

**STAFF REPORT FOR CALENDAR ITEM NO.: 8  
FOR THE MEETING OF: July 14, 2011**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute a renewal to the professional services agreement between the Transbay Joint Powers Authority (TJPA) and URS Corporation (URS) to provide Program Management / Program Controls services for a third three-year term. The initial professional services agreement for Program Management/Program Controls services included an option to renew the Agreement for two (2) additional consecutive three (3) year terms. The total amount of the agreement for the third three-year term will not exceed \$28,400,000.

The scope of services to be performed under this agreement consists of a series of tasks, described in the attached Agreement, Appendix A, "Scope of Work", that will be authorized by TJPA under Annual Work Plans and Task Orders.

**SUMMARY:**

- In April 2004, the TJPA issued a request for proposals (RFP) for a consultant to provide Program Management/Program Control services for up to nine years. In May 2004, five proposals were received. URS was ranked highest through the selection process, and TJPA negotiated an agreement with URS, which was approved by the TJPA Board of Directors in November 2004, for an initial three-year term and a maximum compensation of \$37,611,121. A total of \$23,139,965 was incurred under the initial term.
- The TJPA evaluated the performance of URS for the initial three-year term and determined the need for the renewal of contract terms under Term 2. On March 20, 2008, the TJPA Board of Directors adopted Resolution No. 08-013, which authorized the Executive Director to execute Term 2 of the Agreement for said services by Contractor, extending the contract duration by three years for compensation of 36,670,000. As of April 29, 2011, a total of \$30,870,938 has been incurred.
- Since November 2004, URS has assisted with the development of the Program and has performed the scope of services efficiently and in a cost effective manner. For the next stage of design and construction, the Program will continue to require experienced and knowledgeable Program Manager and Program Controls staffing.
- The TJPA has evaluated the performance of URS for the past three years under Term 2 and has determined the need for the renewal of contract terms. TJPA staff has negotiated a renewed agreement with URS and recommends that the TJPA Board of Directors award this agreement.
- Funding for this agreement will be provided from various sources such as American Recovery and Reinvestment Act (ARRA), Proposition K (Prop K) and AB 1171 funds.

**EXPLANATION:**

The Transbay Transit Center Program requires a Program Management and Program Controls team to assist the TJPA in planning, managing and implementing this large and complex public

infrastructure project. The Program consists of a broad range of infrastructure improvements, including:

- a new intermodal transit center that will support rail and bus operations,
- a ramp structure connecting the San Francisco Oakland Bay Bridge to the new transit center,
- bus storage facilities with a connecting ramp,
- temporary bus terminal,
- a 1.3 mile extension of rail alignment in a mined and cut-and-cover tunnel with supporting systems,
- rail systems with associated electrification, signal and supporting infrastructure,

The complex and interrelated nature of these Program components requires a Program Management team with experience in successful delivery of major public infrastructure projects and a wide variety of technical expertise. The consultant Program Management team will provide this specialized expertise and give the TJPA the flexibility to adjust the management organization to respond to the future needs of the Program. This team will also provide Program Controls expertise that will be critical to successful management of the Program budget and schedule.

The consultant will provide technical and management support to the TJPA to ensure that all elements of the Transbay Transit Center Program are successfully designed and constructed on time and within budget. The scope of services has been developed in compliance with the Federal Transit Administration's Project and Construction Management Guidelines and current best practices in Program Management for large public infrastructure projects.

The general responsibilities of the consultant are as follows:

- Program Management for the Transbay Transit Center
- Program Implementation and Support Activities
- Project Management for the Caltrain Downtown Extension
- Program/Project Controls
- Quality Assurance/Quality Control Oversight
- Management Policies & Procedures
- Document Management & Administrative Support
- Management Information Systems (MIS) Support

### **Original Consultant Selection Background**

The TJPA developed the RFP for Program Management/Program Control services with input from the San Francisco Municipal Transportation Agency (SFMTA) and staff of member agencies, including the Peninsula Corridor Joint Powers Board (JPB) and the Alameda-Contra Costa Transit District (AC Transit). On April 12, 2004, the TJPA issued the RFP for a consultant to provide Program Management/Program Control services for up to nine years. On May 21, 2004, five proposals were received, from URS, Parsons Brinckerhoff, Carter & Burgess Inc., PGH Wong Engineering, and Bovis Lend Lease. The SFMTA Contract Compliance Office was assisting TJPA with procurements at that time, and reviewed both proposals to make the determination that they complied with the requirements of and were responsive to the RFP.

Evaluation criteria for evaluation of the proposals consisted of the following:

- Experience and qualifications of firm(s): expertise in necessary disciplines, relevance and success of recently completed projects, results of reference checks, subconsultant experience and qualifications, organization of staff for project
- Experience and qualifications of staff: relevant recent experience, professional qualifications and education, demonstrated abilities, results of reference checks
- Project understanding and approach: understanding of scope of work, required services, and special issues, approach to management of staff, schedule and budget, ability to provide qualified and adequate staffing and services in a timely manner

A selection committee was convened, interviews were conducted, and the URS team was ranked highest. A contract was negotiated and, as mentioned above, awarded in November 2004 and renewed in March 2008.

### **Consultant Performance Evaluation**

The TJPA staff recommendation to renew depended on an evaluation of URS' services and work products completed or in-progress and compliance with requirements of the contract. Assessment of whether the services and products were of satisfactory quality and whether such services and products were completed within the agreed-upon budget and within a reasonable schedule form the basis of renewal. TJPA staff found that services, work products, performance of Key Personnel, and the team's cost effectiveness in the performance of scope were consistently satisfactory.

The basis of URS' performance under the scope of services was evaluated with respect to the following:

- Adherence to agreement
- Quality of performance of Key Personnel and other staff assigned to the Program
- Quality of performance and cooperative working relationship of the URS team and its members, including its subcontractors, in relationship to the other members of the TJPA's staff and other contractors, including design, grant management, financial, construction management and other professionals
- Management of authorized budget for Annual Work Plans and Task Orders
- Adherence to agreed schedule
- Quality of deliverables
- Monitoring, reporting and updating of progress of assigned work
- Timeliness in resolving issues, including issues arising from performance evaluations
- Working relationship between the URS team and other Program stakeholders

### **Current Contract Status**

On November 2, 2004, the TJPA Board authorized the Executive Director to execute a contract with URS for a maximum compensation of \$37,611,121 and a term of three (3) years for Program Management/Program Control services to the TJPA. A total of \$23,139,965 was expended. On March 20, 2008, the TJPA Board authorized the Executive Director to execute Term 2 of the Agreement for said services by Contractor, extending the contract duration by three years for a maximum compensation of \$36,670,000. As of April 29, 2011, a total of

\$30,870,938 has been expended. Term 2 of the Agreement expires on June 30, 2011 and services provided by URS from July 1 through July 14, 2011 are not presently included in the existing agreement or any change order. The approval of the new Term 3 Agreement will authorize ratification of payments to URS for services provided starting July 1, 2011 to coincide with fiscal calendars.

Term 3 has an SBE participation goal of 30 percent. Through March 2011, URS has had DBE participation of 21 percent and SBE participation of 32 percent during Term 2.

### **Record of Negotiations and Agreement Provisions for Term 3**

TJPA staff has negotiated an agreement with URS with the assistance and input from the City Attorney's office. A series of negotiation meetings occurred from February 16, 2011 to June 6, 2011. Participating in the negotiations on behalf of the TJPA were Robert Beck, Senior Program Manager, and Edmond Sum, Engineering Manager. The consultant team was represented by Stephen Perreault, URS Vice President and PMPC Deputy Program Manager, and Emilio Cruz of On-Point Consulting, PMPC Program Manager.

Negotiation meetings consisted of discussion of updated contract terms, updated scope of work, cost and fee.

Services performed under this agreement will be authorized by TJPA staff through the issuance of Annual Work Plans and/or Task Orders. Annual Work Plans and Task Orders will establish a detailed scope of work, specify all deliverables, establish schedule requirements, include a detailed resource plan and cost for the work to be performed. They will also specify the maximum allowable amount of compensation, including fixed fee. This process will facilitate management of contract expenditures while providing essential Program Management services to the TJPA.

Compensation for services performed under this agreement will be primarily on a cost reimbursable basis; however, agreed price (lump sum) or time and materials methods of compensation may be used on a limited basis. Compensation will be subject to the Cost Reimbursement and Rate Agreement (CRRA), Appendix B of the Agreement, which will establish direct labor and indirect cost rates based on consultant and subconsultant audit information. A fixed fee for scope and work performed will be applied to direct and indirect costs in the manner specified in the CRRA. The agreement renewal sets a new maximum contract limit amount of \$28,400,000 for the third three-year term.

### **RECOMMENDATION:**

Staff recommends that the Board authorize the Executive Director to execute a renewed professional services agreement with URS for Program Management/Program Controls services for a third 3-year term (2011 – 2014) and for an amount not to exceed \$28,400,000.

### **ENCLOSURES:**

1. Resolution
2. Agreement

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, On November 2, 2004, the Transbay Joint Powers Authority (TJPA) Board of Directors unanimously resolved to authorize the Executive Director to execute a Program Management/Program Controls Professional Services Agreement (Agreement) with URS Corporation (Contractor) for an initial three-year term with the option to renew the Agreement for two (2) additional consecutive three-year terms and a maximum compensation of \$37,611,121; and

WHEREAS, On November 12, 2004, the Executive Director executed an Agreement with URS Corporation for Program Management/Program Controls professional services; and

WHEREAS, On March 20, 2008, the TJPA Board of Directors adopted Resolution No. 08-013, which authorized the Executive Director to execute Term 2 of the Agreement for said services by Contractor, extending the contract duration by three years to March 31, 2011 and for a maximum compensation of \$36,670,000; and

WHEREAS, On April 20, 2009, the TJPA issued Amendment No. 1 to the Term 2 Agreement, to retain specific peer review consulting experts to advance the design for the Transbay Transit Center Building and Related Structures; and

WHEREAS, On March 21, 2011, the TJPA issued Amendment No. 2 to the Term 2 Agreement to substitute Key Personnel assignments and to extend the renewed Agreement from 3 years to 3 years and 109 days; and

WHEREAS, The TJPA Executive Director has determined that URS, teamed with Hatch Mott MacDonald and EPC Consultants, is well qualified to continue to perform the scope of services in a cost effective manner; and

WHEREAS, The TJPA Executive Director has negotiated a renewed Agreement with URS for Program Management/Program Controls services attached hereto for a third term (2011 – 2014) of three (3) years starting July 1, 2011 at a total cost not to exceed Twenty-Eight Million, Four Hundred Thousand Dollars (\$28,400,000); now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a renewed Agreement for Program Management/Program Controls professional services with URS for a third three-year term (2011 – 2014) and a maximum compensation of \$28,400,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 14, 2011.

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

**AGREEMENT BETWEEN**  
**TRANSBAY JOINT POWERS AUTHORITY**  
**AND**  
**URS CORPORATION**  
**FOR**  
**PROGRAM MANAGEMENT/PROGRAM CONTROL**  
**PROFESSIONAL SERVICES**  
**TERM 3 (2011 – 2014)**  
**(Agreement No. 04-03-PMPC-002)**



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**Agreement Between  
The Transbay Joint Powers Authority  
and  
URS Corporation  
for  
Program Management/Program Controls  
Professional Services  
Term 3 (2011 – 2014)  
(Agreement No. 04-03-PMPC-002)**

THIS AGREEMENT is entered into as of the 1<sup>st</sup> day of July, 2011 by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and URS Corporation, A Nevada Corporation, dba URS Corporation Americas (the “Contractor”).

**Recitals**

- A. TJPA wishes the services of a consulting individual firm to provide program management, project management and program/project controls professional services for the Transbay Transit Center Program (“Program”)
- B. Contractor submitted a written Proposal in response to a Request for Proposals issued April 12, 2004, which was orally presented and rated highest by the Contractor selection committee.
- C. Contractor represents and warrants that it is qualified to perform the services required by TJPA as set forth under this Agreement.
- D. TJPA and Contractor intend that this Agreement comply with the regulations of the United States Department of Transportation (“USDOT”).
- E. On November 2, 2004, the TJPA Board of Directors adopted Resolution No. 04-019, which authorized the Executive Director to execute the original Agreement for said services by Contractor.
- F. On December 19, 2005, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 1 to modify the Agreement only to add the Deputy Program Manager Position and substitute other key personnel with no modification to any other material provision of such Agreement.
- G. On August 31, 2006, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 2 to modify any reference in the Agreement to the TJPA representative from the Deputy Director/Chief Engineer or his/her designee to the Executive Director or his/her designee and to add the Principal-In-Charge/Program Sponsor position and revise Key Personnel assignments.
- H. On June 21, 2007, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 3 to substitute key personnel assignments.
- I. On December 1, 2007, the TJPA issued Amendment No. 4 to extend the initial contract duration from 3 years to 3 years and 109 days.
- J. On March 20, 2008, the TJPA Board of Directors adopted Resolution No. 08-013, which authorized the Executive Director to execute a renewed Agreement for said services by Contractor.

K. On April 20, 2009, the TJPA issued Amendment No. 1 to the renewed agreement to retain peer review experts to advance the design for the Transbay Transit Center Building and Related Structures.

L. On March 21, 2011 the TJPA issued Amendment No. 2 to the renewed agreement to substitute key personnel assignments and to extend the renewed Agreement from 3 years to 3 years and 109 days.

M. On July 14<sup>th</sup>, 2011, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_, which authorized the Executive Director to execute this renewed Agreement for said services by Contractor.

Now, THEREFORE, the parties agree as follows:

## **Terms and Conditions**

### **1. General**

The Transbay Transit Center Program is comprised of four main components: (1) the transit center building, bus access ramps, and auxiliary features, (2) the extension of Caltrain, (3) the temporary bus terminal and storage area, and (4) the permanent bus storage area. The Transbay Transit Center Program is generally described and set forth in the Transbay Terminal/Downtown Caltrain Extension/Redevelopment Project Final Environmental Impact Statement /Environmental Impact Report dated March 2004, which is incorporated here by reference as if fully set forth.

As the consultant providing Program Management/Program Controls under this Agreement, the Contractor agrees to provide the TJPA with various services to support the management and administration of the Program as set forth in Appendix A. All work under this Agreement shall be authorized and performed at the sole discretion of the TJPA.

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

### **2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriations**

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Finance Coordinator. The amount of TJPA's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to TJPA at the end of any fiscal year (July 1 through June 30) if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the fiscal year for which funds are appropriated.

TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or Program costs. TJPA budget decisions are subject to the discretion of

the TJPA Board of Directors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

### **3. Term of the Agreement**

Subject to Section 2, the term of this Agreement shall not exceed three years (3) years from the Effective Date of Agreement, as described in Section 4 below, provided that (i) the TJPA shall have the right to extend this Agreement for an additional 109 days by providing to the Contractor written notice of such extension on or before the expiration of this Agreement.

### **4. Effective Date of the Agreement**

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

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

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

The Contractor agrees to perform the services provided for in Appendix A, "Scope of Services," attached to this Agreement and incorporated by reference as though fully set forth herein.

The Scope of Services consists of a series of tasks ("Appendix A, Scope of Services") that TJPA may authorize under Annual Work Plans, Task Orders or a combination of these documents. The following process shall be used to implement the Annual Work Plans and Task Orders:

(i) TJPA shall initiate each Annual Work Plan or Task Order by issuing a written directive to the Contractor requesting an Annual Work Plan or Task Order Proposal. The Proposal Request will describe the actual tasks to be performed by the Contractor based on the scope of work in Appendix A, "Scope of Services", the schedule for performance of these tasks and the required deliverables.

(ii) The Contractor shall prepare and submit an Annual Work Plan or Task Order Proposal to the TJPA outlining in detail its approach to performing the requested work. The proposal shall include at a minimum the following:

- A detailed description of the work to be performed, by subtask, and the means and methods that will be used to perform the work;
- Work Breakdown Structure for performing the required tasks;
- A schedule (in both electronic and written format) including milestones for completion for each subtask and deliverable;
- Management Plan that lists personnel and the subcontractors assigned to each part of the work along with a rationale for the proposed staffing plan;
- Budget Plan, including the following information for the Contractor and all subcontractors included in the proposal:
  1. A detailed cost estimate for each subtask;
  2. Estimated hours and direct salaries by employee;
  3. Overhead of prime contractor and subcontractors;
  4. Proposed profit, as a fixed fee (to include subcontractor management fee);
  5. Other direct costs
  6. Cash flow plan
- List of work products that will be delivered as part of the Annual Work Plan or Task Order

(iii) TJPA will review the proposal and promptly negotiate with the Contractor the scope, approach to completing the work, cost, deliverables and schedule requirements.

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

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

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

The following shall not be considered out-of-scope work, but shall be considered incidental to the "Scope of Services" outlined in Appendix A:

(1) All work required to comply with local, state and federal codes, regulations and standards, as interpreted by local or state agencies having approval or sign-off authority for this Program.

(2) All work required to correct deficiencies and errors, including work related to resubmittals of work products that are evaluated reasonably by TJPA to be incomplete or inadequate.

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

#### **b. Key Personnel and Staffing**

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

The Contractor agrees to commit and assign Emilio Cruz to manage this Program for the Contractor and to serve as the single official contact on behalf of the Contractor in all matters related to the Program for the duration of the Contract. The Contractor's Program Manager must have his/her permanent office for this Program located within the San Francisco Bay Area for the entire assigned duration of the Contract. The Contractor further agrees that the following Key

Personnel shall be committed and assigned to work on the Contract and shall also be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract:

1. Principal-In-Charge/Program Sponsor: Louis J. Armstrong,
2. Program Manager: Emilio Cruz,
3. Deputy Program Manager/URS Contract Manager: Stephen Perreault,
4. Project Manager, Transbay Transit Center: Alfred Lau,
5. Project Manager, Caltrain Downtown Extension (DTX) / Buttress, Shoring and Excavation (BSE): Roger Rothenburger, and
6. Program/Project Controls Manager: James Coughlin.

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

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

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

#### **c. Current Workload and Available Resources**

The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Contract. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two (2) weeks of the receipt of NTP. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of NTP.

#### **d. Information and Data**

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

#### **e. Contractor's Performance**

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

- (1) Contractor's adherence to this Agreement
- (2) Quality of performance of Key Personnel and other staff assigned to the Program by the Contractor and its subcontractors

- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the TJPA's staff and other contractors, including design, grant management, financial, construction management and other professionals.
- (4) Management of authorized budget for Annual Work Plans and Task Orders
- (5) Adherence to agreed schedule
- (6) Quality of deliverables
- (7) Monitoring, reporting and updating of progress of assigned work
- (8) Timeliness in resolving issues, including issues arising from performance evaluations
- (9) Working relationship between Contractor's team and other stakeholders

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

#### **f. Transmittal of Products**

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

The Contractor's Program Manager and Key Personnel shall have thoroughly reviewed and approved all products and deliverables and signed off as such prior to transmitting to TJPA.

#### **g. Reproduction of Products**

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

#### **h. Design**

Except where TJPA expressly requests Contractor to perform design services in a Task Order, the services to be performed by Contractor shall not impose upon it any obligation to assume any responsibilities, duties, services, or activities assumed or required to be rendered or performed by any Architect, Engineer, or Construction Contractor employed by, or associated with TJPA in relation to this Program. In performing constructability review, value engineering or any other review involving the drawings and/or specifications for the Program, Contractor does not undertake to perform any design work nor does it accept responsibility for any of the design features or design of the Program, which shall remain the sole responsibility of the Design Professional.

**i. Safety**

Contractor shall have no responsibility for construction means, methods, sequences, techniques or health and safety precautions and programs of the Construction Contractor(s), including construction site safety, all of which shall remain the sole responsibility of the Construction Contractor(s). If Contractor is required to monitor Construction Contractor(s) work for compliance with the contract documents, which includes, the plans, drawings and specifications, Contractor shall have no responsibility to monitor the Construction Contractor(s) work in regard to any federal, state and local laws, rules and regulations pertaining to health and safety, which includes federal and/or state OSHA rules and regulations. Contractor shall be responsible for safety of Contractor's employees and the employees of Contractor's subcontractors only. Contractor is not responsible for the safety of any other person working on this Project.

**j. Hazardous Materials**

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

Contractor shall have no duty to discover, handle, remove, store, transport, report, dispose, abate or remediate any hazardous substance, asbestos or asbestos-related products as may be required in connection with the Program, except that in the event hazardous substances, asbestos or asbestos-related products are discovered by Contractor, Contractor shall immediately notify TJPA. Contractor shall not be responsible for notifying any other appropriate person or agency other than the TJPA of the existence of any hazardous substances or asbestos-related products as required. Contractor shall not be required to provide any services in connection with the remediation, abatement, asbestos or asbestos-related products.

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

**k. Third Party Litigation**

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

**6. Program Direction**

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

**a.** Directions to Contractor, which shift work emphasis between tasks, require pursuit of certain activities, or otherwise provide information and program guidance to Contractor in order to

accomplish the services described in Appendix A, and in the current Annual Work Plan or Task Order.

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

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

## **7. Submittals and Responses**

TJPA will review and comment on Contractor's submittals generally within four calendar weeks of submittal. The TJPA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Annual Work Plan or Task Order.

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

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

## **8. Compensation**

### **a. Generally**

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

**Contract Limit:** The maximum amount payable under this Agreement during the renewed three (3) year Term 3 (2011 - 2014) shall not exceed Twenty Eight Million Four Hundred Thousand Dollars (\$28,400,000) ("Contract Limit"). The Contract Limit includes (a) the allowable actual costs of services ("Contract Costs") plus (b) the Contractor's fee for the period of this Agreement ("Contract Fee"). The Contract Costs shall not exceed Twenty-Six Million Sixty-One Thousand, and Forty-Eight Dollars (\$26,061,048) and the Contract Fee shall not exceed Two Million Three Hundred Thirty-Eight Thousand, Nine Hundred Fifty-Two Dollars (\$2,338,952), for a Contract Limit total of \$28,400,000.

**Contract Costs:** The amount of compensation for the Contract Costs shall be limited to the allowable actual costs incurred by the Contractor and all subcontractors, including direct labor costs, indirect costs, other direct costs, and subcontractor direct labor and indirect costs for all services performed under this Agreement. The TJPA shall pay Contract Costs on a cost reimbursable, agreed price, or lump sum basis and/or a time and materials basis, as provided in a particular task order.

**Contract Fee:** The Contract Fee is a total fixed fee, payable over the term of this Agreement, based on the satisfactory performance of the Contractor.

Billing and reimbursement for the Contract Costs and Contract Fee shall be consistent with Appendix B to this Agreement

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

The hourly rates, including direct labor, burden or markup, indirect costs, rates, and other direct costs associated with this Agreement shall be subject to the rate requirements set forth in paragraph 8(c) below and in Appendix B, "Cost Reimbursement and Rate Agreement," attached hereto and incorporated by reference as though fully set forth herein. The individual direct labor cost rates for Key Personnel may be subject to annual adjustment at the discretion and written approval of the Executive Director or designee, at a rate not to exceed the local Consumer Price Index escalation factor.

Compensation will be allowable only to the extent that costs incurred, or costs estimates included in negotiated, or otherwise established prices, are consistent with the Federal Cost Principles with Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

The Contractor shall inform the Executive Director or designee when total expenditures for all approved Annual Work Plans or Task Orders exceeds eighty percent of the maximum compensation for this Agreement.

#### **b. Actual Compensation**

Actual compensation under this Agreement shall be determined on a Task Order basis or as set forth in an Annual Work Plan or Task Order. Contractor acknowledges and agrees that, depending on the nature of the task, the TJPA may compensate Contractor on a lump sum or cost-plus-fixed fee basis. The TJPA shall in its sole discretion propose the pricing method for each Task Order or Annual Work Plan. The TJPA shall negotiate with the Contractor to reach a lump sum amount or limitations on the cost-plus fixed fee for each Task Order or Annual Work Plan as part of the procedures set forth under the foregoing paragraph 5. The TJPA may additionally order and/or authorize work on a limited time-and-materials basis. The Contractor shall only be entitled to time and materials compensation upon written direction by the TJPA.

No charges shall be incurred under this Agreement, nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement or under a specific Task Order or Annual Work Plan are received from the Contractor and approved by the Executive Director as being in accordance with this Agreement. TJPA, in its sole discretion, may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

Such compensation for the cost plus fixed fee services shall be further subject to the following requirements:

- (i) Conform with (a) the work to be performed pursuant to an accepted Annual Work Plan or Task Order or approved by the TJPA as compensable out of scope work or ordered by the TJPA pursuant to section 5.a.(v); (b) any compensation limits or sublimits set forth in such Annual Work Plan(s) or Task Order(s) or written approvals, and this Agreement; and (c) all other terms of this Agreement.
- (ii) Be necessary in order to accomplish the work.
- (iii) Be reasonable for the services to be performed.

- (iv) Be actual net costs or prices to the Contractor or its subcontractors at any tier, (e.g. the cost or price less any refunds, rebates, or other items of value received by Contractor or its subcontractors at any tier, that have the effect of reducing the cost or price actually incurred). As used herein, the term "costs" shall include the following:
  - (a) Those Program costs recorded by Contractor that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.
  - (b) Those Program costs incurred, but not necessarily paid, for (1) direct labor; (2) other direct costs that are not subcontracted; (3) indirect costs, but only if the Contractor is not delinquent in its payment of such costs which it is obligated to pay in providing services on this Program.
  - (c) The amount of reimbursement that has been paid by Contractor for subcontracted services under similar cost standards.
  - (d) Direct costs or prices incurred for work performed after the effective date of this Agreement, and presented for payment within 180 days of incurrence.

**c. Rates**

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

All Contractor costs associated with providing services that are identified in this Agreement as being apart and separate from any individual Annual Work Plan, or Task Order are considered to be either indirect costs or a portion of Contractor fee as the case may be.

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

Contractor understands and agrees to the following:

- (i) That any compensation or reimbursement received under this Agreement does not constitute a final decision by the TJPA as to the allowability of such compensation or reimbursement, and does not constitute a waiver of any violation by Contractor of the terms of this Agreement or of the Contractor's obligations under the Agreement (including, but not limited to, requirements of the Agreement to be included in Contractor's subcontracts).
- (ii) That unless approved otherwise by the Executive Director or designee, the TJPA will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed. Any audit by the TJPA must be commenced within three years of the termination, completion or expiration of this Agreement. Once commenced, any audit performed by the TJPA shall be completed in a reasonable amount of time.

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

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

(v) If Contractor claims or receives payment from TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to TJPA upon TJPA's request. At its option, TJPA may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

#### **e. Reimbursable Expenses**

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

#### **f. Payment; Invoice Format**

Contractor shall be compensated and reimbursed by TJPA on the basis of invoices submitted every month for services performed during the preceding month. Invoices shall be submitted within approximately thirty (30) days of the end of said calendar month. For the end of the fiscal year, monthly invoices shall include up to the last day of the calendar month ending June 30th; invoices starting the next fiscal year beginning July 1st shall be included in the next calendar month invoice cycle. Contractor must submit required DBE/SBE Progress Payment Reports with every invoice. All amounts paid to the Contractor shall be subject to audit by the TJPA.

The charges for each individual assigned under this Agreement shall be listed separately. Further, invoices furnished by the Contractor under this Agreement shall be in a form acceptable to TJPA and each invoice shall include:

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

#### **g. Invoice Disputes**

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

#### **h. No Late Charges**

TJPA shall make payment to Contractor at the address specified in the section entitled "Notices to the Parties." TJPA shall make a good faith effort to pay undisputed amounts within 45 days of receiving a proper invoice from Contractor. However, in no event shall TJPA be liable for interest or late charges for any late payments. The Contractor acknowledges that the provisions of Public Contract Code § 7107 do not apply to this Agreement or to the Program.

#### **9. Certified Funds**

**a.** The TJPA's obligation hereunder shall not at any time exceed the amount certified by the TJPA's Finance Coordinator for the purpose and period stated in such certification.

**b.** Except as may be provided by laws governing emergency procedures, officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the Contractor for commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by this Agreement.

**c.** Officers and employees of the TJPA are not authorized to offer or promise, nor is the TJPA required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the TJPA's Finance Coordinator.

**d.** The TJPA's Finance Coordinator is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

#### **10. Changes and Modifications**

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

##### **a. Changes To Scope, Task Orders, or Annual Work Plans**

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

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

##### **b. Unilateral Change Orders**

When time does not allow for a change order or modification to be negotiated, or when the TJPA and Contractor are unable to agree on the scope, cost, or time required to complete the change in the work, the TJPA may issue a Unilateral Change Order instructing Contractor to proceed with a change in the Contractor's Program Management/Program Control services based on the TJPA's estimate of cost and time to perform the change in the work. Upon receipt of a unilateral change order, Contractor shall proceed with the ordered work. However under no circumstances shall the Contractor be required to perform work that is not consistent with Program Management and/or Program Control Services on a unilateral basis.

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

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

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

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the Contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

#### **12. Suspension and Debarment**

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this contract. Contractor further agrees to include a provision requiring such compliance in its lower tier subcontracts for services that equal or exceed \$25,000.

#### **13. Taxes**

**a.** 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 Contractor.

**b.** Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to the possession, occupancy, or use of TJPA real property for private gain. If such a possessory interest is created, then the following provisions apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of property taxation and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the TJPA to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g. Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by TJPA to enable TJPA to comply with any reporting requirements under applicable law with respect to possessory interests.

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

The granting of any payment by TJPA, or the receipt thereof by Contractor, shall in no way imply the acceptance of work or lessen the liability of Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made.

#### **15. Responsibility for Equipment**

TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by TJPA. As discussed in this Agreement, Contractor shall indemnify and hold harmless TJPA for any such damage.

#### **16. Independent Contractor; Payment of Taxes and Other Expenses**

##### **a. Independent Contractor**

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

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

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

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

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

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

## **17. Insurance**

**a.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) If required under California law, Worker's Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
- (4) Professional liability insurance with limits not less than \$10,000,000 each claim and in the aggregate, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

- (1) Name as Additional Insured the TJPA, its Members, Directors, Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to TJPA of reduction or nonrenewal of coverages or cancellation for any reason. Notices shall be sent to the address specified in the Section entitled "Notices to the Parties". Alternatively, Contractor shall submit the certificates of insurance and additional insured policy endorsements to the TJPA on a quarterly basis during the Contract term, evidencing that all required insurance remains in full force and effect. In addition, the Contractor shall provide thirty (30) days advance written notice to TJPA of reduction or non-renewal of coverages or cancellation of coverages for any reason. In the event of reduction or non-renewal of coverages or cancellation of coverages for any reason, Contractor shall file with the TJPA a certificate of the required new or renewed policy at least ten (10) days before the effective date of such cancellation, change or expiration.

d. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of four (4) years beyond the expiration of this Agreement or the filing of the Notice of Completion by the TJPA, whichever event occurs last, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

g. Before commencing any operations under this Agreement, the Contractor shall do the following: (a) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (b) furnish relevant portions of copies of policies promptly upon TJPA request. TJPA agrees that if and when Contractor provides the TJPA with such policies, Contractor may exclude and withhold those portions of the policy that contain the Contractor's financial information. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

## **18. Indemnification**

### **a. General Indemnity**

To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the TJPA), indemnify and save harmless the TJPA, its members, directors, officers, and employees (collectively "Indemnitees"), from and against any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation), that arise directly or indirectly, in whole or in part, from the negligent, reckless, or willful act or omission of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein. In the case of personal injury or property damage, the Contractor and its subconsultants' indemnification obligation shall apply to all losses arising out of the services performed under this Agreement.

**b. Limitations**

- (1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.
- (2) The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee
- (3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

**c. Copyright Infringement**

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, shall be considered a material breach of contract, if not the basis for indemnification under the law.

**19. Incidental and Consequential Damages**

Nothing in this Agreement shall constitute a waiver or limitation of any rights which TJPA may have under applicable law to seek recovery for any injury or damages caused by Contractor's acts or omissions, including but not limited to any incidental or consequential damages, but any such incidental or consequential damages are only recoverable to the extent they result from Contractor's negligent acts or omissions.

**20. Liability of TJPA**

TJPA'S MONETARY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 8 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL THE TJPA BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT AND ANY AMENDMENTS TO THIS AGREEMENT.

**21. Delays and Extensions of Time**

Contractor acknowledges and agrees that its delay in prosecuting the work may result in monetary damages to the TJPA. Contractor acknowledges and agrees that the TJPA will hold Contractor responsible and liable for any delay costs to the extent caused by Contractor. The TJPA's right to recover for delay costs is limited by the provisions of paragraph 19 of this Agreement.

In the event the Contractor is delayed in the timely prosecution of this Agreement by the TJPA's vendors, suppliers, officers, or employees, or by an Uncontrollable Forces (as defined in Section 22) through no fault or lack of diligence on the part of the Contractor, the Contractor shall present a written request to the TJPA Executive Director for an extension of time of the performance of the work, together with supporting documents, within thirty (30) calendar days of

commencement of the delay of the work. Contractor shall be deemed to have waived the right to request a time extension if not requested within this period, and shall not have a cause to make a claim of the same TJPA-caused delay at a later date. Approval of such extension of time by the TJPA Executive Director shall not be unreasonably withheld and shall be added to the time for completion of the work.

Any work delays which result in the extension of the term of the Agreement must be by written instrument executed and approved in the same manner as the Agreement, and may be subject to approval by the Federal Transit Administration ("FTA").

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

## **22. Uncontrollable Forces**

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

## **23. Bankruptcy**

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

## **24. Termination for Convenience**

a. TJPA shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and when it is in the TJPA's best interest, which best interest shall be determined at the TJPA's sole discretion. TJPA shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective, but in no case shall termination become effective less than 14 days from the date of the notice.

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

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by TJPA.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At TJPA's direction, assigning to TJPA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, TJPA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to TJPA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that TJPA designates to be completed prior to the date of termination specified by TJPA.
- (7) Taking such action as may be necessary, or as the TJPA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which TJPA has or may acquire an interest.

c. Within 60 days after the specified termination date, Contractor shall submit to TJPA an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor for all services and other work TJPA directed Contractor to perform prior to the specified termination date, including actual, reasonable, documented termination and demobilization costs, for which services or work TJPA has not already tendered payment. The costs shall be determined as provided in Section 5 above, and shall be invoiced as provided in Section 8 above. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the TJPA or otherwise disposed of as directed by the TJPA.
- (3) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to TJPA, and any other appropriate credits to TJPA against the cost of the services or other work.

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

e. In arriving at the amount due to Contractor under this Section, TJPA may deduct: (1) all payments previously made by TJPA for work or other services covered by Contractor's final invoice; (2) any claim which TJPA has asserted in writing to Contractor in connection with Contractor's performance of this Agreement; (3) any invoiced costs or expenses excluded pursuant to the

immediately preceding subsection (d); and (4) in instances in which, in the opinion of the TJPA, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and TJPA's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

g. Contractor's obligation to carry insurance and its indemnification obligations as set forth in Sections 17 and 18 shall likewise survive termination of this Agreement.

## **25. Termination For Cause; Default; Remedies**

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

- (1) Contractor fails or refuses to perform or observe any material term, covenant or condition contained in any of the following Sections of this Agreement: Payment; Submitting False Claims, Monetary Penalties; Taxes; Insurance; Proprietary or Confidential Information of TJPA; Protection of Private Information; Assignment; Drug-Free Workplace; Compliance With Laws; USDOT Requirements.
- (2) Contractor fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from TJPA to Contractor.
- (3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

d. Contractor's obligation to carry insurance and its indemnification obligations as set forth in Sections 17 and 18 shall likewise survive termination of this Agreement.

**26. Rights and Duties Upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: False Claims; Disallowance; Taxes, Payment Not Deemed Acceptance of Work; Responsibility For Equipment; Independent Contractor; Insurance; Indemnification; Incidental and Consequential Damages; Liability of TJPA; Proprietary or Confidential Information; Ownership of Results; Works For Hire; Audit and Inspection of Records; Limitation on Contributions; Modifications; Administrative Remedies for Agreement Interpretation; Agreement in California; Construction; Entire Agreement; Severability; USDOT Requirements; Prompt Payment of Subcontractors.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 3, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to TJPA. This subsection shall survive termination of this Agreement.

**27. Conflict of Interest**

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code, and Section 87100 et seq. 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. Contractor must comply with all applicable conflict of interest codes at all times during the term of this Agreement.

**28. Proprietary or Confidential Information of TJPA**

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

**29. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement or designated by the TJPA and the Contractor, all written communications sent by the parties may be by US mail, email, or by fax, and shall be addressed as follows:

To TJPA: Ms. Maria Ayerdi-Kaplan, Executive Director  
Transbay Joint Powers Authority  
201 Mission St., Suite 2100  
San Francisco, CA 94105

(415) 597-4615 fax  
MAyerdi-Kaplan@TransbayCenter.org

To Contractor: Russel P. Rudden, Senior Vice President  
URS Corporation  
Post Montgomery Center  
One Montgomery Street, Suite 900  
San Francisco, CA 94104  
(415) 947-0603 fax  
Rus\_Rudden@URScorp.com

Any notice of default must be sent by registered mail.

### **30. Ownership of Results**

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

### **31. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the TJPA. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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

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

### **33. Assignment, Subcontractors and Substitution**

#### **a. Assignments**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by TJPA by written instrument executed and approved in the same manner as this Agreement. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

## **b. Subcontractors**

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

## **c. Substitution**

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

## **34. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter. There shall be no waiver except in writing, signed by the party to be charged.

## **35. Earned Income Credit (EIC) Forms**

San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

**a.** Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

**b.** Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Agreement or under applicable law.

**c.** Any subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

**d.** Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12O of the San Francisco Administrative Code.

## **36. Not Used**

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

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

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

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

#### **b. Subcontracts**

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

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

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

#### **d. Condition to Contract**

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

#### **e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of

\$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

**38. 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 Contractor acknowledges and agrees that he or she has read and understood this Section.

**39. Tropical Hardwood/Virgin Redwood Ban**

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

**40. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TJPA premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

**41. Resource Conservation**

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

**42. Compliance with Americans with Disabilities Act**

The Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**43. San Francisco Sunshine Ordinance**

In accordance with San Francisco Administrative Code Section 67.24(e), Contractors' bids, responses to solicitations and all other records of communications between 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 benefit 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.

**44. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions

of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

#### **45. Limitations on Contributions**

Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **46. Requiring Minimum Compensation for Covered Employees**

The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$11.54 as of January 2009.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, than that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the San Francisco Administrative Code. As of January 1, 2011, Chapter 12R's minimum wage is \$9.92 per hour.

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

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

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

- (1) The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by the Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar the Contractor from entering into future contracts with the TJPA for three (3) years.

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

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

f. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

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

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

i. The TJPA may conduct random audits of the Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an

alleged violation of the MCO.

j. Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is the Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the TJPA may pursue any of the remedies set forth in this Section against the Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If the Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor to exceed that amount in a fiscal year, the Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

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

#### **51. No Third-Party Beneficiaries**

This Agreement is intended solely for the benefit of TJPA and Contractor and is not intended for the use or benefit of any other party. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

#### **52. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **53. Construction**

All Section captions are for reference only and shall not be considered in construing this Agreement. In the event of direct conflict between this Agreement and the Appendices, the Appendices shall control.

**54. Entire Agreement**

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 10.

**55. Compliance With Laws**

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

**56. Services Provided by Attorneys**

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

**57. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**58. News Releases/Interviews**

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

**59. Disputes**

**a. Process.** For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply within fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position. Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the Executive Director, whose decision shall be administratively final and conclusive.

**b. Performance of Work.** Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written directions of the TJPA.

**c. Alternative Dispute Resolution.** If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

**60. Authority to Execute Agreement**

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this

Agreement is binding on such party in accordance with its terms. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **61. USDOT Requirements**

The provisions contained in "USDOT Requirements for Personal Services Contracts," attached as Appendix D are incorporated into this Agreement, and the Contractor agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT terms and conditions and any other terms and conditions of this Agreement, in the TJPA's sole determination, the USDOT terms and conditions shall take precedence.

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

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

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

Pursuant to TJPA policy, Contractor is encouraged to actively recruit minorities, women and other disadvantaged persons for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in Consultant's employment practices.

#### **63. 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 and non-DBE 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.

#### **64. Intern Mentoring Program**

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

#### **65. Graffiti Removal**

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

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA. This Article is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include (a) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (b) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.).

## **66. Protection of Private Information**

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

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

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the TJPA to disclose the information; or

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

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

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

d. Any failure of the Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate this Agreement, debar Contractor, or bring a false claim action against the Contractor.

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

Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal of 30 percent. Failure of the Consultant to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

Pursuant to the monitoring requirements outlined in Section IX of the TJPA's SBE Program, the Contractor will be required to update and submit the TJPA's "Bidders/Proposers Information Request Form," regardless of SBE participation. Upon award of the contract, the Contractor shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subcontractor Payment Declaration" within five days of each Contractor payment to a subcontractor, and a "Final Expenditure Report" with the completion of the contract.

## **68. First Source Hiring Program**

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

(1) The Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) The Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers.

(3) The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

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

f. Subcontracts

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

**69. Food Service Waste Reduction Requirements**

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth.

This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the TJPA will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of Contractor's failure to comply with this provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

\_\_\_\_\_  
Maria Ayerdi  
Executive Director

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

\_\_\_\_\_  
Nila Gonzales  
Secretary, TJPA Board

Approved as to Form:

TJPA Legal Counsel

\_\_\_\_\_

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Contractor

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

I have read and understood paragraph 38, the San Francisco's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

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Authorized Signature

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Printed Name

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Title

---

Company Name

---

Address

---

City, State, ZIP

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Phone Number

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Federal Employer ID Number

## Appendix A

### SCOPE OF WORK (TERM 3 – 2011 thru 2014)

#### A. Program Management

- A.1 Program Manager.** Provide a Program Manager and Deputy Program Manager (referred to collectively herein as the “Program Manager”) with overall responsibility for managing the program scope of work and developing and implementing Program Management and Program Controls. The Program Manager shall provide staff planning, supervision, and support for the Program Team, including coordination among project teams. As requested by TJPA, the Program Manager shall also assist the TJPA in the acquisition of funding for the Program, various Program approvals, and other third party agreements. The Program Manager, or his or her designee, will attend the TJPA’s weekly staff meetings and other meetings as required by the TJPA. The Program Manager will provide all other related services as requested by the TJPA. The Program Manager and Deputy Program Manager are designated as key personnel positions.
- A.2 Comprehensive Program Report.** This task has been completed.
- A.3 Program Descriptions & Analysis.** This task has been completed.
- A.4 Program Implementation Plan.** Update the Program Implementation Plan as needed for program cash flow and contracting analysis.
- A.5 Program Management Plan.** Update the Program Management Plan (PMP) as required reflecting Program organization, structure, and requirements.
- A.7 Secured Staff.** If requested, provide staff to work in TJPA offices under the direction of the TJPA.

#### B. Management Policies and Procedures

Develop, update and implement Management Policies, Procedures and guidelines and other documents needed to standardize management of the Program and its component projects.

- B.1 Requirements Checklist.** Maintain the Requirements Checklist to assist in managing the Program to verify that design and construction complies with all requirements and commitments established during the planning and environmental clearance phase and the requirements of the various entities whose funds will be used to deliver the Program have been met.
- B.2 Policies.** Develop policies to fulfill the requirements of the PMP and manage their implementation. Update these policies as necessary.
- B.3 Procedures and Guidelines.** Develop procedures and guidelines addressing requirements of the Program and its component projects as specified in individual task orders or work plans issued by the TJPA. Update procedures as necessary to reflect changes in approved processes.

#### C. Program Implementation and Support Activities

- C.1 Program Coordination.** Coordinate or assist with various Program support activities as outlined below between the TJPA, PMPC, Construction Management/General Contractor (CM/GC), Construction Management Oversight (CMO) consultants, other TJPA consultants, public agencies and the public.

- C.2 Project Implementation Plans.** Review Project Implementation Plans such as project phasing and contract packaging proposals prepared by design teams. Provide recommendations for optimization of program delivery as necessary.
- C.3 Design Criteria.** Verify conformance with approved design criteria to achieve consistency in design among various project components and contract packages.
- C.4 Issue-action Tracking.** Develop methodologies for tracking and resolving issues related to design, construction and operations with all stakeholders that have an interest and/or are participants in the Program. Work with Project Managers to facilitate resolution of issues and maintain issue-tracking documentation for all components of the Program.
- C.5 Stakeholder Coordination.** Assist the TJPA in coordination with regulatory agencies and other stakeholders that have an interest or are participants in the Program and facilitate resolution of issues related to design, construction and operations. Assist with government relations and community outreach services at the direction and discretion of the TJPA and coordinate with TJPA and TJPA consultants on these services as requested.
- C.6 Risk Management.** Establish a systematic risk management process for the Program and its component projects. Develop a framework by which these risks will be identified and assessed. Develop and implement response and control strategies to manage these risks. Provide periodic risk updates during design and construction consistent with USDOT guidelines.
- C.7 Design Reviews.** Set up and conduct various Design Reviews, such as Peer Review, Value Engineering, Constructability Review and other technical reviews as required.
- C.8 Procurement Documents.** Prepare contract procurement documents, including but not limited to professional services and construction contracts. Scope of work may include requests for proposals, scopes of work, and addenda. Assist in preparing scope of work and contract language.
- C.9 Contract Administration.** Provide contract administration, including maintaining contract files, records, performing invoice reviews, independent cost estimates, Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) compliance, verifying compliance with City and County of San Francisco requirements, and FTA, FRA and TJPA procurement and contracting policies and procedures.
- C.10 Human Rights Liaison.** Assist with the TJPA's liaison to human rights and contract compliance authorities as requested by the TJPA.
- C.11 Insurance Planning and Risk Analysis.** This task has been completed.
- C.12 Real Estate Acquisition.** Working with the TJPA's legal counsel and the City and County of San Francisco Real Estate Department, implement and update as needed a real estate acquisition plan coordinated with the Program Implementation Plan and the Program Master Schedule. Work with the TJPA and its consultants to oversee the real estate acquisition process, including assistance with appraisals, site assessments, offers to purchase, relocation, condemnation and other activities as necessary and as requested by the TJPA.
- C.13 Caltrans Liaison.** Serve as the TJPA's liaison to Caltrans as requested.
- C.14 Property Acquisition and Joint Development.** Serve as the TJPA's liaison to stakeholders and interested parties relative to property acquisition and joint development opportunities, as requested by the TJPA.
- C.15 Utility Coordination.** Provide utility coordination management to verify project teams are successful in making all arrangements for timely and cost-effective relocations of existing facilities. Provide

planning assistance, oversight and coordination required to make timely and accurate arrangements for all new or relocated utility services and hook-ups. Assist with oversight of planning, policy implementation and oversight of design to accommodate public power service at the new Transit Center.

- C.16 Permit Management.** Provide oversight and management of processes related to obtaining local, regional, state and federal permits required to complete the component projects, and verify these requirements are met in a timely and efficient manner.
- C.17 Mitigation Support.** Provide oversight of all required environmental mitigation measures as outlined in the FEIS/FEIR. Provide oversight for implementation of the Mitigation Monitoring Plan and verify and document through quarterly and annual Mitigation Monitoring Reports that all activities identified in this Plan and the FEIS/FEIR are implemented, completed and documented in accordance with all local, state and federal regulations and guidelines. These activities will include hazardous waste management, noise and vibration mitigation; property acquisition/relocation; cultural and historic resources; soils/geology; utilities coordination; and pre-construction activities related to building structural survey, geotechnical investigation, business community coordination and community outreach programs. As requested, provide noise, dust and air monitoring, including baseline measurements.
- C.18 State Historical Preservation Offices (SHPO) & Archaeological Support.** Provide technical assistance in performing all tasks required by existing and future agreements with local, state and federal agencies related to environmental mitigation requirements outlined in the "Memorandum of Agreement Among the FTA and the California State Historic Preservation Officer for the Transbay Terminal/Caltrain Downtown Extension/ Redevelopment Project".
- C.19 EIS/EIR Documents.** As requested by the TJPA, prepare any required reevaluations, studies, amendments, or addenda to the environmental clearance documents for the Program. Review environmental documents for adjacent area projects to identify potential conflicts with the Program.
- C.20 Construction Management Plan.** As needed, update Construction Management Plans and Procedures covering construction management procedures and systems for contract management and administration; cost, schedule and quality control; testing and start-up.
- C.21 Traffic Management and Operations Planning.** As requested by TJPA, provide specialist assistance to the TJPA for management of pedestrian, bicycle and vehicular traffic during construction as well as traffic planning for the temporary terminal and new Transit Center buildings. Provide specialists as needed to assist the TJPA with planning for operation of the temporary terminal as well as the new permanent facilities, including but not limited to bus and rail operations and facility operations and maintenance.
- C.22 System Testing and Startup.** Provide oversight of final System Testing and Start-Up activities for both the Transbay Transit Center and Caltrain Downtown Extension (DTX) components of the program. Oversee the development and execution of a startup and commissioning schedule and plan, including activities for safety certification, system integration, system commissioning, training and turnover to operations staff.
- C.23 Facilities Operations and Maintenance Planning.** As requested by the TJPA, prepare facilities operations and management plans and cost estimates.
- C.24 Closeout.** Assist TJPA in project and program closeout activities and documentation, including facility acceptance, systems acceptance and training, turnover of operations and maintenance materials, warranties, final budget reconciliation and file turnover.
- C.25 CADD Management.** As requested by the TJPA, establish and maintain a program-wide CADD database. Develop and implement procedures and systems to permit timely and efficient transfer of

CADD documents and other design information among Project participants. Review TJPA design consultant submittals for conformance with CADD standards.

- C.26 3-D Modeling and Building Information Modeling.** As requested by the TJPA, review three-dimensional digital models and building information models prepared by others for compliance with Program standards, procedures and contractual requirements. Begin research on and planning for use of the models with facility maintenance systems during the operations phase of the projects.
- C.27 Safety and Security.** Continue to coordinate security-related work for the Program including working with TJPA and the design teams regarding physical and operational issues; continuing to work with the DTX design team on refining the design guidance criteria produced in the DTX risk assessment report; updating and expanding the Safety and Security Management Plan (SSMP) as required by the FTA and FRA for projects entering final design; assist TJPA with the development of a comprehensive security program as outlined in the SSMP; and coordinate as requested with the relevant state and local agencies to verify that safety and security activities are consistent with plans for the Transbay Redevelopment Area.
- C.28 Economic Studies.** If requested by TJPA, provide additional study updates.
- C.29 Public Outreach.** This task not used.
- C. 30 Documentary Production.** As requested by the TJPA, provide assistance with media documentation of the ongoing planning, design, and construction of the Transbay Transit Center Program.
- C.31 Security Director.** This task not used.
- C.32 Bay Bridge Corridor Study.** This task has been completed.

**D. Project Management: Transit Center**

Provide Project Management of the Transit Center Project, including the Temporary Terminal, New Transit Center, New Ramps and Bus Storage components of the Program. The Transit Center Project Manager will be responsible for managing the project scope, schedule, budgets and contracting during the design, construction, system testing, start-up and close-out phases of the Transit Center project. The Transit Center Project Manager and his or her support staff will perform the following:

- D.1 Transit Center Project Manager.** Provide a Transit Center Project Manager with overall responsibility for project management oversight of design procurement and construction phases of the Transit Center Project including the Temporary Terminal, Bus Storage, new Transit Center and Ramps. Support TJPA operations at the Temporary Terminal and Bus Storage facilities as requested. The Transit Center Project Manager is designated as a key personnel position. Work cooperatively with the Program staffing to verify that all other aspects of the project, including environmental, real estate, utilities and permits are completed successfully within the parameters of the adopted schedule and budget. Provide interface management between the Transit Center Project and other components of the Program.
- D.1.1 Buttress, Shoring and Excavation (BSE) Project Manager.** Provide a BSE Project Manager responsible for overall project performance and delivery of the Transbay Transit Center (TTC) Buttress, Shoring and Excavation (BSE) construction package. The BSE Project Manager will oversee the work of the Construction Management Oversight (CMO) consultant and the Construction Manager/General Contractor (CM/GC) related to BSE construction design consultants, expert consultants, and others involved in design elements of the BSE work during the construction process. The BSE Project Manager will manage the work of the BSE Resident Engineer, Project Manager for Utilities/BART Connector, Engineering/Permits Coordinator and part-time Project Engineer managing DTX/rail studies, environmental specialists, mitigation support, traffic engineers and archaeological

consultants. The BSE Project manager will coordinate directly with TJPA, Public Relations staff and other Agencies on all aspects of the BSE work. The BSE Project Manager is designated as a key personnel position.

- D.2 A/E Selection Process.** This task has been completed.
- D.3 Design Constraints, Criteria & Standards.** This task has been completed.
- D.4 Update Program.** If requested by TJPA, provide additional Program updates.
- D.5 Program Development and Scope Documents.** This task has been completed.
- D.6 Project Scope, Schedule & Budget.** Work with estimators, technical specialists and Program Controls Manager to validate scope and develop the project budget and schedule for the Transit Center Project, including subprojects and project components. Maintain current and accurate information regarding project scope, schedule and budget throughout the entire life of the project. Analyze project progress and provide management direction and oversight to project team to address scope, schedule, claims and cost issues that may arise during project delivery and implementation. Identify problem areas, formulate strategies and oversee implementation of corrective action plans to address issues related to scope, claims, schedule and cost. Analyze cost trend information and identify cost issues as early as practicable.
- D.7 Design Reviews.** Coordinate, manage and conduct various reviews during the design phase, such as Risk Management Reviews, Peer Reviews and Value Engineering and Constructability Workshops.
- D.8 Procedures Implementation.** Verify that the various design consultants use current design criteria and coordinate interface points between the various components of the Program and contract packages. Verify that approved changes to the Project or Program are implemented for all contract packages.
- D.9 Issue-Action Tracking.** Maintain an issue-action tracking system to facilitate timely resolution of issues and decision-making. Perform comprehensive decision analyses as needed. Facilitate and document major design decision processes.
- D.10 Change Management Oversight.** Provide oversight during design, construction and start up testing to verify that all approved changes are communicated to all impacted parties and are implemented consistently throughout the Program.
- D.11 Contract Packaging.** Work with the CM/GC and CMO on development of packaging and construction strategies to be used in the implementation of the Project.
- D.12 Interface Management.** Verify that physical and schedule interfaces are coordinated between the Transit Center Project and other components, projects and subprojects and contract packages within the program.
- D.13 A/E Contract Management.** Assist the TJPA with management of the scope, deliverables, schedule and budget for Architecture/Engineering Contract(s) for the Transit Center Project. Provide management oversight of A/E design contract(s) during design, construction, testing, start-up and closeout phases.
- D.14 Design Submittal Reviews.** Organize independent reviews of design submittal packages to verify that design intent is properly implemented and project scope is accurately represented in various contracts.
- D.15 Procurement Support.** Oversee the CM/GC's work on prequalification, bid document preparation, solicitation addenda, pre-bid meetings, analysis of bid results and award of contracts as requested by

the TJPA. Oversee and coordinate the timely exchange of information between the design teams, CM/GC, CMO and TJPA related to preparation of bid packages, issuance for bid, contract award and notices-to-proceed.

- D.16 Construction Management Oversight.** Provide management oversight for construction management activities, including development of the construction management scope of services, management of cost, schedule, quality, scope and integration with other projects and contract packages. Provide oversight and Quality Assurance of TJPA construction management consultant services, including submittal processing, response to RFIs, document control, change management claims analysis/project closeout and other responsibilities of the construction management teams. Provide management of the change order process and claim analysis and adjustment. Coordinate design services and construction management services during construction. Provide specific construction management services as requested by the TJPA.
- D.17 Testing, Startup and Closeout.** Provide management oversight for development of pre-revenue testing and start-up procedures, safety certification program and project closeout.
- D.18 Bus Station Operations Analysis.** This task has been completed.
- D.19 Bus Storage.** Provide project management oversight of design and construction phases of Bus Storage facility. Work cooperatively with the TJPA and program staff to verify that all aspects of the project, including environmental, utilities and permits are completed successfully within the adopted schedule and budget. Provide interface management between the Bus Storage, Bus Ramps and other components of the Program.
- D.20 Bus Operations, Bus Ramps Layout and Preliminary Engineering.** This task has been completed.
- D.21 BART/MUNI Embarcadero Station Pedestrian Connection.** Continue to work with TJPA staff, BART, MTA staff and other stakeholders as necessary to advance the concept for the BART/MUNI Pedestrian Connector. Work with the A/E to verify that accommodations are provided in the design and construction of the Transbay Transit Center to facilitate future construction of the connector. If necessary provide oversight for any environmental studies conducted in relation to the connector.
- D.22 Existing Terminal and Ramps Demolition.** As engineer-of-record for the Demolition Project, provide construction administration services during execution of the Demolition work.
- D.23 Transbay Ridership Projections Study.** As requested by the TJPA, update commuter passenger ridership projections related to the Transbay Transit Center Program.
- D.24 LEED and Sustainability Analysis.** Review the Transit Center A/E sustainability documents, LEED matrix and scorecard, and drawings and specifications during preparation of construction documents for the Transit Center. Provide oversight review of LEED design credit templates and submittals, participate in meetings as requested, and provide input to the Transit Center design and commissioning processes regarding the TJPA's programmatic sustainability goals.
- D.25 Structural and Seismic Review Committee.** Provide members of and coordinate the work of a Structural and Seismic Review Committee to work with the San Francisco Department of Building Inspection on development of structural and seismic design criteria for the Program.
- D.26 Essex Ramp.** This task has been completed
- D.27 Partnering Facilitation.** As requested, provide a facilitator to plan and implement a partnering program to include project metrics, issue escalation, development of team goals, and objectives.

- D.28 Engineering Design Support.** As requested, provide architectural and engineering design services, including but not limited to preliminary engineering and final design for civil, structural, MEP and other engineering design disciplines, preparation of design/build or construction documents, review of construction submittals, answering requests for information and other construction administration support.
- D.29 Operations Support.** Provide support for facility and transit operations as needed at the Temporary Terminal and Bus Storage Facility including but not limited to participation in regular operations meetings, oversight of facility managers, working with transit operators and providing direction on facility modifications and requested repairs.
- D.30 IT Design Consultation.** Provide a part time consultant to provide IT planning services for the Transit Center and to oversee the work of the design team's IT consultant(s).

**E. Project Management: Caltrain Downtown Extension (DTX)**

Provide Project Management for the Caltrain Downtown Extension Project, including the 4<sup>th</sup> & King Caltrain Yard Improvements, 4<sup>th</sup> & Townsend Station, cut & cover, mined tunnel and rail and system components of the overall Program. The Caltrain Downtown Extension Project Manager will be responsible for managing the project scope, schedule, budgets and contracting during the design, construction, system testing, start-up and close-out phases of the Caltrain Downtown Extension, including coordinating rail and system improvements within the Transit Center Building with the Transit Center Project Manager. The Caltrain Downtown Extension Project Manager and his or her support staff will perform the following:

- E.1 DTX Project Manager.** Provide a DTX Project Manager with overall responsibility for project management oversight of Design Engineering, Procurement, Construction and startup of the DTX. The DTX Project Manager is designated as a key personnel position. Work cooperatively with the Program Coordinator to verify that all other aspects of the project, including environmental, real estate, utilities and permits are completed successfully within the parameters of the adopted schedule and budget. Provide interface management between DTX and other component projects of the Program.
- E.2 Project Scope, Schedule & Budget.** Work with estimators, technical specialists and Program Controls Manager to validate scope and develop the project budget and schedule for the DTX Project, including subprojects and project components. Maintain current and accurate information regarding project scope, schedule and budget throughout the entire life of the project. Analyze project progress and provide management direction to project team to address scope, schedule, claims and cost issues that may arise during project delivery and implementation. Analyze cost trend information and identify cost issues as early as practicable. Identify problem areas, formulate strategies and oversee implementation of corrective action plans to address issues related to scope, claims, schedule and cost.
- E.3 Design Reviews.** Coordinate and manage various Risk Management Reviews, Peer Reviews, design, Value Engineering and Constructability reviews and workshops.
- E.4 Procedures Implementation.** Verify that the various design consultants use current design criteria and coordinate interface points between the various components of the Program and contract packages. Verify that changes to the project or Program are implemented for all contract packages.
- E.5 Issue-Action Tracking.** Maintain an issue-action tracking system to facilitate timely decision-making. Perform comprehensive decision analyses as requested by the TJPA. Facilitate and document major design decision processes.

- E.6 Change Management Oversight.** Provide oversight during design, construction and start up testing to make sure that all approved changes are communicated to all impacted parties and are implemented consistently throughout the Program.
- E.7 Construction Contract Packaging.** Develop construction contract packaging and strategies to be used in the implementation of the Project and serve as the basis for development of the Work Breakdown Structure and Program Master Schedule.
- E.8 Interface Management.** Verify that physical and schedule interfaces are coordinated between the DTX Project and other component projects, subprojects and contract packages within the Program.
- E.9 Engineering Contract Management.** Assist the TJPA with development of DTX engineering design or design-build contract scope, deliverables, schedule and budget. Provide management oversight of engineering design contract through completion of design phase or design-build contract through completion. Provide management oversight of design services during construction, testing, start-up and closeout.
- E.10 Design Submittal Reviews.** Organize independent reviews of design submittal packages to verify that design intent is properly implemented and that the project scope is accurately represented in various contracts.
- E.11 Procurement Support.** Manage prequalification, bid document preparation, pre-bid meetings, analysis of bid results and award of contract as requested by the TJPA.
- E.12 Construction Management Oversight.** Provide management oversight for construction management activities, including development of scope of construction management services, management of cost, schedule, quality, scope and integration with other projects and contract packages. Provide oversight and Quality Assurance of construction management functions, including submittal processing, response to RFIs, document control, change management, claims analysis project close out and other responsibilities of the construction management teams. Provide management of the change order process and claim analysis and adjustment. Coordinate design services and construction management services during construction. Provide construction management services as requested by the TJPA.
- E.13 Testing, Startup and Closeout.** Provide management oversight for development of pre-revenue testing and start-up procedures, safety certification programs and project closeout.
- E.14 Design Constraints, Criteria & Standards.** Refine and validate design constraints, criteria, and standards with the engineering design team and rail operators as requested by the TJPA. Maintain and update design criteria as necessary. Work with Caltrain, California High-Speed Rail Authority and other rail operators on rail design and operations criteria including negotiation of design variances and preparation of variance requests as required.
- E.15 Dual Locomotive Study.** This task has been completed.

## **F. Program/Project Controls**

- F.1 Program Controls Manager.** Provide a Program Controls Manager with overall responsibility for developing and implementing program and project-level cost and schedule controls. The Program Controls Manager is a designated key personnel position. The Program Controls Manager will direct Program and Project Controls support staff in working with the Project Managers to accomplish the following scope of work.
- F.2 Work Breakdown Structure.** Maintain and update a work breakdown structure (WBS) for the implementation of the Program that will be used for organizing and reporting on cost, schedule and

scope. All drafts, updates and revisions will be submitted to the TJPA for review, evaluation, and approval prior to implementation.

- F.3 Preliminary Phase Estimating.** This task has been completed.
- F.4 Program Budget.** Maintain the Baseline Budget for the Program in accordance with the approved Work Breakdown Structure. Incorporate construction budgets using cost estimates developed by reconciliation of the CM/GC and design team estimates. Estimate other soft costs for each line item. Conduct market and escalation studies to forecast potential cost increases and market pressures over the life of the Program. Work with TJPA Program Management to assess the adequacy of contingency budgets at the project and Program level that are consistent with the risks associated with each Program element at each stage of design and construction. Monitor, update and manage the budget over the course of the Program.
- F.5 Program Master Schedule.** Develop a Program master schedule based on the WBS and the Program Implementation Plan. Update the Program master schedule regularly, but no less than monthly, to include current information regarding project and contract progress.
- F.6 Project and Contract Package Schedules.** Develop and update project and contract package schedules based on input from various project team members, including designers and contractors. Provide current information regarding critical and near-critical activities, milestones, progress and outstanding issues affecting the schedule.
- F.7 Program Schedule Monitoring and Control.** Review and analyze overall Program progress during the design and construction phases. Review and analyze design and construction schedules for compliance with contractual and Program requirements. Identify areas of concern and provide input on corrective action plans as necessary.
- F.8 Cost Accounting Technical Support and Budgeting.** Working with the TJPA's Financial consultants and Finance Coordinator, provide technical support in establishing a Program cost accounting structure. Develop, maintain and analyze budgets, track actual commitments, costs and encumbrances, analyze variances and forecast total Program costs.
- F.9 Cost Monitoring, Forecasting and Reporting.** Working with the TJPA's Financial consultants and Finance Coordinator and various team members, collect and analyze project and Program cost information, including encumbrances, commitments, contingency usage, actual expenditures, trends, forecasts and variance information. Provide reports as requested to satisfy reporting requirements of funding partners, FTA, FRA and others as necessary.
- F.10 Cost Control.** Work with the TJPA to develop and implement procedures to control cost and manage the budget, including change order and contingency usage approval procedures and limits, budget change procedures, change management, trend forecasting and variance notification policies. Assist the TJPA with monitoring cost performance and taking corrective actions to keep the Program scope within the approved budget.
- F.11 Cash Flow Planning.** Working with the TJPA's Financial consultants and Finance Coordinator, analyze, prepare and maintain current and projected cash flow requirements for the Program.
- F.12 Estimate Reviews.** Review and evaluate various cost estimates related to construction, operations and maintenance of the Program to verify that they are comprehensive and conform to established guidelines.
- F.13 Project Estimating and Bid Analyses.** Prepare independent cost estimates as requested by the TJPA. Review cost estimates prepared by others and analyze and reconcile variances. As requested, analyze bid results for construction contracts.

- F.14 Change Order Estimating.** Develop independent cost estimates for construction contract change orders to be used as the basis for negotiation. Assist project managers and construction management staff with negotiations as required.
- F.15 Contingency Management.** Develop and maintain a contingency management and tracking system. Report regularly on project and program contingency usage and recommend corrective actions to the TJPA.
- F.16 Status Reporting.** Prepare monthly, and other regular or one-time reports of Program, project and contract status as required by the TJPA, FTA, FRA, funding agencies and other Program stakeholders. Include executive, management and project level reports. Content may include but is not limited to progress, cost, schedule, procurement, small and local business participation, safety, status of the QA/QC process, issue resolution and other aspects of the project or contract. Recommend corrective actions relative to these aspects of the project. Provide a part-time technical editor to provide final editing of regular status reports.
- F.17 Claims Analysis and Resolution.** Develop and implement strategies for claim avoidance and claim management throughout the life of the Program. Develop and implement a claims analysis and review procedure and assist in the review, analysis and resolution of all claims associated with implementation of the Program. Assist the TJPA with establishment of change control and dispute resolution mechanisms such as a Dispute Review Board as requested.

**G. Quality Control/Quality Assurance (QC/QA) Program**

The QC/QA Manager will update and maintain a program wide QA/QC Program covering management, design and construction activities.

- G.1 QC/QA Program.** Implement and update a QC/QA program establishing a planned and systematic approach to attaining the Program requirements and the expected level of quality. The QC/QA Program includes the QC/QA Plan and procedures and all related activities to meet FTA, FRA, and other requirements.
- G.2 QA Reviews.** Perform reviews of QA/QC programs proposed for individual projects by various design and construction teams to confirm that these programs meet or exceed minimum Program standards.
- G.3 QA Oversight.** Provide oversight of design, construction, commissioning and start-up activities relative to implementation of the adopted QA/QC program. Identify areas needing improvement, recommend corrective action plans and provide oversight to confirm compliance.

**H. Document Management and Administrative Support**

- H.1 Administrative Support.** Administrative support will include, but not be limited to, documentation of meetings, report writing, preparation of presentations, preparation of correspondence, filing, organizing meetings, reception, office administration and other general office and administrative support for PMPC and TJPA staff.
- H.2 Document Control.** Maintain a document control management plan that includes the necessary procedures for the coordination, documentation, management, control and distribution of correspondence, reports, memoranda, submittals, drawings, contract documents, and other documentation during the course of the Program. Document control will serve as the official records management function for the Program, and be the source for all official documentation and provide storage for all Program records and files.

Maintain a central document control function that provides the following:

- H.2.1 Processing all documents according to the approved Program document control procedures

- H.2.2 Maintain an accessible record of all Program correspondence, submittals, drawings, reports, RFIs and other documents
- H.2.2 Maintain a Program library of all official documents, tracking and reporting assigned tasks, and maintaining back-up file storage of essential Program records

**H.3 Presentation Support.** Provide data, graphics and other materials as required for internal, external and public presentations, and for the TJPA website.

**H.4 Technical Editing.** Provide one technical editor to maintain program style guides, document and editing standards and to coordinate assembly and editing of major program documents.

**I. Program Management Information Systems (PMIS) Support**

**I.1 Systems Needs Assessment and Support.** Evaluate, support and assist with program, information technology and information management software and hardware systems as requested by the TJPA.

**I.2 Program Controls Software and Implementation.** Maintain and implement program/project controls and project management software to facilitate collection and management of information related to cost, schedule, scope, issue tracking, document control, contract administration, project status and other related activities.

## APPENDIX B

### FORM OF COST REIMBURSEMENT AND RATE AGREEMENT

(Through June 30, 2014)

Pursuant to Agreement 04-03-PMPC-001 between the parties, URS Corporation (hereinafter referred to as "Contractor") and the Transbay Joint Powers Authority (hereinafter referred to as "TJPA"), hereby agree to enter into a Cost Reimbursement and Rate Agreement (CRRA) as follows:

This Agreement and the CRRA are subject to federal regulations pertaining to grants to state and local governments, CFR 49, Part 18 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments". The Federal Acquisition Regulations Title 48, CFR 31 are governing factors regarding allowable elements of cost and CONTRACTOR and all of its subcontractors agree that these regulations shall be used to determine the allowability of individual items of cost. Furthermore, the Cost Principles contained in Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments), pertain to this Agreement and the CRRA.

Within 30 days of the award of this Agreement, the CONTRACTOR shall submit completed Cost Disclosure Statements for CONTRACTOR and all subcontractors who will perform work in excess of \$500,000 during the term of the Agreement. The Cost Disclosure Statements will be as shown in Attachment A hereto.

#### I. BASIS FOR REIMBURSEMENT OF CONTRACTOR DIRECT LABOR COSTS

- A. The Parties intend that CONTRACTOR perform services primarily on a cost reimbursable basis.
- B. The individual direct labor cost rates, exclusive of any burden or markups, shall be within the salary ranges as set forth in Attachment B hereto, "Hourly Salary Ranges".
- C. The individual direct labor cost rates for Key Personnel may be subject to annual adjustment, at the sole discretion and written authorization of the Executive Director or designee, at a rate not to exceed the local Consumer Price Index escalation factor.
- D. Notwithstanding the above, at no time will any individual direct labor rate exceed one hundred – twenty-five dollars (\$125.00) per hour.
- E. The following direct labor costs are allowable only to the extent that they are authorized in an accepted Annual Work Plan or Task Order or by prior written approval of TJPA's Executive Director or designee.
  - 1. Principal or Partner costs
  - 2. Expert and senior specialist costs
  - 3. Administrative costs
- F. The following direct labor costs are not allowable without the prior written approval of TJPA's Executive Director or designee.
  - 1. Premium costs incurred as a result of working overtime or holidays.
- G. Notwithstanding the above, and subject to approval by TJPA's Executive Director or designee, the Contractor may perform services on a lump sum or agreed price and/or time and materials basis. Contractor time and materials payments shall conform to Section VII below.

## II. BASIS FOR REIMBURSEMENT OF SUBCONTRACTED DIRECT COSTS

- A. The parties intend that CONTRACTOR obtain subcontracted services primarily on a cost reimbursable basis. The TJPA may additionally order and/or authorize work on a time and materials and/or lump sum or agreed price basis. For subcontractors performing services on a cost reimbursable basis:
1. CONTRACTOR will be reimbursed for subcontracted or subcontractor direct labor costs at any tier in accordance with the requirements of Sections I. B through I. F above.
  2. Reimbursement for subcontracted other direct costs at any tier, (i.e. subcontractor furnished materials and supplies) shall be in conformance with the requirements of Section III below.
  3. Reimbursement for subcontracted indirect costs at any tier shall be in conformance with the requirements of Sections IV, V, VIII and IX below.
  4. Subcontractor Fixed Fee at any tier, shall be in conformance with the requirements of Section VI below.
- B. Subject to approval by TJPA's Executive Director or designee, subcontractor(s) may perform, or be obligated to perform, services on a 'time and material' basis when the following conditions have been met:
1. CONTRACTOR has identified at least three subcontractors for any specific services to be performed on this basis or if this is not possible, then CONTRACTOR has furnished a written justification acceptable to TJPA, as to why the recommended subcontractor represents the most advantageous offer to the TJPA, considering qualifications, cost or price factors as may be appropriate.
  2. Total compensation for subcontractor labor will not, in aggregate, exceed \$100,000 per Contractor fiscal year.
- C. As used herein the term 'time and material' is defined as a subcontract that provides for acquiring supplies or services on the basis of (i) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (ii) materials or supplies at direct cost only with no overhead, profit or fee allowed.

Subcontractor(s) time and material rates are allowable only to the extent that any individual rate complies with the following requirements:

1. Total reimbursement per individual, per day does not exceed eight hours or eight times the approved rate and forty hours in one week;
2. For services performed on a time and material basis, the following costs shall be allowable only to the extent that they are a part of the overhead portion of the subcontractor's labor rate:
  - a. All subcontractor costs including, but not limited to subcontractor labor, associated with automobile travel within a 50 mile radius of the TJPA's Administrative Offices at 201 Mission Street, San Francisco, California;
  - b. All subcontractor costs associated with providing insurance as set forth in this Agreement other than TJPA furnished coverages.

- D. In the event the TJPA Executive Director or designee gives approval for specific subcontractor services pursuant to the above Sections II.B and II.C, CONTRACTOR shall thereafter obtain such subcontractor services accordingly.

III. BASIS FOR REIMBURSEMENT OF OTHER DIRECT COSTS

- A. CONTRACTOR will be reimbursed for other direct costs (other than CONTRACTOR and subcontractor direct labor and indirect labor costs), hereinafter referred to as "ODCs". Local travel for the benefit of the Program is reimbursable.
- B. Reimbursement for CONTRACTOR ODCs is based upon the CONTRACTOR'S consistent treatment of these types of costs over CONTRACTOR'S company as a whole.
- C. The following ODCs are not allowable without the prior written approval of TJPA's Executive Director or designee.
  - 1. Relocation, travel and/or subsistence related to travel into or out of the area, or where TJPA offices are located.
  - 2. Tuition for training, seminars, technical associations meetings, or other similar events.
  - 3. Cost of any equipment, tools, or vehicles hired, leased or purchased for the performance of services. Provided such costs are allowed with the prior written approval of TJPA's Executive Director or designee, the depreciated value of such items purchased by CONTRACTOR shall be credited to TJPA at the completion of the work hereunder.

IV. BASIS FOR INDIRECT COST REIMBURSEMENT

- A. The reimbursement rates for CONTRACTOR'S and subcontractors' indirect costs are based primarily on CONTRACTOR'S and subcontractors' submission in accordance with Attachment A, together with supporting information, submitted by CONTRACTOR to the TJPA, and reviewed by TJPA.

Under no circumstances shall the Contractor and/or subcontractor be reimbursed for indirect costs exceeding one hundred fifty percent (150%) of direct labor costs without written approval of TJPA's Executive Director or designee.

- B. The indirect cost rates are also based on the treatment of certain costs as a part of the fringe benefit, overhead or general and administrative expense cost groupings, or any combination thereof, (as set forth in Section V.A. below) by CONTRACTOR and its subcontractors at any tier, as follows:
  - 1. All costs incurred in preparing, submitting and supporting any Annual Work Plan or Task Order Proposal (whether or not accepted by TJPA);
  - 2. All costs incurred in preparing, submitting and supporting any Annual Work Plan or Task Order Modification, or Change Order to the Agreement (whether or not accepted by TJPA);
  - 3. All costs of financial administration (including but not limited to establishing final rates, invoicing, reporting, budgeting, and auditing);
  - 4. All costs associated with direct labor fringe, including but not limited to employee compensated personal absence, payroll taxes and payroll additives.
  - 5. All costs associated with the costs of employee incentive compensation (including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation) shall

be allowable only as indirect costs. Furthermore, such costs shall be allowable only to the extent that they are paid or accrued:

- a. under an agreement (in effect for twelve months prior to award of this Agreement) entered into in good faith between CONTRACTOR and the employees, or,
- b. pursuant to an established organization wide plan or policy followed by the CONTRACTOR (for twelve months prior to award of this Agreement) so consistently as to imply, in effect, an agreement for such incentive compensation.

In no event shall direct distribution of any profits be allowable as a form of incentive compensation.

6. All costs associated with providing insurance coverages as set forth in this Agreement other than those provided by the TJPA.

V. INDIRECT COST RATES

- A. The cost rate for CONTRACTOR overhead, applied to CONTRACTOR direct labor as set forth in CONTRACTOR'S approved submission effective date of January 1, 2011 is 118.133% for work performed in CONTRACTOR'S office and 98.286% for work performed in TJPA's office. Adjustments to the cost rate for CONTRACTOR overhead, applied to CONTRACTOR direct labor shall be approved by the TJPA based upon CONTRACTOR'S latest fiscal year audit. CONTRACTOR shall submit that audit each year as soon as it is available and start using the new indirect cost rates in the next invoice following TJPA' written approval
- B. There shall be no rate applied to ODCs for either the CONTRACTOR or any of its subcontractors at any tier.
- C. There shall be no rate for Facilities Capital Cost of Money for either the CONTRACTOR or any of its subcontractors at any tier.
- D. The rates for subcontractor fringe benefits, overhead or general and administrative expense, or any combination thereof, for CONTRACTOR'S subcontractors at any tier shall be as set forth in individual Annual Work Plans and Task Orders.

VI. FIXED FEE

- A. The CONTRACTOR'S and subcontractors' Fixed Fee shall be specified in each Annual Work Plan or Task Order. CONTRACTOR'S and subcontractors' Fixed Fee shall be computed as follows:
  1. For CONTRACTOR and subcontractor direct labor costs and indirect costs, as applied to CONTRACTOR and subcontractor direct labor costs:
    - a. A fixed fee of nine percent (9%).
  2. Subcontractor direct labor and indirect labor costs are hereinafter referred to as "SDC's". Contractor shall apply a fixed fee of 2% to SDC's
  3. There shall be no fee allowed for CONTRACTOR ODC's
  4. There shall be no fee allowed for subcontractors ODC's or SDC's at any tier
- B. There shall be no revision, either upward or downward, to the established fee for CONTRACTOR or subcontractors at any tier due to the establishment of a final rate for indirect cost reimbursement for any given fiscal year.

VII. BASIS FOR REIMBURSEMENT OF CONTRACTOR SERVICES PERFORMED UNDER TIME AND MATERIALS

- A. As used herein the term 'time and material' is defined as work performed on the basis of (i) direct labor hours at specified fixed hourly rates that include direct labor costs, indirect labor costs, and fee and (ii) if required and authorized, materials or supplies at direct cost only with no overhead, profit or fee allowed.

CONTRACTOR'S time and material rates are allowable only to the extent that any individual rate complies with the following requirements:

1. Total reimbursement per individual, per day does not exceed eight hours or eight times the approved rate and forty hours in one week, unless authorized by the Executive Director or his/her designee. If overtime is authorized, indirect labor costs shall not be included in fixed hourly rates as reimbursement for overtime hours;
  2. For services performed on a time and material basis, the following costs shall be allowable only to the extent that they are a part of the overhead portion of the CONTRACTOR'S labor rate:
    - a. All CONTRACTOR costs including, but not limited to CONTRACTOR labor, associated with automobile travel within a 50 mile radius of the TJPA's Administrative Offices at 201 Mission Street, San Francisco, California;
    - b. All CONTRACTOR costs associated with providing insurance as set forth in this Agreement other than TJPA furnished coverages.
- B. Reimbursement for CONTRACTOR'S other direct costs shall be in conformance with the requirements of Section III above.
- C. Reimbursement for CONTRACTOR'S indirect costs shall be in conformance with the requirements of Sections IV, V, VIII and IX.
- D. CONTRACTOR'S Fixed Fee shall be in conformance with the requirements of Section VI above.

VIII. CONTRACTOR CERTIFICATIONS

By signing this agreement CONTRACTOR hereby certifies to the following

- A. That the requirements and standards of 48 CFR 31.205-22 have been complied with regarding Legislative lobbying costs.
- B. That the computations, requirements and standards of 48 CFR 31.205-18 have been complied with regarding maximum compensation for CONTRACTOR'S Bid and Proposal costs and if requested by TJPA, these materials will be transmitted to TJPA.

IX. APPLICABILITY

- A. This CRRA shall apply to cost reimbursement and direct and indirect rates, and shall cover the period from Notice to Proceed until December 31, 2008. In the future, and for each Contractor fiscal year, the parties anticipate entering into a similar form of negotiated agreement with respect to costs and rates.
- B. Nothing herein shall be construed to prejudice, waive, or in any other way affect any rights of the TJPA under the provisions of this Agreement, nor respecting limitation of the TJPA's obligations thereunder.

- C. The negotiated rates set forth in this CRRA are applicable to all affected Annual Work Plans or Task Orders issued by the TJPA for this Agreement, pending final determination of such rates for CONTRACTOR and subcontractors by a cognizant United States Government Audit Agency, subject to approval by TJPA's Executive Director or designee.
  - 1. In the event CONTRACTOR does not have final rates determined by a cognizant United States Government Audit Agency, then such rates will be established by an independent, third party audit entity which shall be acceptable to the Executive Director or designee.
  - 2. Not Used.
  - 3. CONTRACTOR agrees to accept payment of these audited rates as its total compensation for all overhead, general and administrative costs for performing all services.
  - 4. The final approved audited rates for CONTRACTOR and its subcontractors shall be limited each fiscal year to a rate no more than that set forth in Section IV. A above. Such limitation shall not apply to any increases due solely to additional costs imposed by local, state or federal regulations, subject to the approval of TJPA's Executive Director or designee.
- D. CONTRACTOR shall submit an Annual Work Plan or Task Order Proposal in a form acceptable to the Executive Director or his/her designee and in accordance with paragraph 5 (A), "Procedures for Developing Scope of Services" of this Agreement.
- E. CONTRACTOR shall submit Invoices and backup information in accordance with paragraph 8 (F), "Payment; Invoice Format" of this Agreement.

X. OTHER

A. The terms and conditions of this Agreement between the parties are incorporated by this reference.

B. All modifications to this agreement shall be in writing.

The parties have executed this Agreement as of \_\_\_\_\_, 2011.

TRANSBAY JOINT POWERS AUTHORITY

CONTRACTOR

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

Approved as to Form:

CONCUR

TJPA Legal Counsel

\_\_\_\_\_

\_\_\_\_\_



Does your firm have a working knowledge of these materials?

Do your employees have copies of these materials?

2. In order to evaluate your firm's compliance with the above principles, please answer the following questions, complete the schedules and attach all requested information.

a. Does your firm have federal government contracts?

b. Was your proposed indirect cost rate audited during the past year by a federal agency (sometimes referred to as "cognizant agency"), any other governmental entity, or a CPA firm? If yes, provide a copy of the audit report(s) and the resulting rate agreements, if any. Also, complete the following: (Identify all reports)

Audit Organization  
Period of Audit  
Report Date  
Scope of Audit

Audit Organization  
Period of Audit  
Report Date  
Scope of Audit

C. DESCRIPTION OF COST ACCUMULATION AND BILLING PROCEDURES

1. On what basis does your firm maintain its accounting records? Accrual \_\_\_\_\_ Cash \_\_\_\_\_

If on a cash basis, are steps taken to properly allocate expenditures that benefit more than one fiscal year? \_\_\_\_ Is any allocation procedure contained in a written procedure? \_\_\_\_ If written, please attach a copy.

2. Briefly describe your firm's system for accumulating and billing project costs by answering all of the following questions.

(provide separate attachments as necessary or required)

a. DIRECT LABOR

The CONTRACTOR and each Subcontractor will be compensated for the services of its personnel on the basis of reasonable, actual paid Direct Labor Costs (herein called "DLC") exclusive of any fringe benefits or overheads.

DLC must exclude principal or owner time dedicated to the general operation of the business. DLC must also exclude time associated which TJPA has identified as being allowable only to the extent that they are (i) specific classifications of DLC identified in the Agreement, Annual Work Plan or Task Order as may be the case or, (ii) are not associated with specific activities that TJPA has identified as being reimbursable on a basis other than as a direct cost.

The hourly rates of temporary or contract personnel which are classified as non-employees cannot be calculated as part of DLC, but must be treated as an Other Direct Cost (herein called "ODC").

Similarly, the hourly rates of Subcontractors cannot be calculated as part of DLC, but must be treated as a Subcontracted Direct Cost (herein called "SDC"). Therefore, with respect to direct labor charges by your firm:

- 1) Your firm must fully document all time spent by Principals and employees and charged to TJPA projects. TJPA requires that all labor charges be identifiable to the nearest half-hour and specify what activity or task is being performed.
  - a) Does your firm have a time sheet signed by the employee and verified in writing by the immediate supervisor?
  - b) Does the time sheet record all time both direct and indirect?
  - c) Are controls in existence to ensure that DLC are relevant to the project scope? \_\_\_\_  
Are any such controls formalized in written procedures?
- 2) How many hours in your firm's normal workday? \_\_\_\_ hours
- 3) TJPA normally does not participate in overtime premium for direct labor personnel. Has your firm made provisions to exclude overtime premium and unpaid overtime from TJPA billings?
- 4) Does your firm have a compensation policy for the classifications of labor proposed for these services? \_\_\_\_ If so, please attach a copy.
  - a) Does your firm have guidelines for Salary Administration, i.e. the range of annual reviews, or salary adjustments? \_\_\_\_ If so, please attach a copy and indicate the average adjustment for the last three years.
  - b) Does your firm have any individual incentive compensation plans including, but not limited to bonuses, commissions or profit sharing plans? \_\_\_\_ If so, please attach a copy of each.
- 5) TJPA does not allow payment for uncompensated labor costs. Does your firm have procedures to ensure that uncompensated labor is not billed to TJPA projects?
- 6) If your firm is a partnership/sole proprietorship, does your accounting system use a drawing account to record all compensation to the owner(s)?
- 7) Does your firm hire professionals on a temporary basis to work on specific projects, rather than on a continuous employment relationship?
  - a) How many are currently working for your firm? \_\_\_\_\_
  - b) Who are they and what projects are they working on?
  - c) What was the total cost to your company of professionals hired on a temporary basis during the last completed fiscal year? 20\_\_\_\_\_, \$ \_\_\_\_\_  
  
Were these amounts in your direct labor base for that year? \_\_\_\_\_

b. OTHER DIRECT COSTS

Other Direct Costs (herein called "ODCs") are direct costs other than direct labor and direct materials that are identified specifically with a contract based on a beneficial or causal relationship.

The Federal Acquisition Regulations (48 CFR 31) provide that no contract will have a cost allocated to it as a direct cost if other costs incurred for the same purpose, in like circumstances, are treated as an indirect cost of that or any other contract.

Costs identified specifically with a contract are the direct cost of that contract. All costs identified with other contracts are direct costs of those contracts whether reimbursed or not.

- 1) a) Does your firm have an approval process for ODCs? \_\_\_\_\_  
If so, are they in writing? \_\_\_\_\_
- b) Does your firm have procedures in place to ensure that ODC budgets are not exceeded? \_\_\_\_\_ If so, are these procedures in writing?
- 2) For each of the following cost categories estimate the amounts charged as direct and indirect costs by your firm during the last completed fiscal year. FY 20\_\_\_\_

	Direct	Indirect
Travel	\$	\$
Reproduction		
Graphics		
Office Supplies		
Equipment		
Relocation Costs		
Computer Expenses		
Laboratory Testing		
Contract Labor		
Other Cost (specify)		

- 3) If any costs listed in 2 above are charged as both direct and indirect costs, identify them and explain how these and other costs directly identifiable with specific contracts are excluded from the indirect cost pool, to prevent duplication.
- 4) ODCs also include Subcontractors; does your firm lease office space to other consultants, or otherwise provide support services? \_\_\_\_\_ If so, describe the relationship.

c. INDIRECT COSTS

Indirect costs may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. However, TJPA contract requirements specify **direct labor costs** as the basis for allocating indirect costs. Furthermore, TJPA requires that direct labor exclude: 1) fringe benefits, which must be classified as indirect costs; 2) Subcontractor, contract employees and other non-employee costs which must be classified as ODCs; and 3) principal, or owner labor cost dedicated to the general operation of the firm.

Indirect cost rates must be supported. A negotiated rate for indirect costs will be established. Your firm's final rate must represent your firm's actual cost experience for a completed fiscal year and must comply with all FAR and specific TJPA agreement requirements.

Rates must represent your firm's best estimate of the rates to be experienced during that particular year. If your rate does not use your last completed fiscal year, the estimated cost must

be based on historical data and all known future changes. The computation should provide for the future changes that will occur in both your direct labor base and indirect expense pools. A proposed rate must comply with all FAR and TJPA agreement requirements. TJPA will consider rates audited and approved by a cognizant federal agency (i.e., EPA, DCAA), or other government entity, if the rate is further adjusted to comply with TJPA agreement requirements.

Each firm must be able to support its direct labor base and other labor cost components used to calculate the indirect cost rate by submission of data for the last three years. For this purpose complete the SCHEDULE OF SUMMARY COST AND SALARY DATA below for the last two completed fiscal years and the new fiscal year.

Complete the INDIRECT COST SCHEDULES (Schedules A, B and C, below) for your firm's last two completed fiscal years and the new fiscal year. The schedules may be modified as appropriate and will be reviewed by TJPA as part of negotiating a reimbursement agreement.

List each indirect cost account, the amount, and a description of each adjustment. Specifically show adjustments for: 1) FAR unallowable costs, and 2) the exclusion of those categories of cost *which* will be paid directly by TJPA as an ODC, or will be provided directly by TJPA or another firm. Also exclude comparable pool costs incurred in the performance of other contracts. For example, if travel is charged directly, then only general purpose travel should be included in the pool. Non-reimbursable direct travel should be excluded from the pool.

The following is a list of some of the more common costs unallowable per FARs. The list is not meant to be all inclusive, and accordingly, the consultant must refer to the FARs when preparing the INDIRECT COST SCHEDULE.

Advertising	Fines/Penalties
Bad Debts	Idle Facilities
Contingencies	Interest/Other Financial Costs
Contributions	Losses on Other Contracts
Entertainment	Organizational Costs

- 1) Does your firm routinely evaluate pool costs to identify and remove unallowable costs? \_\_\_\_\_ If so, at what interval? \_\_\_\_\_ If there is a written procedure for this removal, please attach a copy.
- 2) Does this CDS exclude any cost centers used by your firm? \_\_\_\_\_ If yes, identify these cost centers:
- 3) a. Does your firm own or have a financial interest in the facilities it leases or rents? \_\_\_\_\_ If yes, identify:  
  
b. Does your firm own or have a financial interest in equipment it leases or rents? \_\_\_\_\_ If so, please identify those interests:



Schedule A - General & Administrative Expenses MAI  
Fiscal Year Ending: \_\_\_\_\_, 20\_\_\_\_\_

Schedule of Actual Expenses, Unallowable Costs and Adjusted Costs

<u>Account No.</u>	<u>Description of Costs Removed</u>	<u>Adjusted General Ledger Costs</u>	<u>Unallowable Costs Notes</u>
	Salaries & Wages		
	Legal Fees		
	Audit Fees		
	Other Fees		
	Travel		
	Entertainment		(1)
	Advertising & Promotion		(2)
	Bad Debts		(1)
	Technical Publication		
	Periodicals		
	Conventions & Seminars		
	Interest Expense		
	Holiday		
	Vacation		
	Sick Leave		
	Personal Absence		
	Employee FICA		
	FUI		
	SUI		
	Workmen's Compensation		
	Health Insurance		
	Life Insurance		
	Pension Plan		(3)

Tuition Assistance	
Miscellaneous	
Subtotal	
B&P/IR&D	(4)
Total	

Notes:

- (1) Unallowable cost per Government procurement regulation FAR 31.2.
- (2) Some advertising expenses allowable e.g. help-wanted employment advertising.
- (3) Employer contributions to pension plan may be in excess of that allowable under FAR.
- (4) See Schedule I for computation of allowable IR&D/B&P costs.

(Use this format for each Fiscal Year and Cost Center)

Schedule B - Overhead Expenses  
 Fiscal Year Ending: \_\_\_\_\_, 20\_\_\_\_\_

Schedule of Actual Expenses. Unallowable Costs and Adjusted Costs

<u>Account No.</u>	<u>Description of Costs Removed</u>	<u>Adjusted General Ledger Costs</u>	<u>Unallowable Costs Notes</u>
	Salaries & Wages		
	Postage & Handling		
	Office Supplies		
	Small Equipment		
	Temp. Clerical Help		
	Other Outside Services		
	Relocation		(1)
	Business Meals		
	Telephone Expense - Local		
	Telephone - Long Distance		
	Telecopies		
	Real Estate Rent		
	Equipment Rent		
	Recruitment		
	Dues/Memberships		(2)
	Insurance		
	Property Taxes		
	Permits & Licenses		
	Depreciation/Amortization		
	Repairs & Maintenance		
	Holiday		
	Vacation		
	Sick Leave		
	Severance Pay		(3)
	Employer FICA		
	FUI		

SUI	
Workman's Compensation	
Health Insurance	
Life Insurance	
Pension Plan	(4)
Miscellaneous	
Total	

Notes:

- (1) Moving charges are limited by FAR.
- (2) Nature and amount limited by FAR.
- (3) Severance pay is limited.
- (4) Employer contributions to pension plan may be limited.

(Use this format for each Fiscal Year and Cost Center)

Attachment A

Cost Disclosure Statement

Schedule C - Schedule of Bases Used to Allocate Indirect Expenses  
Fiscal Year Ending: \_\_\_\_\_, 20\_\_\_\_\_

Pool - General and Administrative Expenses - Schedule A:

Base - Direct Labor Cost input (excluding fringe benefit expenses)

Pool - Fringe Benefit Expenses - Schedule B:

Base - Straight time direct labor dollars of all contracts and projects including labor costs of Bid and Proposals.

## ATTACHMENT B

### COST REIMBURSEMENT AND RATE DATA

This data sheet is to be completed and submitted by the CONTRACTOR and each subcontractor performing in excess of \$500,000 of services during the term of the Agreement:

#### 1. INDIRECT COST RATES

- a. The cost rate for direct labor fringe benefits as set forth in CONTRACTOR'S or subcontractor's submission is \_\_\_\_%.
- b. The cost rate for overhead expense for services performed in CONTRACTOR'S offices as applied to (identify bases) \_\_\_\_\_ is \_\_\_\_\_%.
- c. The cost rate for overhead expense for services performed in TJPA's facilities as applied to (identify bases) \_\_\_\_\_ is \_\_\_\_\_%.
- d. The rate for general and administrative expense as applied to direct labor for services performed in CONTRACTOR'S offices is \_\_\_\_%.
- e. The rate for general and administrative expense as applied to direct labor for services performed in TJPA's facilities is \_\_\_\_%.

#### 2. FIXED FEE

CONTRACTOR'S Fixed Fee will consist of the following components set forth in Section VI.A. of the Cost Reimbursement and Rate Agreement (Rate Agreement).

- a. The fixed fee component in accordance with the Rate Agreement Section VI.A.1.a, will be 9% of the estimated Direct Labor Costs and indirect costs that will be incurred by the CONTRACTOR and subcontractors and approved by TJPA for any Annual Work Plan or Task Order. There shall be no fee for ODCs or any ODC-associated indirect costs.
- b. For providing subcontracted services consistent with the requirements of Agreement, CONTRACTOR'S Fixed Fee component shall be as set forth in Section VI.A.2 the Rate Agreement.

3. BASIS FOR DIRECT LABOR COST REIMBURSEMENT:

CONTRACTOR and subcontractors agree to the following direct labor cost rates, exclusive of any burden or markups, for its professional, technical, administrative and clerical personnel in the following employment categories:

CONTRACTOR AND SUBCONTRACTOR SALARY RANGES

<u>TITLE</u>	<u>GRADE</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
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## APPENDIX C

### LISTING OF SUBCONTRACTORS

1. Hatch Mott MacDonald
2. EPC Consultants, Inc.
3. JD Bray Consultants, Inc.
4. Cambridge Systematics, Inc.
5. Cooper Pugeda Management, Inc.
6. Degenkolb Engineers
7. DeSimone Consulting Engineers
8. DMJM+Harris, Inc (AECOM)
9. Forell/Elsesser Engineers, Inc.
10. Golder Associates
11. Gray Bowen and Company, Inc.
12. Hellmuth, Obata+Kassabaum
13. Hollins Consulting Inc.
14. LCW Consulting
15. William Lettis & Associates (part of Fugro Consultants, Inc.)
16. LKG-CMC, Inc.
17. Loisos+Ubbelohde
18. M. Lee Corporation
19. Mendoza & Associates Consulting Engineers
20. MJM Management Group
21. Jack Peter Moehle
22. On Point Management and Consulting
23. Quality Engineering, Inc.
24. Paul C. Rizzo Associates, Inc.
25. Structural Design & Analysis (StD&A)
26. Simon & Associates, Inc.
27. Simpson, Gumpertz & Heger
28. Singer Associates, Inc.
29. Steelblue
30. TBD Consultants
31. Transportation Management & Design, Inc.
32. Ventura Consulting Group
33. View By View, Inc.
34. Wilbur Smith Associates
35. William Self Associates, Inc.

## APPENDIX D

### USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

**The following provisions (1-11) 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, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA or FRA may issue.
- (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 leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the TJPA (through the Contractor in the case of a subcontractor's bill-of-landing).

**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 2 CFR Part 180, and the Contractor is required to comply with 2 CFR Part 180. In particular, the Contractor is required to verify that the Contractor, its "principals," as defined in 2 CFR Part 180, and its "affiliates," as defined in 2 CFR Part 180, are not "excluded" or "disqualified," as defined in 2 CFR Part 180.
- (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 of damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.

- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 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.