bias in the selection process. *See Schram Const. v. Regents of Univ. of Calif.*, 187 Cal. App. 4th 1040, 1058-59 (Cal. Ct. App. 2010) (holding that the University failed to put procedures in place that would ensure an impartial selection, “creating the appearance of favoritism”). TJPA violated the City and County of San Francisco’s Contract Monitoring Division’s standard practice by allowing program staff to participate on the evaluation committee and significantly influence the outcome. Separating program staff from members of the evaluation committee prevents bias.

Although TJPA has stated that it will make proposals available for review at its office, it did not offer to make detailed evaluation materials available. TCP has submitted a Public Records Act request for all relevant evaluation materials and will supplement this protest with additional grounds, as they are discovered. TJPA provided an anonymized score sheet purporting to show final evaluation results. The panelists’ scoring should be reviewed and scrutinized to assess the impact of Ms. Mincio’s and Mr. Rodriguez’s scores on the Selection Committee’s decision.

**iii. AECOM has a Contract with the California High Speed Rail Authority that Creates a Conflict of Interest**

The downtown extension project, otherwise known as the Portal, is a major infrastructure project to integrate and connect eleven transit systems to downtown San Francisco, California. *See* RFP at 1; *see also* RFP, Attachment 5 Scope of Services at 1. One of those transit systems is the California High Speed Rail Authority. Transbay Joint Powers Authority, The Portal/DTX Video, <https://www.tjpa.org/portaldtx> (last visited Jan. 8, 2024). Previously, CAHSR contracted with WSP for program management services. On November 10, 2022, CAHSR notified AECOM that its joint venture had been selected to provide program management support. AECOM Press Release, *AECOM-led joint venture to provide program management support for the California High-Speed Rail program* (Nov. 10, 2022), <https://aecom.com/press-releases/aecom-led-joint-venture-to-provide-program-management-support-for-the-california-high-speed-rail-program/>.



This Solicitation anticipates award of a contract to a contractor that will be responsible for, among other things, connecting the California High-Speed Rail system to the Transbay Terminal through delivery of the Portal Project. Awarding a contract to a company that is also responsible for managing the California High-Speed Rail systems to be connected at the Portal will result in that company “evaluating” its own work product because the contractor managing delivery of the Portal/DTX is the same contractor responsible for managing the delivery of the California High-Speed Rail. In other words, one company will be responsible for both implementing the solutions required under this Solicitation *and* impartially judging and examining whether the same company has successfully performed its requirements under the CAHSR contract, in order to adequately connect into the Transbay Terminal. AECOM could not render impartial assistance or advice to the TJPA in relation to its other client, the California High-Speed Rail Authority, as AECOM is also responsible to the CAHSR Authority.

TJPA’s intent to award the contract to AECOM violates the Procurement Policy 001 because it ignores an existing Organizational Conflict of Interest. Furthermore, the intent to award is also contrary to the purpose of Policy Goals TJPA established in October 2023 in Board Policy 022 despite Policy 022’s curiously selective application, which applies exclusively to the Portal’s design-build procurement contractors and subcontractors.

TJPA’s Board (Procurement) Policy 001 states that it will not select contractors “(1) who, because of other activities, relationships, or contracts, are unable, or potentially unable, to render impartial assistance or advice to the TJPA; (2) whose objectivity in performing contract work may be impaired; or who have an unfair competitive advantage.” TJPA Procurement Policy at 10.<sup>6</sup> This RFP requires the awardee to be responsible for, among other things, connecting the California High-Speed Rail to the Transbay Terminal through delivery of the Portal Project. Awarding a contract to a company that is also responsible for managing the California High-Speed Rail system will result in that company “evaluating” its own work product under this RFP. In other words, AECOM would be responsible for both implementing the solutions required under this Solicitation *and* impartially judging and examining its own work under the CAHSR contract. That relationship makes AECOM “unable, or potentially unable, to render impartial assistance or advice to the TJPA” and “whose objectivity in performing contract work may be impaired.” *See id.*

TJPA’s Policy Goals were drafted in part to avoid Organizational Conflicts of Interest. Indeed, in 2019, CAHSR directed WSP to suspend one of its top officials because he approved a change order while “he may have owned” stock in Jacobs Engineering (now Jacobs Solutions

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<sup>6</sup> California High-Speed Rail Authority’s Conflict of Interest Policy defines an organizational conflict of interest as a “circumstance arising out of a Contractor’s existing or past activities (including projects outside of the Authority’s Program), business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results or would result in . . . **a perception or appearance of impropriety** with respect to any of the Authority’s procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the Authority (regardless of whether any such perception is accurate).” California High-Speed Rail Authority, Organizational Conflict of Interest Policy, 4 (June 29, 2023) (emphasis added). This policy is persuasive and supports that a “perception or appearance of impropriety” is sufficient to demonstrate an organizational conflict of interest.

Inc.), a firm performing work for CAHSR under a joint venture. See Vartabedian, Ralph, *California's Top Bullet Train Consultant is Suspended Amid a State Ethics Review* (June 4, 2019), <https://www.latimes.com/local/california/la-me-bullet-train-investigation-20190604-story.html>.<sup>7</sup> CAHSR's concerns reverberate here. There is a conflict of interest with AECOM managing and overseeing work performed by AECOM for CAHSR.

Further, AECOM's contractual relationship creates an unfair competitive advantage. The RFP states that "the project delivery team will be supported through a partnership with stakeholder agencies." RFP, Attachment 5 Scope of Services at 1. However, given AECOM's contract with CAHSR, AECOM would essentially form a partnership with itself. Additionally, TJPA's board includes a voting member from CAHSR —Boris Lipkin. This Board Member would be voting for or against its representative (on a different contract) to serve TJPA. Accordingly, the nature of AECOM's contractual relationship with CAHSR makes it clear that AECOM cannot complete its work under the CAHSR contract while simultaneously advising TJPA in an impartial manner. See Procurement Manual at 10. Thus, TJPA violated the Procurement Policy when it awarded a contract to AECOM given the organizational conflict of interest.

### **C. California Government Code Section 1090 Precludes Award to AECOM**

California Government Code Section 1090 ("Section 1090") and its supplementing sections in the California Government Code prohibits public officials from having financial interests in the contracts made by them in their official capacities. Cal. Gov't Code § 1090. A contract entered into in violation of Section 1090 is void ab initio. It does not matter whether the contract involves actual fraud, dishonest, unfairness or whether the contract is fair or oppressive. *People v. Honig (Honig)*, 48 Cal. App. 4th 289, 314 (1996). A violation of Section 1090 occurs when (1) the official participated in the making of a contract in his or her official capacity; (2) the official had a cognizable financial interest in that contract; and (3) the financial interest does not fall within any of the statutory exceptions for remote or noninterests. *Lexin v. Superior Court*, 47 Cal. 4th 1050, 1074 (2010).

Section 1090 is broadly applied and is interpreted to cover even outside advisors, including corporate consultants, who have similar public contracting responsibilities to those of public officials. Where, as part of its contractual duties or responsibilities under one contract, the consultant participates in "making" the subsequent contract, the consultant would generally be precluded by Section 1090 from participating in the second contract. Examples of participating in "making" a contract for Section 1090 purposes have been found to include "planning, preliminary discussions, compromises, drawing of plans and specifications, and solicitations of bids." *Healy Adv. Ltr.*, FPPC No. A-17-159 (Aug. 16, 2017).

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<sup>7</sup> WSP Global Inc.'s senior executive, Roy Hill, was cleared of wrongdoing after the state ethics commission stated that Hill's stock in Jacobs Engineering was "non-interest, so he was not financially interested in the contract." See Vartabedian, Ralph, *Former Consultant for California High-Speed Rail Project is Cleared of Ethics Violations* (Nov. 12, 2020), <https://www.latimes.com/california/story/2020-11-12/california-bullet-train-project-ethics-violations>. In contrast, AECOM/WSP has a significant financial interest in overseeing work they are performing for the California High-Speed Rail Authority.

A contractor is also prohibited under section 1090 from entering into a subsequent contract to complete a project if the contractor had extensive involvement in the initial design and development of the project. *Simon Adv. Ltr.*, FPPC No. A-17-148 (citing *Hub City*, 186 Cal. App. 4th at 1125).

AECOM, though its prior and current consulting positions with both the TJPA and CAHSR, has participated in decisions that influence the content of the responsibilities under the Portal/DTX Solicitation and resultant contract. AECOM's efforts under the CAHSR contract necessarily operate to shape the requirements under this Solicitation, as the two contracts are interrelated. Any contract between TJPA and AECOM should be precluded by Section 1090, because AECOM has participated in the "making" of the Portal/DTX contract by virtue of both its prior and ongoing work with the TJPA and the CAHSR Authority.

In its contract with CAHSR, AECOM serves as program manager, similar to AECOM's role under this award for the TJPA. As program manager for both the Portal/DTX and CAHSR, AECOM will be required to make decisions and recommendations in connection with change orders and approvals or rejections of work occurring under one project that are influenced by the other project. Consequently, through its program management for CAHSR, AECOM may make or participate in decisions that influence what AECOM will do and oversee in its role for the TJPA under the Portal/DTX. AECOM would have a financial interest in any change in the scope of its responsibilities impacted by its conduct on the other project. In other words, on the CAHSR project, AECOM can effect changes that would increase costs on this Project, or the CAHSR contract, which violates Section 1090. As a result, AECOM is prohibited from receiving this contract award and TJPA's failure to consider this prohibition is unreasonable and requires the Notice of Intent to award a contract to AECOM to be revoked.

#### **D. Unfair Proposal Scoring Criteria**

The RFP established issues and questions that the Proposer must address in their proposal. One such required section directed the Proposer to address how it would transition the work from the existing PM consultant. This section is inherently biased toward the incumbent, AECOM, because AECOM would not have a meaningful transition. Rather, AECOM is simply changing some subconsultants. This creates a situation where AECOM would likely be scored higher than any other Proposer and skews the nature of the analysis.

#### **E. Prejudice**

TCP has been prejudiced by TJPA's failure to disqualify AECOM for its violations of the conflict of interest requirements in the Procurement Policy and the Solicitation because AECOM's actions and role as project manager under the CAHSR contract gave it an unfair advantage in the procurement process. TCP was not afforded the same opportunities as AECOM to conduct meetings and presentations with TJPA to explain its experience and technical qualifications and why it should receive a contract award. Indeed, TCP would not do so because

such efforts violate various laws, regulations, and policies. TJPA was required to disqualify AECOM for its conflicts of interest and TJPA's failure to do so negatively impacted TCP.

If TJPA does not disqualify AECOM and instead chooses to reject all bids, it would stand to reason that Board Policy No 22 Organizational Conflict of Interest be installed as a part of the new RFP.

## V. CONCLUSION

TJPA unreasonably failed to consider AECOM's violations of statutes, regulations, and policies. TJPA's Notice of Intent to Award a contract to AECOM violates the rules governing this Solicitation and TJPA's Procurement Policy, including those governing personal conflicts of interest, organizational conflicts of interest, and communications between an offeror and TJPA during a prohibited period. AECOM's events promoting its alleged capabilities in front of TJPA staff, and CAHSR's contractual relationship with AECOM provided AECOM with a direct advantage and ultimately resulted in the Notice of Intent to award a contract to AECOM. These errors have substantially prejudiced TCP and resulted in its non-selection. For all the above reasons, the TJPA should grant this protest, disqualify AECOM, and award to the next highest bidder.

Sincerely,



Steven Cave  
Partner  
*Counsel for Transbay Connect  
Partnership*

# **Attachment A**



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BART Warm Springs Extensions PM/CM

BART SFO Extension PM/CM

Caltrain Modernization and Electrification Program PM/CM

New San Francisco - Oakland Bay Bridge (SFOBB) Construction Management

Santa Clara Valley Transportation Authority (VTA) Capital Project Management

San Francisco Unified School District Capital Improvement Programs

San Francisco Public Utilities Commission Water System Improvement Program

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## About AECOM

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**TRANSBAY JOINT POWERS AUTHORITY**

**DECISION**

**REGARDING MATTER OF  
REQUEST FOR PROPOSAL 23-03  
(PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES)  
BID PROTESTS**

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This decision is regarding bid protests submitted by Transbay Connect Partnership (TCP) in response to the Transbay Joint Powers Authority's (TJPA's) notice of intent to award a contract for Program Management and Construction Management (PMCM) services to Portal Connectors (led by AECOM Technical Services, Inc. (AECOM)).

In its initial and supplemental bid protests, TCP alleges grounds for protesting the award of the contract to AECOM, generally summarized as:

1. Violations of the prohibition on communications between TJPA and respondents during the solicitation period;
2. TJPA's and AECOM's current close working relationship created a conflict of interest;
3. AECOM's current contract with California High Speed Rail Authority will create an organizational conflict of interest if the PMCM contract is awarded to Portal Connectors;
4. AECOM participated in the making of the contract in violation of Government Code section 1090;
5. TJPA used unfair scoring criteria; and
6. A member of the selection committee used unstated scoring criteria.

TJPA Board Policy places the authority to determine bid protests with the TJPA Executive Director. Based on the unique allegations in these bid protests, Executive Director Van de Water delegated the role to me.

I am the Chief Deputy District Director at the California Department of Transportation (Caltrans); I have been a public servant with Caltrans for more than 35 years. I did not participate in the PMCM procurement at issue in the bid protest, and I have no interest in the outcome of the bid protest.

I have conducted an independent review of the facts and documentation, the materials presented by TCP and AECOM, the independent investigation report prepared by attorney Laura Beaton ("Investigation Report") (attached hereto as Exhibit A), and applicable law and policy. I concur with each of the findings described in the Investigation Report and its conclusion that there are insufficient grounds to grant the protests.

Accordingly, the protests are DENIED.

By: David Ambuehl  
David Ambuehl for  
Transbay Joint Powers Authority

Date: June 4, 2024

# **Exhibit A**

## MEMORANDUM

TO: David Ambuehl, Chief Deputy District Director, Caltrans

FROM: Laura D. Beaton

DATE: May 29, 2024

RE: TJPA RFP 23-03 Bid Protest

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### I. Introduction

This memorandum evaluates the bid protests submitted by Transbay Connect Partnership (“TCP”) in response to the Transbay Joint Powers Authority’s (“TJPA’s”) notice of intent to award a contract for Program Management and Construction Management (“PMCM”) services to Portal Connectors (led by AECOM Technical Services, Inc. (“AECOM”). In its initial and supplemental bid protests, TCP alleges six specific grounds for protesting the award of the contract to AECOM:

1. Violations of the prohibition on communications between TJPA and respondents during the solicitation period.
2. TJPA’s and AECOM’s current close working relationship created a conflict of interest.
3. AECOM’s current contract with California High Speed Rail Authority will create an organizational conflict of interest if the PMCM contract is awarded to Portal Connectors.
4. AECOM participated in the making of the contract in violation of Government Code section 1090.
5. TJPA used unfair scoring criteria.
6. A member of the selection committee used unstated scoring criteria.

Each of these alleged grounds for protest is reviewed in turn, below. The purpose of this memorandum is to support you in deciding the protest on behalf of TJPA.

## **II. Applicable Policies and Procedures**

### **A. Procurements**

TJPA derives its policies and procedures for procurements from the City and County of San Francisco, as limited by applicable provisions of state and federal law. TJPA intends to follow the contracting policies and procedures set forth in San Francisco Administrative Code (“SF Code”) Chapters 6 (Public Works Contracting), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 21 (Acquisition of Commodities and Services), and other relevant provisions of the San Francisco Administrative Code. *See* TJPA Board Policy 001 (Procurement Policy). As a recipient of federal funds, TJPA also follows the contracting policies and procedures of the Federal Transit Administration (“FTA”), including as set forth in FTA Circular 4220.1F, Third Party Contracting Guidance (“FTA Circular”).

The SF Code requires that professional services for public works projects be procured “through a competitive process based primarily on qualifications.” SF Code § 6.40. The SF Code delegates to the applicable City Department Head the authority to determine the criteria by which proposals will be evaluated, but the criteria should be based primarily on qualifications and experience relevant to the services needed for the project. *See* SF Code § 6.41. Selection shall be made by an impartial panel, and panelists shall rate respondents “according to their independent assessment of the respondent’s qualifications for the ... project” and “questions relating to a respondent’s expertise, qualifications and experience shall remain within the sole purview of the panel members.” SF Code § 6.40(b). The TJPA Board adopted a Procurement Policy. Consistent with the SF Code, TJPA’s Procurement Policy requires that TJPA solicit written proposals and “evaluate the proposals to determine the most qualified proposer.” TJPA Board Policy 001, § II(C)(3). FTA likewise requires recipients to “conduct all third party procurements ... in a manner that provides full and open competition.” FTA Circular, Chapter VI.1.

In reviewing TCP’s protest and deciding whether to award the PMCM services contract to AECOM, TJPA must ensure that its actions are not “arbitrary, capricious, entirely lacking in evidentiary support, or inconsistent with proper procedure.” *Schram Construction, Inc. v. Regents of Univ. of Cal.* (2010) 187 Cal.App.4<sup>th</sup> 1040, 1051.

### **B. Protests**

TJPA permits protests, which are timely, written complaints by bidders or proposers regarding bids or the award process for federally-assisted third-party contracts. *See* TJPA Board Policy 002 (Protest Procedures for Bidding and Award of Federally Assisted Third Party Contracts).

TJPA Board Policy places the authority to determine protests with the TJPA Executive Director. *See* TJPA Board Policy 002, § 3.5. Because of the unique factual allegations in this protest, out of an abundance of caution, and to avoid even the appearance of impropriety in the decision-making process, TJPA Executive Director Adam Van de Water determined it was prudent to delegate the role to you. I understand that you have agreed to accept Mr. Van de Water's request that you decide the protest.

This law firm serves as General Counsel to TJPA. I am a partner at the firm. A focus of my practice is advising public agency and nonprofit clients on contracting, including public contracting, competitive bidding, bid protest resolution, contract negotiation, and dispute resolution, and state and federal grant compliance. I do not regularly provide legal services to TJPA, and I did not participate in the PMCM procurement at issue here. I have conducted an independent review of the facts, the materials presented by TCP and AECOM, and the applicable law and policy.

This memorandum provides you my independent analysis of each of the alleged grounds for protest based on the facts and the pertinent legal standards. The purpose of this memorandum is to support you in deciding the protest on behalf of TJPA. Thus, you may concur (or not) with my analysis of the facts as presented herein, or request additional information to support your decision. I am prepared to provide you additional materials and respond to any questions about the law or facts as you conduct your independent review. Your decision on behalf of TJPA is final as to TJPA. *See* TJPA Board Policy 002, § 3.5.

### **III. Background**

TJPA issued its Request for Proposals ("RFP") No. 23-03 for PMCM services for the Transbay Program Phase 2 – Downtown Extension ("Phase 2") project on June 26, 2023. Submissions were due on September 22, 2023. The RFP explained that the proposals would be evaluated on a qualifications-based procurement basis; price was excluded as an evaluation factor. *See* RFP at 8-9. The RFP explained that the evaluation of qualifications would include evaluation of written proposals and may also include in-person interviews. *Id.* The RFP provided the evaluation factors and points available for the written component, and the total points available for the oral interview. *Id.*

TJPA's selection committee consisted of five individuals: Robert Barnard (Chief, Rail Design & Construction - Caltrain), Carl Holmes (Deputy Director for Capital Projects – San Francisco County Transportation Authority), Rebecca Mincio (Project Controls Manager – TJPA), Alfonso Rodriguez (Project Director – TJPA), and Edmond Sum (Chief Engineer – TJPA). Consistent with TJPA's standard process, each member of the selection committee executed a Qualifications/Proposal Evaluation Confidentiality and Conflict of Interest Certification.

Three proposals were submitted in response to the RFP: Arcadis U.S., Inc. (as prime contractor), Portal Connectors (consisting of AECOM as prime contractor), and TCP (consisting of a joint venture of EPC Consultants, Inc. and PGH Wong Engineering, Inc. as prime contractor). TJPA's selection committee convened and scored the written proposals. All three proposers were invited to interview. The selection committee developed 10 interview questions; TJPA asked each team the same set of questions. The proposers were provided the questions in advance. TJPA's selection committee scored the interviews. Based on the aggregated scores from the written proposals and oral interviews, AECOM received the highest ranking. On November 1, 2023, TJPA provided Arcadis and TCP notice of its intent to negotiate a contract with AECOM. On April 12, 2024, TJPA issued to Arcadis and TCP notice of TJPA's intent to award the PMCM contract to AECOM.

On April 19, 2024, TCP submitted to TJPA a protest of the award of the contract to AECOM.<sup>1</sup> On April 23, 2024, TJPA sent a letter to AECOM and TCP informing them of the process and timeline for responses to the protest. AECOM submitted an opposition on April 30, 2024, and TCP thereafter replied on May 7, 2024. TCP's reply was submitted late. Nonetheless, TJPA accepted TCP's reply, which is thoroughly considered in this memorandum.

On May 9, 2024, TCP submitted a supplemental protest; TCP explained that its supplemental protest was based on records it obtained via a Public Records Act request. On May 10, 2024, TJPA sent a letter to AECOM and TCP informing them that although TCP's supplemental protest was submitted late, TJPA would allow it; accordingly, TCP's supplemental protest is fully addressed in this memorandum. TJPA's letter also described the process and timeline for responses to the supplemental protest. AECOM

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<sup>1</sup> Earlier, on February 29, 2024, TCP submitted a notice of intent to protest. TJPA considered the allegations in the letter. Because the notice of intent was submitted before TJPA issued a notice of intent to award, however, TJPA did not treat this notice as TCP's protest.

submitted its opposition to the supplemental protest on May 17, 2024. TCP submitted its reply on May 22, 2024.

#### **IV. Analysis of Protest Grounds**

##### **A. Violation of Communications Prohibition – AECOM Events**

The TCP protest alleges that AECOM violated the communications prohibition set forth in TJPA Board Policy 001, which provides:

Beginning on the date a procurement formally begins (e.g., an RFP is issued and made available to prospective respondents), there shall be no communications concerning the procurement between members of the TJPA Board of Directors, 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 expressly authorized in the procurement documents. This restriction will end when the TJPA has provided respondents in the procurement notification of the TJPA staff's recommended contract award to the TJPA Board of Directors.

TJPA Board Policy 001, § IV(D); *see also* RFP at 11. The RFP requires that a respondent be disqualified if it violates the communications prohibition. *See* RFP at 10.

##### **1. Barebottle Event**

First, TCP alleges that two members of TJPA staff, Executive Director Adam Van de Water and Chief of Staff/Board Secretary Nila Gonzales, attended an AECOM-hosted event on August 16, 2023, which was called “AECOM: Small Business Celebration!” *See* TCP Protest at 6. This event was held at Barebottle Brewing Company, which is a beer garden located at Salesforce Park in the transit center. TCP alleges that members of its joint venture were not invited to the event. *Id.* TCP alleged that AECOM invited TJPA staff to the event. *See id.*

Some attendees of the event perceived its purpose as outreach to subcontractors for the PMCM RFP. *See* TCP Reply, Att. B. TCP alleges that AECOM spoke about “the criticality of the Portal project and touted AECOM’s purported capabilities for the Solicitation” while TJPA staff were present. TCP Protest at 6-7. TCP submitted a declaration from someone who attended the event, stating that a member of AECOM’s proposed PMCM team, Guy Hollins, referred to the Phase 2 project and said that “AECOM knows how to get things done in San Francisco.” *See* TCP Reply, Att. A. Then, Mr. Hollins invited attending firms to consider joining the AECOM team. *Id.*



AECOM responds that its representative at the event, Tyler Sheldon, did not discuss the Portal project or AECOM's capabilities. AECOM Opp. at 5.

I investigated the facts regarding TJPA staff's attendance at, and matters discussed at, this event, including interviews with TJPA staff. I confirmed that Adam Van de Water, Nila Gonzales, Edmond Sum, Alfonso Rodriguez, and Rebecca Mincio were invited to the event, and that Mr. Van de Water and Ms. Gonzales attended the event; I do not believe any other TJPA staff attended the event. Mr. Van de Water and Ms. Gonzales reported to me that their impression was that the purpose of the event was to generally celebrate small businesses. They were each at the event for approximately one-half hour, and they reported that they did not have substantive conversations with anyone from AECOM, beyond greeting or acknowledging each other's presence. Ms. Gonzales reported that she spoke to Paul Pendergast of BuildOUT California and Pendergast Consulting and Guy Hollins of Hollins Consulting, Inc. briefly; Mr. Pendergast's and Mr. Hollins' firms are proposed subcontractors on the AECOM team. Ms. Gonzales reports that she did not discuss the PMCM solicitation with them. Mr. Van de Water and Ms. Gonzales recalled that AECOM made a presentation at the event about AECOM's successes generally and its work with small businesses, but they did not witness any discussions or presentations about the Phase 2 project or the PMCM procurement at the event.

As described above, the TJPA Board Procurement Policy restricts "communications concerning the procurement." Other than TCP's allegation that AECOM referenced the Phase 2 project and AECOM's qualifications generally at the Barebottle event, TCP has not provided and TJPA has not identified any evidence that communications *concerning the procurement* occurred between TJPA and AECOM at the Barebottle event. Specifically, TJPA staff that attended the event reported that they received no communication from the AECOM team regarding the PMCM solicitation. I find staff's account of the event and the communications credible. It is neither the rule nor is it workable to expand the scope of the communications prohibition to *any* communications between the agency and a solicitation respondent. Accordingly, I have not identified sufficient evidence of a violation of TJPA's procurement policies to support granting TCP's protest on this issue.

## **2. Other Events**

TCP also alleges communications violations occurred at other events hosted by AECOM during the PMCM procurement process, including an event regarding the BART Silicon Valley Phase 2 Program on Progressive Design-Build. *See* TCP Protest at

8.<sup>2</sup> TCP alleges that the discussion at this event allowed AECOM to “present their team’s qualifications and experience to TJPA’s project staff, including members of the selection panel.” *Id.* TCP does not identify the exact date or title of this event.

AECOM suggests that TCP may be referring to a “Progressive Design-Build Trendsportation” webinar that AECOM hosted on June 27, 2023. *See* AECOM Opp. at 5. AECOM states that the event was advertised publicly on June 5, 2023, prior to release of the solicitation, but was held during the “cone of silence” period. *Id.* The event included a presentation on “the trend of implementing progressive design-build projects in the transportation sector including lessons learned from AECOM’s existing and current projects.” *Id.*

In its reply, TCP further explains that the event it was referring to was not the webinar, but was a live, in-person event including BART to Silicon Valley Phase II consultants and TJPA program staff. *See* TCP Reply at 4. TCP did not provide further explanation of what may have been said at that event or why it constituted a violation of the communications prohibition.

TCP’s allegations regarding these events are based on its assertion that “[i]t is contrary to both the specific Cone of Silence rule and general policies of transparency and fairness to have agency employees attending events hosted by contractors currently pursuing business with that agency.” TCP Reply at 4. TCP asserts that this is especially true when the event organizer is excluding other contractors who may be pursuing the same contract. *Id.*

I investigated the facts to attempt to identify the events referenced in TCP’s protest, determine whether any staff attended such events, and, if so, what was communicated at those events. I believe it is credible to conclude that the events described above are what TCP is referring to. Based on my investigation, only Rebecca

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<sup>2</sup> TCP also frames AECOM advertising these events to TJPA and TJPA’s attendance as violation of TJPA Board Policy 001’s Conflict of Interest provision. *See* TCP Protest at 8 (quoting TJPA Board Policy 001, § IV(A)). However, this provision specifically concerns TJPA board and staff *financial* interests in respondents, and TCP has made no allegations regarding, nor has my investigation uncovered, any conflicted financial interest of TJPA employees, officers, or agents involved in selection of the PMCM contractor. San Francisco Campaign and Governmental Conduct Code section 3.200(d)-(e), also cited by TCP, is likewise inapplicable, as it concerns prohibitions on members of City and County Boards and Commissions from contracting with the City and County and on communications between current and former City and County employees with the City and County.

Mincio identified that she may have attended the “Progressive Design-Build Trends/transportation” webinar. She reported that the event was on her calendar, but she could not recall whether she attended or not, and she had no memory of the contents of the event. I do not believe any other TJPA staff attended this event or the other referenced events.

TCP has not alleged and my investigation did not reveal any communications at these or any other events regarding the PMCM procurement. As explained above, it is neither the rule nor is it workable to expand the scope of the communications prohibition to *any* communications between the agency and a solicitation respondent. The prohibition, or “cone of silence,” applies only to communications *concerning the procurement*. Accordingly, I have not identified sufficient evidence of a violation of TJPA’s Procurement Policy to support granting TCP’s protest on this issue.

**B. Conflict of Interest – AECOM’s Close Working Relationship with TJPA**

TCP next protests the fact that two of the five members of the selection panel, Alfonso Rodriguez and Rebecca Mincio, currently work closely on a daily basis with AECOM in its role as a Program Management/Program Control (“PMPC”) consultant to TJPA. *See* TCP Protest at 9. TCP alleges that Mr. Rodriguez’s and Ms. Mincio’s presence on the selection panel created at least an appearance of lack of impartiality, if not true bias. *Id.*

TCP does not cite and I am not aware of any applicable rule prohibiting agency staff with a past or current working relationship with a contractor from participating in a selection committee for a procurement that includes the contractor. Instead, TCP’s protest seems to be based on an assumed implicit bias in favor of an incumbent contractor, which bias would violate the requirement for conducting a competitive procurement that fosters full and open competition. TCP does not cite and I am not aware of any applicable law that supports such a conclusion of implicit bias in all cases; thus, I investigated the facts to ascertain whether there was evidence of such bias here.

Alternately, TCP’s protest may be based on an assumed access to information or insight about the PMCM services as a result of its role as the incumbent, which would provide AECOM an unfair competitive advantage and violate the requirement for full and open competition. TCP does not cite and I am not aware of any applicable law that supports such conclusions of bias or unfair advantage in all cases of incumbency; thus, I investigated the facts to ascertain whether there was evidence of such bias or unfair advantage here.

My investigation did not identify any actual bias by Mr. Rodriguez or Ms. Mincio in favor of AECOM. They reported to me that they considered each proposal on its merits and applied the criteria stated in the RFP. While the evidence suggests to me that these TJPA staff members have a working relationship with AECOM, and Ms. Mincio has a social relationship with at least one AECOM subconsultants, I did not find evidence of actual bias in favor of AECOM. I note that the AECOM team proposing to provide the PMCM services has some overlap with the current AECOM staff providing the current PMPC services, but some team members, including some key staff from AECOM, have no prior relationship with the TJPA. This fact seems to reduce the likelihood of any favorable bias. I note that a current working relationship does not on its face suggest that there will be a favorable view of a current contractor; it seems just as likely that a current working relationship could generate a unfavorable view of that contractor. Lastly, I note that each of the respondent teams has members that currently or in the past have worked for TJPA; I did not find evidence of impartiality (in favor or against) any of the teams based on this work.

My investigation identified steps TJPA implemented to reduce the possibility of bias or the ability of a current contractor to obtain a competitive advantage in the solicitation as a result of a past or current working relationship with TJPA. For example, TJPA established clear selection criteria, which members of the selection committee were required to use to score both written proposals and interviews. TJPA's selection committee was diverse; in addition to the two TJPA staff people referenced above, the committee included a TJPA staff person (Edmond Sum) whose current job functions do not include a close working relationship with AECOM, and representatives from two other public agencies (Caltrain and SFCTA) with no day-to-day working relationship with AECOM. TJPA required each selection committee member to execute a Qualifications/Proposal Evaluation Confidentiality and Conflict of Interest Certification, affirming that the panelist would give each proposer fair and independent consideration.

My investigation also looked for evidence of unfair competitive advantage as a result of AECOM's incumbency. TCP did not allege with particularity any competitive advantage AECOM may have experienced, and my investigation did not reveal any. I note TJPA has procedures in place to minimize the risk of such advantage. For example, TJPA excluded AECOM representatives from staff meetings beginning months prior to the RFP's issuance, so that the RFP could be discussed freely by TJPA staff without allowing AECOM to learn information that other respondents would not have access to. Any information related to the RFP that AECOM may have had access to in its current role (such as scheduling information) was made public to ensure all respondents had equal access. TJPA kept all procurement materials off of any network drives to which existing contractors may have had access. TJPA instituted a practice requiring procurement-related documents be disposed of via shredding and required that employees

working on the procurement keep their desks clear of paper related to the procurement. All of these practices and procedures together appear reasonably likely to ensure that AECOM did not garner an advantage by virtue of its current role with TJPA.

There is no rule that prohibits staff with a current working relationship with a contractor from participating in a selection panel that may include that same contractor, and there is no generally applicable rule that a selection committee member necessarily will be biased in favor of a contractor. Likewise, there is no rule that an incumbent always has an unfair competitive advantage in a future procurement. TCP has not offered, and I have not uncovered, evidence of bias as a result of Mr. Rodriguez's or Ms. Mincio's current working relationship with AECOM, or evidence of unfair advantage by AECOM. For these reasons, I have not identified sufficient evidence of bias or an unfair advantage to support granting TCP's protest on this issue.

**C. Organizational Conflict of Interest – AECOM's Contract with California High Speed Rail Authority**

TCP next alleges that because an AECOM-led joint venture is contracting with California High Speed Rail ("HSR") to provide program management support, there would be an organizational conflict of interest if AECOM were to serve in the PMCM role for TJPA. *See* TCP Protest at 9-10.

An organizational conflict of interest may occur where a contractor cannot or may not be objective and impartial due to, or may have an unfair competitive advantage because of, other activities, relationships, or contracts. *See* TJPA Board Policy 001, § IV(F). TJPA's policy prohibits selection of contractors with organizational conflicts of interest.

HSR is a member agency of TJPA, along with AC Transit, Caltrain, and the City and County of San Francisco. TJPA's transit center will serve as the Northern California terminus for HSR. Completing Phase 2 will fill the critical gap for Peninsula commuters and travelers on Caltrain and HSR's future high-speed rail system into the heart of downtown San Francisco. *See* RFP at 1. The PMCM consultant team will serve as advisors, managers, and support as an extension of TJPA technical staff. The PMCM will assist in the oversight and completion of ongoing and future work associated with the delivery of the Phase 2 project. *See* RFP, Attachment 5, § 1. The PMCM services include program management, project management, construction management and construction support, project delivery and contract development/compliance, configuration management, project controls, estimating, community outreach and construction relations, and other related activities. *See* RFP, Attachment 5, § 2. The detailed scope of work for the PMCM includes numerous references to coordination with

Caltrain. *See* RFP, Attachment 5. It does not provide the same level of detail regarding anticipated coordination with HSR; HSR’s 2024 Draft Business Plan does not indicate firm timing for construction work on the northern segment of HSR.

Based on my interviews with staff, TJPA has identified no circumstance where it may be possible in the course of the PMCM or HSR contracts for AECOM to create a competitive advantage for itself vis-à-vis the other contract. In particular, TJPA staff confirmed that AECOM-for-TJPA will not be reviewing change orders from AECOM-for-HSR or otherwise reviewing AECOM-for-HSR’s work. Also, TJPA staff confirmed that AECOM-for-HSR played no role in development of the PMCM RFP, so it could not have had a competitive advantage in that regard. Based on my review, there is evidence that should an organizational conflict of interest arise in the future, there could be an opportunity for TJPA to put appropriate measures in place, as needed, to protect TJPA’s interests.

Considering all available evidence, I conclude that any organizational conflict of interest is purely speculative at this point and not sufficient grounds to grant the protest..<sup>3</sup>

#### **D. California Government Code Section 1090**

TCP also argues that California Government Code section 1090 prohibits TJPA from contracting with AECOM. *See* TCP Protest at 11-12. Specifically, TCP argues that AECOM participated in the “making” of the PMCM contract through its current and past work for TJPA because AECOM has “participated in decisions that influence the content of the responsibilities” under the PMCM contract. TCP Protest at 12.

Government Code section 1090 prohibits a public official from “making” a contract in which they have a financial interest. A violation of Section 1090 occurs when (1) an official participated in the making of a contract in his or her official capacity; (2) the official had a cognizable financial interest in that contract; and (3) the financial

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<sup>3</sup> TCP makes several references to TJPA Board Policy 022 (Conflict of Interest Policy for Design-Build Procurements). The TJPA Board adopted the policy in October 2023 at the same meeting where the Board authorized the release of the Civil and Tunnel Progressive Design Build (40-CT) contract Request for Qualifications, a design-build procurement. By its terms, the policy applies only to design-build procurements, which the PMCM RFP is not. It is thus inapplicable here. Nonetheless, my analysis applies the same legal standards for assessing TCP’s allegation of organizational conflict of interest in its protest; thus, application of the policy would not result in a different conclusion here.

interest does not fall within any of the statutory exceptions for remote or noninterests. *See Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1074.

A consultant may be a public official subject to Section 1090. *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124-45. A consultant may be a public official participating in “making” a contract when the consultant is involved in “preliminary decisions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids.” *See Millbrae Ass’n for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.

However, I have not found any evidence that AECOM participated in “making” the PMCM contract as defined in California Fair Political Practices Commission (“FPPC”) decisions and case law interpreting Section 1090. Based on my review of the facts and interviews of staff, AECOM was not involved in the drafting of, or development of, the contents of the RFP. As described in Section IV.B above, TJPA implemented procedures to exclude AECOM from meetings that involved discussion of RFP preparation, prevent unauthorized access to materials about the RFP on network drives, and prevent inadvertent disclosures. Materials that AECOM helped draft that were relevant to the RFP, such as the *Transbay DTX Quantitative Risk Analysis Report*, were attached to the RFP and available for all respondents to review. This contribution does not establish that AECOM participated in the “making” of the contract, pursuant to Government Code section 1090, as the materials were provided to all interested parties. *See, e.g.,* Ciccozzi Advice Letter, FPPC File No. A-19-022 (May 9, 2019), *available at* <https://www.fppc.ca.gov/content/dam/fppc/documents/advice-letters/1995-2015/2019/Final%20A-19-022.pdf> (contractor that participated in preliminary plans or studies did not participate in “making” of contract where materials produced by that contractor related to subsequent contract were made public). Prior to the proposal due date, TJPA held a pre-proposal conference and provided all proposers the opportunity to submit questions about the procurement and the PMCM services and seek access to any additional documents or information the proposer believed it required to inform its proposal. *See* RFP at 10. TCP did not request access to any additional information or documentation.

To the extent that TCP suggests that there could be a potential Section 1090 violation in the future if AECOM works for both TJPA and HSR (*see* TCP Protest at 12), similar to the reasons described in Section IV.C above, I find this allegation is speculative and is not relevant to whether making of the PMCM contract at issue here would violate Section 1090.

### **E. Unfair Proposal Scoring Criteria**

TCP suggests that TJPA's scoring criteria for the solicitation is unfair because one of the required issues to be addressed in the proposals was how the respondent would transition work from the current consultant, which is AECOM. *See* TCP Protest at 12. TCP argues that this aspect of the required proposal is inherently biased toward the incumbent and that AECOM would likely be scored higher in this regard. *Id.*

The RFP at Section 5.1.2 invited proposes to describe their management approach. Within this category, proposers were asked to address several specific topics, including provide their evaluation of TJPA's proposed staffing plan, provide an organization chart showing their overall structure for completing the work, identify their proposed Key Personnel, address their company's mentoring, address their proposal for coordinating work across disciplines and contractors, describe their quality assurance plan, and provide detail about their community outreach strategy. *Id.* They were also instructed to "describe Respondent's change management plan for transitioning from the current Program Management/Project Controls (PMPC) team to Respondent's team." *Id.* The RFP explained that the entire management approach section could receive up to 40 points out of 100 points total for the written proposal.

TCP does not cite and I am not aware of any applicable law that precludes the use of an evaluation criterion based on transition plan. Instead, the SF Code provides that criteria should be based primarily on qualifications and experience relevant to the services required, and delegates development of the criteria to the Department Head. Thus, the inquiry is whether the evaluation criterion was arbitrary and capricious, or inconsistent with proper procedure because it thwarts full and open competition.

Based on my review of the facts, I do not see a credible argument that inquiring into a transition plan advantages the incumbent. First, the incumbent AECOM PMPC team is not identical to the proposed AECOM PMCM team, so some transition will be required regardless of AECOM's incumbent status. Further, *not* including such an inquiry would likely disadvantage non-incumbent respondents, as describing a transition plan gives every respondent the same opportunity to demonstrate how it will handle the change. Moreover, as described above, the proposed transition plan was only one element of the overall criterion regarding a proposer's management plan. While the review of a respondent's expertise, qualifications, and experience "remain within the sole purview of the panel members," I did not identify any evidence that it was unduly weighted compared to the other aspects of the management approach criterion.

Based on my review of the facts, this inquiry was reasonably related to TJPA's evaluation, as a smooth transition is essential to TJPA's operations. It seems quite



reasonable for TJPA to seek information from responding teams about how they would propose to handle the transition; thus, I do not believe the criterion was arbitrary or capricious.

## **F. Unstated Evaluation Criteria**

After review of records provided by TJPA in response to a Public Records Act request by TCP, TCP submitted a supplemental protest that alleged that one of the five selection panelists (Panelist E) used unstated evaluation criteria focused on AECOM's incumbent status when evaluating AECOM's written proposal and interview. *See* TCP Supp. Protest at 4.

### **1. Evaluation of Interview Questions**

As an example, TCP points to Panelist E's evaluation of AECOM on interview question 3, which asked interviewees to:

Briefly summarize the proposed interaction and reporting levels between the TJPA staff and the proposed "Key Personnel." What assurances can be provided that the "Key Personnel" proposed on your team's organization chart will be on the project if your team is selected?

Panelist E gave AECOM a score of 9.5 on this question and stated that "Two existing key members already have proven dedication and bring high value to the TJPA/Portal team staff." TCP points out that the interview question did not ask about the proposed team's *prior* actions in relation to TJPA. *See* TCP Supp. Protest at 4. Further, TCP argues that relying on "proven dedication" to evaluate a proposal necessarily favors an incumbent. *Id.*

Based on my review of the record, however, in addition to mentioning the AECOM team's "proven dedication," Panelist E's evaluation notes also included the following observations: "The integrated org charts clearly shows [sic] interaction and reporting structure" and "Additional key staff [are] mostly local and all key staff will be dedicated to the project." In my judgment, this demonstrates that the panelist's evaluation was not limited to AECOM's previous work for TJPA.

While the evaluation question did not specifically seek or require information about a respondent's past experience, the evaluation question also did not preclude the selection panel members from considering past experience as a measure by which to evaluate the criterion. Finally, as noted in AECOM's opposition to the supplemental protest, TJPA instructed the RFP respondents that the interview would consist of an hour and a half for "combined interview presentation and response to questions," and

respondents were not limited to speaking on the interview questions. AECOM Supp. Opp. at 2. Thus, AECOM was allowed to present on, and Panelist E was permitted to consider, AECOM's presentation regarding its relevant experience as a way to evaluate the criterion. *Id.*

For these reasons, it does not appear that Panelist E used improper or unstated criteria when evaluating AECOM's interview responses; accordingly, I have not identified sufficient evidence of a violation of TJPA's procurement policies to support granting TCP's protest on this issue.

## **2. Evaluation of Written Proposal**

TCP also suggests that Panelist E applied unfair or unstated scoring criteria when evaluating the written proposals for "Qualifications and Experience of Key Personnel." TCP Supp. Protest at 4. Specifically, TCP alleges that Panelist E gave AECOM the highest score "because [AECOM] had a strong, experienced team with institutional knowledge on the program and an engineering manager with 15 years of history on the program." *Id.*

Based on my review of the record, Panelist E's full evaluation of AECOM on this criterion read:

Strong experience team with institutional knowledge on program, local projects, and stakeholders.

Engineering manager has 15 year history on the program.

Interface/integration lead has key experience from BSV Phase I (DB) and Phase II (PDB), and Crossrail (UK)

Project Controls manager has multi mega projects experience – critical skills needed to understand PC challenges.

Procurement lead has transit procurement experience but only listed DBB for delivery method experience (DB, PDB, CMCG not listed for prior experience).

Appreciated organization of key personnel (Section 3.C) to clearly show past project experience type and delivery methods.

Panelist E gave AECOM a score of 32 out of 35 on this criterion. As previously explained, there is no prohibition on panelists considering respondents' past performance when evaluating them, and such evaluation is relevant to qualifications and experience. Indeed, evaluation of past performance at the agency could help or hinder the respondent (depending on how they had actually performed) and does not necessarily provide an advantage.

Notably, Panelist E also favorably evaluated TCP on its past work for the agency, scoring TCP 30 out of 35 on similar grounds:

MBE/DBE lead team (most local) with long standing history of delivery in San Francisco/Bay Area, Key staff members have worked on Phase 1&2. Project Contracts manager has key CIGFTA experience from Central subway and Phase 1 (was Program Manager for Phase 1). Construction manager (CM) has solid FTA Region 9 & 10 PMO experience and CM for Central submittal. Project Control Manager (PCM) has solid Project controls/PDB experience at SFO. Procurement manager has solid procurement experience but seemed focused on contract specialist and less lead roles with HSR.

Panelist E thus applied the same approach to evaluate both AECOM's and TCP's relevant qualifications and experience; the approach appears fair and reasonable.

For these reasons, it does not appear that Panelist E applied unfair or unstated scoring criteria, and I do not believe that TJPA acted inconsistent with proper procedures or arbitrarily or capriciously.

TCP also alleges that Panelist E did not fairly score TCP because it ranked AECOM higher on some criteria where, in TCP's opinion, TCP had the stronger answer. *See* TCP Supp. Protest at 5-6. Questions relating to a respondent's expertise, qualifications and experience shall remain within the sole purview of the selection panel members. SF Code § 6.40(b). TCP's perception of whether its answers were stronger – especially when it was not present at AECOM's interview and thus did not observe AECOM's answers – is not evidence of bias or improper or unfair scoring.

## **V. AECOM Notice of Alleged TCP Violations**

In its opposition to TCP's supplemental protest, AECOM alleges solicitation policy violations by TCP. *See* AECOM Opp. to Supp. at 6-7. Because there is no notice of intent to award the PMCM contract to TCP at this time, there currently exists no grounds for a protest related to TCP's alleged actions. For this reason, I did not consider AECOM's allegations or TCP's responses thereto at this time.

## **VI. Conclusion**

For the reasons explained above, I recommend that TCP's Protest related to RFP 23-03 be denied.

Memo to David Ambuehl, Chief Deputy District Director, Caltrans  
May 29, 2024  
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Please do not hesitate to contact me if I can provide any further information to assist in making your decision.

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