

## **EXHIBIT C**

### **Relevant Excerpts from the Master Asset Management Agreement**

**Note: The attached excerpts from the Master Asset Management Agreement refer to the various obligations, rights and responsibilities of “Owner” and “Manager” as the parties to the Master Asset Management Agreement. However, as incorporated into or otherwise required by this Agreement, Contractor shall perform the applicable obligations set forth in the Master Asset Management Agreement and otherwise comply with the applicable terms of the Master Asset Management, and for such purposes, the term “Owner” shall be deemed to refer to Owner and LPC, and the term “Manager” shall be deemed to refer to Contractor, as applicable.**

## **Definitions Used in the TJPA Service Contractor Requirements**

"Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"Claims" mean any liabilities, damages (including without limitation for Claims filed against any indemnified party by a third-party, for direct, special and/or consequential damages alleged by such third party), costs, expenses, suits, losses, claims, actions, fines and penalties, including, without limitation, court costs, reasonable attorneys' fees and any other reasonable costs of litigation.

"Environmental Law" means any Law about the following at, in, under, above, or upon the Center: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or such other entity or instrumentality acknowledged by Owner to have jurisdiction over the Center (or any activity the Master Asset Management Agreement or this Subcontract allows), including the United States federal government, the State of California and City and County of San Francisco governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof.

"Hazardous Substances" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended, or California Hazardous Substances Account Act, Health and Safety Code Sections 26300, et seq.; (ii) defined as a "hazardous waste" under Section 1004 of The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended or the California Hazardous Waste Control Act, Health and Safety Code Sections 25100, et seq.; (iii) defined as a "hazardous substance" or "hazardous waste" under Section 101 of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called "superfund" or "superlien" law, including the judicial interpretations thereof; (iv) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (v) defined as "hazardous waste" under 40 C.F.R. Part 260; (vi) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (vii) subject to the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5, et seq., California Health and Safety Code Sections 25280, et seq. (Underground Storage of Hazardous Substances), the California Hazardous Waste Management

Act, Health and Safety Code Sections 25170.1, et seq., the California Health and Safety Code Sections 25501. et seq. (Hazardous Materials Response Plans and Inventory), California Health and Safety Code Sections 25214.9 et seq. (Electronic Waste) or the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000, et seq.; or (viii) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

"Hazardous Substances Discharge" means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Center, or into the real property on which the Center is located, or that arises at any time from the use, occupancy, or operation of the Center or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the real property on which the Center is located, whether or not caused by a party to this Subcontract and whether occurring before or after the commencement date thereof.

"Indemnify" means, where a party shall "Indemnify" any Indemnitee from, against, or for a particular matter (the "Indemnified Risk"), that the indemnifying party shall indemnify the indemnified party and defend and hold the indemnified party harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the indemnifying party's indemnity. The indemnifying party's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to the indemnifying party's insurance carrier shall be automatically deemed satisfactory.

"Laws" means all applicable laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government, whether currently in force or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs) including, without limitation, reasonable attorneys' fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

"Owner's Indemnitee's" means Owner, the additional insureds specified by Owner, the member agencies of TJPA and any and all subsidiaries and affiliates of any of the foregoing, their agents, servants, directors, officers, employees and any Person directly or indirectly holding or owning any ownership or equity interest of any of the foregoing.

"Person" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership (of any type), trust, unincorporated organization, or other entity of any kind.

## **Indemnity Provisions – Section 15 of the Master Asset Management Agreement**

15.1 *Obligations.* The foregoing obligation to Indemnify shall apply irrespective of whether (i) Claims are asserted by any Indemnitees or by unrelated third parties against the Indemnitees, including but not limited to patrons, occupants, Tenants, and invitees of or to those portions of the Premises which fall under Manager's control, authority, duties, responsibility, management, or oversight, or (ii) whether the Indemnitees or others are partially, or are alleged to be partially, at fault for the Claims, provided that, if the Indemnitees or others are partially at fault for the Claims, Manager shall only be responsible for a proportionate share of any such Claim based on the extent of Manager's [indemnification obligations]. Notwithstanding the foregoing, Manager is not required to Indemnify the Indemnitees against Claims to the extent that such Claims result directly from Owner's breach of this Agreement or from the active negligence, willful misconduct, or fraud of the Indemnitees, their officials, employees, agents, contractors, or others performing work for, or on behalf of, the Indemnitees. Nothing contained herein shall relieve Manager of any responsibility for Claims regardless of whether Manager is required to provide insurance covering such Claims or whether the matter giving rise to the Claims is the responsibility of Manager's agents, employees, contractors, or subcontractors. Each Indemnitee shall have the right to participate in the defense of any claim against it that is covered by Manager's obligations hereunder, including the right to retain its own legal counsel of its choice in the event a conflict of interest exists between Indemnitee and Manager; provided that nothing herein shall limit an Indemnitee's rights as an additional insured on Manager's insurance required under Section 16.2 below. Except as otherwise provided for herein regarding third-party claims, Manager shall not be liable to Indemnitees for loss of profits or for indirect, special, or consequential damages. Manager shall promptly pay over, reimburse, and make good to Indemnitees all sums of money that Manager is obligated to pay by any reason of Manager's obligations to Indemnify under this Agreement. The provisions of this Section 15.1 shall survive the expiration or the termination of this Agreement.

15.2 *Liability of Owner.* To the fullest extent permitted by applicable Law but subject to Section 16.7 below, during the Term, none of Owner or any of its Affiliates shall be liable for any injury or damage to (a) any property of Manager or any other Person occurring on or about the Premises, or (b) any Person occurring on or about the Premises, unless caused by Owner's willful misconduct, gross negligence or breach of this Agreement; provided, however, that notwithstanding whether the injury or damage is caused by any act or failure to act of any Indemnitee, neither Owner, nor any Indemnitee shall have any liability for any injury or damage for which Manager would have been reimbursed under policies of insurance required by the terms of this Agreement to be maintained by Manager (i) had Manager not failed to procure or maintain such policies of insurance or (ii) had Manager not failed to procure or maintain such policies of insurance with at least the limits herein specified. Owner's right to enter and inspect the Premises is intended solely to allow Owner to ascertain whether Manager is complying with this Agreement and (to the extent this Agreement allows) to cure any Default. Such provisions shall not impose upon Owner any liability to third parties, but nothing in this Agreement shall be construed to exculpate, relieve, or Indemnify Owner from or against any liability of Owner: (y) to third parties existing at or before the Commencement Date; or (z) arising from Owner's intentional acts or omissions or negligence.

15.3 *Indemnification Procedures.* Wherever this Agreement requires Manager to Indemnify any Indemnitee:

15.3.1 *Selection of Counsel.* Manager shall select counsel reasonably acceptable to Indemnitee. Counsel to Manager's insurance carrier shall be deemed satisfactory. Even though Manager shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Manager's counsel shall actively consult with Indemnitee's counsel.

15.3.2 *Settlement.* Manager may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall be given for any settlement by which: (w) Manager procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (x) neither Indemnitee, nor Manager on behalf of Indemnitee, admits liability; (y) the continued effectiveness of this Agreement is not jeopardized in any way; and (z) Indemnitee's interest in the Premises is not jeopardized in any way, each as determined in Indemnitee's reasonable discretion.

15.4 *Survival.* The provisions of this Section 15 shall survive the expiration or sooner termination of the Term.

**Insurance Provisions – Sections 16.3.3 and 16.4-16.8  
of the Master Asset Management Agreement**

- 16.3.3 All policies of insurance required pursuant to Sections 16.2 and 16.3 above must be written in accordance with the following requirements:
- A. Shall be endorsed to be primary insurance coverage at least as broad as ISO CG 10 01 04 13 as respects Owner and the other Indemnitees and shall be non-contributory to any other valid and collectible insurance and must be exhausted before implicating any Owner's policy available.
  - B. Shall be written by companies with an A.M. Best Company rating of A, VII or better, licensed to do business in California, unless otherwise approved by the Owner.
  - C. Each policy shall provide that coverage shall not be canceled, materially changed or not renewed unless thirty (30) days' advance notice (ten (10) days' advance notice for non-payment of premiums) shall be delivered to the Owner.
  - D. Policies written on a "claims-made" basis are not acceptable except for Professional Liability.
  - E. Shall endeavor to provide evidence of renewal or replacement insurance with the same terms and conditions as required in the agreement at least two (2) weeks prior to the expiration date of the then-current policy.
  - F. All such insurance shall contain deductibles of not more than \$25,000 unless approved by the Owner. Self-insured retentions must be declared to and approved by Owner. The party responsible for procuring the applicable insurance shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. Owner may require that the party procuring the applicable insurance provide proof of ability to pay losses and related investigations, claim administration and defense expenses with any self-insured retention.
  - G. All indemnified parties are to be covered as additional insured on all such insurance other than any worker's compensations insurance.
  - H. All references to the required forms shall comply with the Insurance Services Office, Inc. ("ISO") or its equivalent approved by the Insurance Department of the State of California.

16.4 *Insurance Submission Requirements.*

16.4.1 The Manager shall furnish evidence of all policies prior to occupancy or start of any work to:

Transbay Joint Powers Authority  
425 Mission St., Suite 250  
San Francisco, CA 94105  
Attn: Executive Director

16.4.2 Certificates of insurance may be supplied as evidence of such aforementioned policies. However, if requested by the Owner, the Manager shall deliver to the Owner, within forty-five (45) days of such request, a copy of such policies required to be carried by Manager pursuant to Section 16.2, certified by the insurance carrier as being true and complete. With respect to any policies required to be carried by any contractor pursuant to Section 16.2.2 or any Tenant pursuant to Section 16.3, if requested by the Owner, the Manager shall use commercially reasonable efforts to obtain and deliver to the Owner, within forty-five (45) days of such request, a copy of such policies, certified by the insurance carrier as being true and complete. If a certificate of insurance is submitted it must: (1) be signed by an authorized representative of the insurance carrier or producer and notarized; (2) disclose any deductible, sub-limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (3) indicate the Additional Insureds and Named Insureds as required herein. The Manager must provide (or use commercially reasonable efforts to cause any contractor or Tenant to provide, as applicable) a copy of the Additional Insured endorsement (s) as required in the foregoing and must include the policy number(s); and (5) expressly reference the inclusion of all required endorsements. The Manager shall be responsible for managing and tracking insurance compliance for all Tenants and their contractors throughout the Term.

16.5 *No Limit on Manager's Liability.* The minimum amounts of insurance required under Sections 16.2 and 16.3 of this Agreement shall not be construed to limit the extent of Manager's liability under this Agreement.

16.6 *Right to Request Additional Insurance and Limits.* Owner reserves the right to modify the requirements for the insurance required under this Article 16, including changes to the limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances; provided, however, that (i) Owner shall, at all time, acquire such insurance protection as it deems necessary to protect the interests of the Owner, the members of Owner and the public, and (ii) Owner shall not require Manager to carry additional types of insurance that is to be carried by Manager at Manager's sole cost and expense if such additional type of insurance is not available at commercially reasonable rates or is not customarily required of other property managers providing similar asset management services to projects reasonably similar in scope to the Center. In furtherance of the foregoing, Manager agrees to provide, or cause any Tenants or contractors, as

applicable, such increased limits, or expanded insurance coverages as the Owner may, from time to time, deem appropriate.

- 16.7 *Waiver of Subrogation.* All policies of Commercial Property Insurance carried by Manager shall include an appropriate clause in, or endorsement upon, each such insurance policy pursuant to which the insurance company waives subrogation or permits the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim shall extend to Owner as well as each of their respective agents and employees.
- 16.8 *Blanket and/or Master Policies.* The insurance required to be carried by Manager pursuant to the provisions of this Agreement may, at Manager's option, be effected by so-called "blanket", "wrap-up" and/or "master" policies issued to Manager and/or its Affiliates covering the Premises and other properties owned, leased or managed by Manager or its Affiliates, provided such policies (a) otherwise comply with the provisions of this Agreement and (b) by endorsement, allocate to the Premises the specified coverage and limits of coverage herein required for all insureds required to be named as insureds hereunder.



## Article 29 – TJPA General Contracting Requirements

### 29. General Contracting Requirements.

29.1 *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code Chapter 6, Article V, Manager or any 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. Manager or any such subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if Manager or such 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. Notwithstanding anything in this Section 29.1 which may be construed to the contrary, Manager shall not be liable to TJPA for any acts or omissions of any subcontractor or consultant in violation of San Francisco Administrative Code Chapter 6, Article V or this Section 29.1; provided, however, Manager shall be obligated to notify Owner of any violations by its subcontractors or consultants of which it becomes aware and shall cooperate with Owner in connection with any investigation or prosecution of any such violation or alleged violation.

29.2 *Disallowance.* If Manager 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 Manager 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 Manager under this Agreement or any other Agreement. By executing this Agreement, the Manager certifies that the Manager is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The Manager acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

29.3 *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 Manager.

29.4 *Qualified Personnel.* The Manager represents and warrants to the TJPA that the Manager is qualified to perform the services as contemplated by this Agreement. The Manager 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 Manager. 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.

29.5 *Independent Contractor.* The Manager or any agent or employee of Manager 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 Manager or any agent or employee of the Manager shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Manager or any agent or employee of the Manager, as applicable, is liable for the acts and omissions of itself, its employees and its agents. All matters pertaining to the selection, direction, employment, supervision, compensation (subject to any applicable approved staffing plan and the Budget for the applicable Fiscal Year approved by Owner), promotion and discharge of such personnel are the sole responsibility of Manager or Manager's subcontractor, as the case may be, which shall be in all respects the employer of such personnel, except that Manager shall have total responsibility for and shall fully comply with all applicable laws and regulations having to do with workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. Without limiting the foregoing, the Manager 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 Manager's performing services and work, or any agent or employee of the Manager providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Manager. 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 Manager's work only, and not as to the means by which such a result is obtained.

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

Notwithstanding the foregoing, the restrictions on the use and disclosure of private or confidential information shall not apply to and shall not include the following (the "Confidentiality Exclusions"):

- (a) the disclosure of information or techniques which are or become generally known in the property management industry (other than through disclosure in violation of this Section 29.6);

- (b) the disclosure of information to the extent required under Laws, including reporting requirements applicable to public companies;
- (c) the disclosure of information to the extent necessary to assert any right or defend any claim arising under this Agreement;
- (d) the disclosure of information to the extent the disclosing party is legally compelled to do so under the terms of a subpoena, order, civil investigative demand or similar process issued by the Government; provided, however, that prior to any such disclosure, such disclosing party shall, to the extent legally permissible: (i) promptly notify the non-disclosing party of the existence, terms and circumstances surrounding such request; (ii) consult with the non-disclosing party regarding the advisability of taking legally available steps to resist or narrow such disclosure; (iii) furnish only that portion of the information that, in the opinion of independent counsel for the non-disclosing party, such disclosing party is legally compelled to disclose; and (iv) cooperate with the non-disclosing party (or any other Person having an interest in the information) to obtain a protective order or other reliable assurance that confidential treatment will be accorded the information;
- (e) the disclosure of any information that is or has become generally available to the public other than as a result of disclosure by the disclosing party in breach of any of the provisions of this Agreement; or
- (f) the disclosure of any information made available to the disclosing party on a non-confidential basis by any third party who is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation to the non-disclosing party.

Additionally, the Manager acknowledges that all data and documentation collected, created, received, maintained or disseminated for any purpose in the course of Manager's performance of this Agreement is governed by the California Public Records Act, Government Code Section 6250, *et seq.* ("CPRA") and any other applicable state statutes, any regulations adopted to implement the CPRA and any federal statutes and regulations on data privacy.

*29.7 Protection of Private Information.* The Manager agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Manager agrees to all of the following:

- (a) Neither the Manager 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 Manager received advance written approval from the TJPA to disclose the information; or
- (3) Any Confidentiality Exclusion is applicable.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the TJPA shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.

(d) Any failure of the Manager to comply with the Nondisclosure of Private Information Ordinance shall, subject to applicable notice and cure periods, 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 Manager, or bring a false claim action against the Manager.

*29.8 News Releases/Interviews.* All Manager news releases, media interviews, testimony at hearings and public comment relating to the Transbay Transit Center Program shall be prohibited unless expressly authorized by the TJPA.

*29.9 Ownership of Results.* Any interest of the Manager or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by the Manager 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 Manager may retain and use copies for reference and as documentation of its experience and capabilities.

*29.10 Works for Hire.* If, in connection with services performed under this Agreement, the Manager 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 Manager or its subcontractors under this Agreement are not works for hire under U.S. law, the Manager 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 Manager may retain and use copies of such works for reference and as documentation of its experience and capabilities. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Manager and its subcontractors shall retain any and all of their respective intellectual property rights not developed solely for the performance of this Agreement or any

subcontract pertaining to performance of this Agreement, including rights under patent, copyright, trademark, trade secret, or rights of publicity laws, or any other statutory provision, regulation or common law doctrine.

*29.11 San Francisco Sunshine Ordinance.* In accordance with S.F. Administrative Code Section 67.24(e), the Managers' 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.

*29.12 Public Access to Meetings and Records.* If the Manager 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 Manager shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Manager 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 Manager 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 Manager acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Manager 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.

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

*29.14 Limitations on Contributions.* Through execution of this Agreement, the Manager acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Manager acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Manager further acknowledges that

the prohibition on contributions applies to each prospective party to the contract; each member of the Manager's board of directors; the Manager's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Manager; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Manager. Additionally, the Manager acknowledges that the Manager must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

*29.15 Prohibition on Political Activity with TJPA Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Manager may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Manager agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the Manager 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 Manager from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Manager's use of profit as a violation of this Section.

*29.16 Equal Employment Opportunity/Nondiscrimination; Penalties.*

(a) *Manager Shall Not Discriminate.* In the performance of this Agreement, the Manager agrees not to discriminate against any TJPA or City employee working with such Manager or subcontractor, applicant for employment with such Manager or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Manager further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Manager 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 Manager's employment practices.

(b) *Subcontracts.* The Manager 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. Manager's failure to comply with

Manager's obligations in this subsection shall, subject to applicable notice and cure periods, constitute a material breach of this Agreement.

(c) *Nondiscrimination in Benefits.* The Manager does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.

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

(e) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Manager 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 Manager 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 Manager and/or deducted from any payments due the Manager.

*29.17 Disadvantaged Business Enterprise (DBE) Requirements.* The Manager or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The Manager shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Manager 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 Manager will be required to update and submit the TJPA's "Bidders/Proposers Information Request Form," regardless of DBE participation. Upon award of the contract, the Manager shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subcontractor Payment Declaration" within five days of each payment by Manager to a subcontractor, and a "Final Expenditure Report" with the completion of the contract.

*29.18 Requiring Minimum Compensation for Covered Employees.* The Manager 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, Manager agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, the Manager shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$13.64 as of July 1, 2017.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then the gross hourly compensation as of July 1, 2016, is \$13.00 per hour, and as of July 1, 2017, \$14.00 per hour.

(b) The Manager shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Manager's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) The Manager understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Manager of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.

(d) If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, the Manager fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Manager fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge the Manager 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 Manager under this Agreement;

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



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

(5) The right to bar the Manager from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) The Manager represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) The Manager 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 Manager from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

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

(h) The Manager shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

(i) The TJPA may conduct random audits of the Manager. 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 Manager every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by the Manager 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 Manager and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Manager 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. Manager shall require all subcontractors to comply with the requirements of the MCO and will use commercially reasonable, diligent

efforts to pursue all rights and remedies available to Manager under such subcontract, at law or in equity if such subcontractor fails to comply with the MCO.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Manager 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 Manager 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 Manager 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 Manager 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 Manager also understands that the MCO provides that if the Manager prevails in any such action, the Manager may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If the Manager 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 Manager later enters into an agreement or agreements that cause the Manager to exceed that amount in a fiscal year, the Manager 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 Manager and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

*29.19 Requiring Health Benefits for Covered Employees.*

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

(a) For each Covered Employee, the Manager shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Manager chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Manager is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) The Manager's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Manager 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 Manager fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Manager fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.

(d) Any Subcontract entered into by the Manager shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Manager 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. Manager shall require all subcontractors to comply with the requirements of HCAO and will use commercially reasonable, diligent efforts to pursue all rights and remedies available to Manager under each such subcontract, at law or in equity, if such subcontractor fails to comply with the HCAO.

(e) The Manager shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Manager's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) The Manager represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) The Manager shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.

(h) The Manager shall keep itself informed of the current requirements of the HCAO.

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

(j) The Manager shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least ten (10) Business Days to respond.

(k) The Manager shall allow the TJPA to inspect the Manager's job sites and have reasonable access to the Manager's employees in order to monitor and determine compliance with HCAO, provided that TJPA shall not unreasonably interfere with or impair Manager's operations in the exercise of such inspection rights.

(l) The TJPA may conduct random audits of the Manager to ascertain its compliance with HCAO, provided that TJPA shall not unreasonably interfere with or impair Manager's operations in the exercise of such audit rights. The Manager agrees to cooperate with the TJPA when it conducts such audits.

(m) If the Manager is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Manager later enters into an agreement or agreements that cause the Manager'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 Manager and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

*29.20 First Source Hiring Program.*

(a) *Incorporation of Administrative Code Provisions by Reference*

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Manager shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) *First Source Hiring Agreement*

(1) The Manager 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 Manager 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 Manager agrees to use good faith efforts to comply with the First Source hiring requirements. Manager 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 Manager's employment records.

(c) *Hiring Decisions*

The Manager shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) *Exceptions*

Upon application by Employer, the First Source Hiring Administration ("FSHA") may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) *Liquidated Damages*

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(f) *Subcontracts*

Any subcontract entered into by the Manager 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.

29.21 *MacBride Principles – Northern Ireland.* Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Manager acknowledges and agrees that he or she has read and understood this Section.

29.22 *Drug-Free Workplace Policy.* The Manager 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 Manager agrees that any violation of this prohibition by the Manager, its employees, agents or assigns will be deemed a material breach of this Agreement.

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

29.24 *Tropical Hardwood/Virgin Redwood Ban.* Pursuant to Section 804(b) of the San Francisco Environment Code, the TJPA urges Manager not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

29.25 *Preservative-treated Wood Containing Arsenic.* The Manager 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. Manager 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 Manager 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.

29.26 *Food Service Waste Reduction Requirements.* Manager 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, Manager agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Manager 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 Manager's failure to comply with this provision.

29.27 *Graffiti Removal.* Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City and County of San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

The Manager shall remove all graffiti from the Premises within forty eight (48) hours of the earlier of the Manager'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, the cost of which removal shall be an Operating Expense. 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.).

*29.28 USDOT Requirements.* The provisions contained in "USDOT Requirements for Professional Services Contracts," attached as **Exhibit P**, are incorporated into this Agreement, and the Manager 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 reasonable determination, the USDOT terms and conditions shall take precedence.

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

*29.30 Compliance with Americans with Disabilities Act.* The Manager 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 Manager 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 Manager 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 Manager, its employees, agents or assigns will, subject to applicable notice and cure periods, constitute a material breach of this Agreement.

*29.31 Compliance with Card Check Policy.* The provisions contained in the "Labor Representation Policy," attached as **Exhibit Q** (the "Card Check Policy"), are incorporated into this Agreement, and the Manager 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 terms and provisions contained in the Card Check Policy and any other terms and provisions of this Agreement, in the TJPA's sole determination, the terms and provisions contained in the Card Check Policy shall take precedence.

29.32 *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.



## EXHIBIT P

### 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 (1-11) apply to all Agreements (excluding micropurchases—purchases of \$3,000.00 or less).**

#### **1. DEFINITIONS**

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

- (a). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by FTA or FRA.
- (b). **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the TJPA is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- (c). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.
- (d). **Federal Cooperative Agreement** means the instrument by which FRA or FTA awards Federal assistance to the TJPA to support a particular Project, and in which FRA or FTA takes an active role or retains substantial control.
- (e). **Federal Grant Agreement** means the instrument by which FTA or FRA awards Federal assistance to the TJPA to support a particular Project, and in which FTA or FRA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304. **FRA** is the acronym for the Federal Railroad Administration, one of the operating administrations of the U.S. DOT.
- (f). **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.
- (g). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (h). **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.

- (i). **Government** means the United States of America and any executive department thereof.
- (j). **Project** means the Transbay Transit Center Program, which will extend Caltrain to Transbay Terminal and replace Transbay Terminal with the new Transbay Transit Center Building. Total project consists of three major components: a new, multi-modal Transbay Transit Center (TTC) on the site of the present Transbay Terminal; the extension of Caltrain commuter rail from its current SF terminus at 4th and Townsend St. to a new underground terminus under a proposed new TTC; and the establishment of a Redevelopment Area with related development projects, including transit-oriented development on publicly owned land in the vicinity of the new multi-modal TTC.
- (k). **Recipient** means the TJPA.
- (l). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (m). **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.
- (n). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (o). **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. 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.

## **9. 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.

## **10. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

## **11. 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 (12) applies to Agreements exceeding \$10,000.**

**12. 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 (13) applies to Agreements exceeding \$25,000.**

**13. 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 (14-15) apply to Agreements exceeding \$50,000.**

**14. 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.

**15. 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 (16-19) apply to Agreements exceeding \$100,000.**

**16. 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.

**17. 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.

## 18. 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.

## 19. 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.

**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: \_\_\_\_\_

**EXHIBIT Q**  
**CARD CHECK POLICY**

(see attached)



# TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 011

Category: Workplace Matters

## LABOR REPRESENTATION POLICY

### I. DEFINITIONS. FOR PURPOSES OF THIS POLICY, THE FOLLOWING DEFINITIONS SHALL APPLY

A. "Card check agreement" means a written agreement between an employer and a labor organization providing a procedure for determining employee preference on the subject of whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization to be represented, which provides, at a minimum, the following:

1. Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;

2. All disputes over interpretation or application of the parties' card check agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;

3. Forbearance by any labor organization from economic action against the employer at the worksite of an organizing drive covered by this Policy, and in relation to an organizing campaign only (not to the terms of a collective bargaining agreement), so long as the employer complies with the terms of the card check agreement;

4. Language and procedures prohibiting the labor organization or the employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

B. "Contract" means a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement in which one party is anyone operating a hotel or restaurant project.

C. "Collective bargaining agreement" means an agreement between an employer and a labor organization regarding wages, hours and other terms and conditions of employment of the employer's employees. For purposes of this Policy, a collective bargaining agreement does not include a card check agreement as defined herein.

D. "Developer" means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, lease, develop, build, remodel or otherwise establish a hotel or restaurant project.

E. "Economic action" means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an employer, as part of a campaign to organize employees or prospective employees of that employer, including such activities as striking, picketing, or boycotting.

F. "Employer" means any developer, manager/operator or subcontractor who employs individuals in a hotel or restaurant in a hotel or restaurant project.

G. "Hotel or restaurant project" means a development project or facility within the Transbay Transit Center or Transit Tower which contains a hotel or restaurant. For purposes herein a "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a hotel or retail store.

H. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

I. "Manager/operator" means any person, corporation, association, limited or general partnership, joint venture or other entity (including a developer) that operates or manages a hotel or restaurant in a hotel or restaurant project, or provides any material portion of the services provided by such hotel or restaurant in a hotel or restaurant project.

J. "Subcontract" means any lease, sublease, management agreement or other similar agreement between a developer or a manager/operator and a subcontractor which contemplates or permits the subcontractor to operate or manage all or a portion of a hotel or restaurant in a hotel or restaurant project.

K. "Subcontractor" means any person, corporation, association, limited or general partnership, limited liability company, joint venture or other entity that enters into a subcontract with a developer or manager/operator.

## II. POLICY, REQUIREMENTS AND PROCEDURES TO MINIMIZE LABOR/MANAGEMENT CONFLICT

A. General Policy. The Board of Directors declares as a matter of general policy that employers operating a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower shall agree to abide by the procedures of a card check agreement for determining employee preference on the subject of labor union representation, as specified in this Policy.

B. Pursuant to this Policy, the following requirements are imposed, except that no Employer, Developer or Manager/Operator, however, shall be responsible for obligations under this Policy if that person or entity is otherwise exempt from those obligations as described below.

1. Employers. An employer of employees working in a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower shall:

a. Enter into a card check agreement with a labor organization which requests such an agreement for the purpose of seeking to represent those employees before executing the subcontract or contract pursuant to which it will operate a hotel or restaurant in a hotel or restaurant project;

b. If the parties are unable to agree to the terms of a card check agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a card check agreement will be imposed by an arbitrator. In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model card check agreement provided by the TJPA and/or prevailing practices and the terms of card check agreements in the same or similar industries, except that such card check agreement must include the mandatory terms identified in this Policy;

c. Comply with the terms of that card check agreement and this Policy;

d. Include in any subcontract (with a subcontractor) which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project within the Transbay Transit Center or Transit Tower or to provide a service essential to the operation of such a hotel or restaurant, a provision requiring that subcontractor to comply with this Policy. This provision shall be a material and mandatory term of such subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

"The Transbay Joint Powers Authority has a Policy which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Policy, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a card check agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Policy. [Subcontractor] recognizes that, as required by that Policy, it must enter into a card check agreement with a Labor Organization(s) as specified by that Policy before executing this [Subcontract], and that being party to such a card check agreement(s) is a condition precedent of rights or obligations under this [Subcontract]."

Notwithstanding the requirements provided in (a) - (d), any employer who has in good faith fully complied with those requirements will be excused from further compliance as to a labor organization which has taken economic action against that employer at that site in furtherance of a campaign to organize that employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to economic action against an employer at other locations where that employer does business, or at any location for purposes other than organizing the employer's employees; nor shall economic action by one labor

organization excuse an employer from the obligations of this Policy or a card check agreement as to a different labor organization.

2. Developers and Manager/Operators. Any developer or manager/operator of a hotel or restaurant project must:

a. To the extent it employs employees in a hotel or restaurant in a hotel or restaurant project, abide by the requirements stated in Subsection (1);

b. Include the provision specified in (1)(d) in any subcontract, modified as necessary to accommodate the circumstances of that particular subcontract;

c. Refrain from executing a subcontract by which an employer subject to (1) is authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until that employer has entered into a card check agreement with a labor organization, as required in (1);

d. Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower which may be subject to the requirements of (1), as soon as the developer or manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later than 21 days before requiring an employer to sign a subcontract. This notification requirement applies only to hotels or restaurants or employers that will operate in a Hotel or Restaurant Project.

e. Inform any prospective subcontractor, that if the subcontractor acts as an employer subject to the requirements of (1), it must enter into a card check agreement pursuant to this Policy before it may execute the subcontract, and as a condition precedent to any rights or obligations under such document;

f. Take reasonable steps to enforce the terms of any subcontract requiring compliance with this Policy.

3. The TJPA.

a. TJPA Contracts. This Policy shall be included and incorporated in any contract entered into by the TJPA which contemplates the use or operation of a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower. Such contract shall state that any developer or operator/manager of a hotel or restaurant project within the Transbay Transit Center or Transit Tower, and any employer(s) operating in such hotel or restaurant project, agree to comply with this Policy as essential consideration for the TJPA entering into the contract, and that failure to comply with this policy shall constitute a material breach of the contract.

b. Executive Director Authority to Issue Implementation Guidelines. To facilitate the requirements imposed by this Section, the TJPA may provide a model recommended card check agreement that includes the mandatory terms identified in this Policy and which provides the maximum protection against labor/management conflict arising out of an

organizing drive, and make such model recommended agreement available to parties required to enter into such agreement. The TJPA's Executive Director, or designee, may also prepare guidelines establishing standards and procedures related to this Policy.

### III. SCOPE AND EXEMPTIONS

A. Scope. This Policy is not intended to favor any particular outcome in the determination of employer preference regarding union representation, nor to skew the procedures in such a determination to favor or hinder any party to such a determination. Likewise, this Policy is not intended to enact or express any generally applicable policy regarding labor/management relations, or to regulate those relations in any way. The requirements of this Policy apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Accordingly, this Policy does not apply to the process of collective bargaining in the event a labor organization has been recognized as the bargaining representative for employees of employers subject to this Policy. Moreover, nothing in the Policy requires an employer or other entity subject to this Policy to recognize a particular labor organization; nor does any provision of this Policy require that a collective bargaining agreement be entered into with any labor organization, or that an employer submit to arbitration regarding the terms of a collective bargaining agreement.

B. Exemptions. The requirements of this Policy shall not apply to:

1. Employers employing fewer than the equivalent of 50 full-time or part-time employees, provided that when a restaurant is located on the same premises as a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this ordinance;

2. Any employer which is signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that hotel or restaurant project, or which has entered into a card check agreement with a labor organization regarding such employees which agreement provides at least equal protection, as determined by the Executive Director of the TJPA, from labor/management conflict as provided by this Policy;

3. Any hotel or restaurant project where the developer, manager/operator or employer, is an agency of the federal government or a statewide agency or entity ("public agency") and that public agency would prohibit application of this Policy; or

4. Any hotel or restaurant project where the requirements of this Policy would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency related to such hotel or restaurant project, or any related rules or regulations.