

**STAFF REPORT FOR CALENDAR ITEM NO.: 9  
FOR THE MEETING OF: November 18, 2021**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorizing the Interim Executive Director to execute Professional Services Agreements for Construction Management and Engineer Services with a bench of the following firms to provide services on an as-needed basis for five year terms with options to extend for two additional two year terms, as long as the total compensation under all bench agreements does not exceed \$2,000,000:

- **Dabri, Inc.** (Neighboring Parcel and Base Building projects, if needed)
- **Zoon Engineering, Inc.** (Bus Ramp, Civil and Sitework projects, if needed)

**SUMMARY:**

The TJPA anticipates it will require Construction Management (CM) Services for the Transbay Capital Improvement Program (CIP) and Engineer Services related to neighboring property construction projects (together, Services). The consultant Services will supplement the capacity of the TJPA staff and current transit center facility management team. The scope is separate from close out of Phase 1 and delivery of Phase 2/DTX construction.

CM Services:

The CIP focuses on construction projects related to the Salesforce Transit Center including the bus ramp, connecting the Transit Center to an off-site bus storage facility and the San Francisco-Oakland Bay Bridge. The scale of magnitude of projects within the CIP may be from \$10,000 to \$10,000,000 with most under \$1,000,000. (Please note that the scope of work under this RFP does not include Phase 2 of the Transbay Program, the Downtown Rail Extension (DTX). CM Services for the DTX are expected to be separately procured at a later date.)

For the CIP projects, the TJPA requires CM Services to advise and manage in areas including, but not limited to: pre-construction services to support the development and issuance of all construction bid proposals; all management tasks for the construction activities for each project within the CIP; inspection services as required to ensure compliance with the approved plans and specifications; support to the TJPA community and tenant outreach; dispute resolution and claims support including photos and as-built management.

Engineer Services:

The Transit Center and related TJPA facilities are constructed in a dense urban environment and certain adjacent properties may undergo development. In particular, the Transbay Parcel F site is planned for a development that would be located above and adjacent to portions of the Transit Center and bus ramp which includes a pedestrian bridge connecting to the park level of the Transit Center. The TJPA requires a highly-skilled and experienced Structural Engineer to review the planned development on adjacent properties that may impact TJPA facilities, and recommend modifications to construction activity or site conditions, as appropriate, to mitigate potential impacts to any TJPA facility. The protection of TJPA facilities such as the trainbox and the bus ramp's single tower support (Pylon 9) are vital to the TJPA.

On June 25, 2021, the TJPA issued an RFP for CM Services and Engineer Services from firms (Respondents) with the qualifications and expertise to provide some or all of the required Services on-call and an as-needed basis.

On August 6, 2021, eight proposals were received. A selection committee evaluated the proposals and determined that the following three firms scored highest:

- **Dabri, Inc.** (Neighboring Parcel & Base Building projects, if needed)
- **Zoon Engineering, Inc.** (Bus Ramp, Civil and Sitework projects, if needed)
- **TRC Engineers, Inc.** (Base Building and Civil projects, if needed)

Please refer to the Selection Committee Report for additional information.

Based on these results, the needs of the TJPA, and the particular strengths of each firm, the TJPA proceeded with contract negotiations. Through the contract negotiations, TRC was not willing to accept the TJPA's standard contract terms that were included in the RFP, have previously been accepted by firms providing similar scopes of services, and were accepted by the other two firms on the bench for similar services. TJPA concluded negotiations and TRC withdrew its contract proposal. The TJPA determined that the other two highest-ranked proposals were qualified to provide the services. Therefore, only two firms are being recommended for authorization for this bench.

The work will be authorized under the proposed two contracts only when authorized by a written Notice to Proceed (NTP) signed by the TJPA. An NTP will typically have authorized budgets between \$50,000 and \$250,000 each; the maximum amount of compensation for the bench will not be assigned or authorized at the beginning of the contract. The proposed hourly rates for each of the firms were reviewed and confirmed to be competitive in the area for which they were being considered. Additionally, if any of the firms request a rate increase after the initial annual period, the rate increase is at the discretion of TJPA and are tied to the Consumer Price Index averaging less than 3%.

#### **RECOMMENDATION:**

TJPA staff recommends that the TJPA Board authorize the Interim Executive Director to execute the Professional Services Agreements for Construction Management and Engineer Services, creating a bench of the following firms to provide services on an as-needed basis for five year terms with options to extend for two additional two year terms, as long as the total compensation under all bench agreements does not exceed \$2,000,000:

- **Dabri, Inc.** (Neighboring Parcel & Base Building projects, if needed)
- **Zoon Engineering, Inc.** (Bus Ramp, Civil and Sitework projects, if needed)

#### **ENCLOSURES:**

1. Resolution
2. Selection Committee Report
3. Agreements

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, The Transbay Joint Powers Authority (TJPA) has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program, including the Salesforce Transit Center and associated facilities, such as the Bus Ramp, which includes ensuring that these facilities attain the proper maintenance and protections that will preserve the facilities for the life of the facilities; and

WHEREAS, The TJPA would benefit from construction management and engineer service to augment the capacity of the TJPA staff and current transit center facility management team; and

WHEREAS, On June 25, 2021, the TJPA issued a Request for Proposals (RFP) for Construction Management and Engineer Services to provide a broad range of general and specialized construction support; and

WHEREAS, The TJPA received eight responses to the RFP; and

WHEREAS, A selection committee evaluated the proposals, determined three proposals received the highest scores, and the TJPA proceeded to contract negotiations with the firms, but only two of the firms were willing to accept the TJPA's standard contract terms; and

WHEREAS, Those two firms and their recommended area of expertise are Dabri, Inc. (Neighboring Parcel & Base Building projects) and Zoon Engineering, Inc. (Bus Ramp, Civil and Sitework projects); and

WHEREAS, The TJPA has negotiated agreements with each firm to provide construction management and engineer services based on TJPA's needs in a particular area of expertise, for initial terms of five years each, with options to extend each agreement for two additional two year terms, and the maximum compensation across all of the agreements together will not exceed \$2,000,000, in the form attached; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Interim Executive Director to execute the Professional Services Agreements for Construction Management and Engineer Services in the form presented to the Board, creating a bench of the following firms to provide services on an as-needed basis for five year terms with options to extend for two additional two year terms, as long as the total compensation under all bench agreements does not exceed \$2,000,000:

- Dabri, Inc. (Neighboring Parcel & Base Building projects)
- Zoon Engineering, Inc. (Bus Ramp, Civil and Sitework projects)

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 18, 2021.

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



## **Construction Management and Engineer Services Selection Committee Report October 2021**

### **Executive Summary and Recommendation**

In response to Request for Proposals (RFP) No. 21-04 for Construction Management and Engineer Services, issued on June 25, 2021, the Transbay Joint Powers Authority (TJPA) received eight (8) proposals by the due date of August 6, 2021. A selection committee convened on August 11, 2021 to evaluate the proposals and shortlisted three (3) respondents to be considered. On August 24, 2021, the committee conducted oral interviews with the top three (3) scoring respondents and finalized its scoring for the construction management and engineer services RFP.

Based on the criteria outlined in the RFP, the selection committee recommends that the Transbay Joint Powers Authority (TJPA) negotiate an agreement with each of the following firms for these respective practice areas:

- **Dabri, Inc.** (Neighboring Parcel & Base Building projects, if needed)
- **Zoon Engineering** (Bus Ramp, Civil and Sitework projects, if needed)
- **TRC Engineers, Inc.** (Base Building and Civil projects, if needed)

### **Background**

The TJPA sought proposals from professional and qualified firms to provide construction management (CM) services for the Transbay Capital Improvement Program (CIP) and engineer services related to neighboring property construction projects. The selected Respondents will work closely with the TJPA's staff and other consultants to provide the Services. The contract to be negotiated will be for an initial five-year term with options to extend the term for up to two (2) additional two-year terms.

### **Schedule**

1) RFP Issued	June 25, 2021
2) Deadline for Submission of Questions	July 16, 2021
3) Answers to Written Questions Posted	July 23, 2021
4) Proposals due	August 6, 2021
5) Selection committee evaluation meeting	August 11, 2021
6) Interviews	August 24, 2021

### **Selection Committee Members**

- Dennis Turchon, TJPA Senior Construction Manager
- Edmond Sum, TJPA Engineering Manager
- John Updike, TJPA Facility Director

## **RFP Outreach**

The TJPA posted the RFP on its website for the public to view, posted the RFP on DemandStar for nationwide electronic bidding and sent announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. The RFP announcement is enclosed as Attachment A. In total, the announcement was sent to 1,557 (1,507 iContact + 47 DemandStar vendors + 3 DemandStar plan holders) construction management service firms and contacts nationwide.

The TJPA received eight (8) proposals on or before the RFP submission date, from:

- Picot Inspection LLC
- ABA Global Inc.
- JBR Partners, Inc.
- Zoon Engineering
- Dabri, Inc.
- CPM Associates, Inc.
- TRC Engineers, Inc.
- Townsend Management, Inc.

## **Selection Committee Written Proposal Evaluation**

The selection committee met on August 11, 2021 to review the written proposals and evaluate strengths and weaknesses using the criteria listed in the RFP (and reproduced on the written proposal score sheet) (Attachment B). Each committee member individually filled out written scoring sheets. The TJPA Management Analyst (Contracts Officer) tabulated and verified the scores. The competitive range was determined to be firms that received an average score of 60 points or higher, out of 75. Based upon the written evaluation scoring, the top three (3) scoring firms were invited to participate in interviews.

## **Selection Committee Interviews**

On August 24, 2021, the committee conducted oral interviews with the top three (3) scoring firms. Each firm had forty-five minutes to answer questions from the selection committee relevant to the needs of TJPA. Following the interviews, the committee discussed the strengths and weaknesses of each firm, and then individually completed and signed interview scoring sheets (Attachment C) and submitted them to the TJPA Management Analyst for tabulation.

## **Recommendation**

The following three firms are recommended to proceed to the interview phase and contract negotiations: **Dabri, Inc.** was ranked highest by the selection committee and is being recommended to serve the TJPA in the capacity of (Neighboring Parcel & Base Building projects, if needed); **Zoon Engineering** was ranked highest by the selection committee and is being recommended to serve the TJPA in the capacity of (Bus Ramp, Civil and Sitework projects, if needed); **TRC Engineers, Inc.** was ranked highest by the selection committee and is being recommended to serve the TJPA in the capacity of (Base Building and Civil projects, if needed). Scores are shown in Attachment D.

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

**Attachments**

Attachment A, RFP Announcement

Attachment B, Form of Written Scoring Sheet

Attachment C, Form of Interview Scoring Sheet

Attachment D, Overall Scoring Matrix

**Reference**

Request for Proposals No. 21-04 Construction Management and Engineer Services issued by the Transbay Joint Powers Authority on June 25, 2021.

**Attachment A**  
**ANNOUNCEMENT**

**RFP 21-04 Construction Management Services**

The Transbay Joint Powers Authority (TJPA) is issuing a Request for Proposals (RFP) for **construction management (CM) services** for the Transbay Capital Improvement Program (CIP) and **engineer services** related to neighboring property construction projects (together, Services) from firms with the qualifications and expertise to provide some or all of the required Services.

<https://tjpa.org/rfp/21-04-construction-management-services>

Proposals in PDF format must be received by the TJPA at [RFP@tjpa.org](mailto:RFP@tjpa.org) no later than **2:00 pm Pacific Time on Friday, August 6, 2021**. Proposals that are not received by the time and date specified or do not contain all the required information and completed forms shall be deemed non-responsive and rejected without consideration.

Questions may be submitted to [RFP@tjpa.org](mailto:RFP@tjpa.org) by the Submission of Questions deadline no later than **2:00 pm Pacific Time on Friday, July 16, 2021**.

## Attachment B

### EVALUATION SCORE SHEET RFP 21-04: Construction Management Services

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

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

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

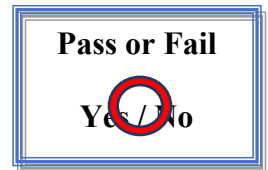
<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
Management Approach of Respondent Firm <i>[maximum 35 points]</i>		
Relevant Experience and Past Performance <i>[maximum 25 points]</i>		
References <i>[maximum 15 points]</i>		
Fee Proposal <i>[maximum 25 points]</i>		

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



## Attachment C

### INTERVIEW SCORE SHEET RFP 21-04: Construction Management Services



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

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

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

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<p><b>Question 1</b> - As a Resident Engineer you observe an unsafe working condition on site. What actions do you take? <i>[maximum 10 points]</i></p>		
<p><b>Question 2</b> - As a Resident Engineer on a Bus Ramp project, what are some of the criteria or documents to review of the existing bridge structure prior to commencing any construction? <i>[maximum 10 points]</i></p>		
<p><b>Question 3</b> - Describe who would need to be notified when performing a project on the 1) Bus Ramp 2) Base Building. Please note that the TJPA is self-permitting, but does have interface with the City &amp; County of San Francisco. Who do you coordinate with and notify? <i>[maximum 10 points]</i></p>		
<p><b>Question 4</b> - What steps would you recommend to recover construction schedule slippage or budget overruns, and what measures do you employ to anticipate schedule slippage potentials before they happen? <i>[maximum 5 points]</i></p>		

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<p><b>Question 5</b> - There is about to be a very large tower (Parcel F) directly neighboring the Transit Center facilities (Cable Stay bridge and Base Building), please provide a description of the issues to be identified from this activity and how are conflicts best resolved if their contractor wants to perform an activity that effects either the structure, the security or the operations of the Transit Center? <i>[maximum 5 points]</i></p>		
<p><b>Question 6</b> - How would you resolve a disagreement between the General Contractor and the Base Building or Tenant Improvement Architect concerning a substitution for a specified product? Who would all need to be involved? <i>[maximum 5 points]</i></p>		
<p><b>Question 7</b> - Does your firm have a quality plan? What is your firms' approach to quality and how would you ensure that all of your subconsultants follow the same standards? <i>[maximum 5 points]</i></p>		

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

## Attachment D

### Written Evaluation Scores (75 points max)

Firm	Panelist A	Panelist B	Panelist C	Average Score
Picot Inspection LLC	5	0	5	3.33
ABA Global Inc.	45	40	40	41.67
JBR Partners, Inc.	0	15	0	5
Zoon Engineering	65	65	59	63
Dabri, Inc.	71	60	58	63
TRC Engineers, Inc.	63	60	60	61
CPM Associates, Inc.	35	40	40	38.33
Townsend Management, Inc.	33	30	29	30.67

### Interview Evaluation Scores (50 points max)

Firm	Panelist A	Panelist B	Panelist C	Average Score
Zoon Engineering	49	45	37	43.67
Dabri, Inc.	50	42	41	44.33
TRC Engineers, Inc.	48	44	40	44

### Combined Written and Interview Evaluation Scores (125 points max)

Firm	Panelist A	Panelist B	Panelist C	Average Score
Zoon Engineering	114	110	96	106.67
Dabri, Inc.	121	102	99	107.33
TRC Engineers, Inc.	111	104	100	105

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_ day of November 2021, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Dabri. Inc. (“Contractor”).

### Recitals

A. The TJPA requires Construction Management Services and Engineer Services (“Services”) for the Transbay Program (“Program”).

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

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

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

E. On November 18, 2021, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_ authorizing the TJPA’s Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

### 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

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

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

c. The TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or Program costs. The TJPA’s budget decisions are subject to the discretion of the TJPA Board of Directors. The Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

### 2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for 5 (five) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that (i) the TJPA shall have the right to extend this Agreement for 2 (two) additional 2-year (two-year) options by providing to the Contractor written notice of such extension on or before the expiration date of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by the TJPA.

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

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

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

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

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

### **5. Compensation**

a. All work under this Agreement shall be compensated on an hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed Two Million Dollars (\$2,000,000). The breakdown of the Contractor's fees appears in Appendix B, Fees.

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

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

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

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

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the

Contractor for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 5, "Compensation," unless the changed scope is authorized by written amendment and approved as required by law.

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

d. The Chief Financial Officer is not authorized to make payments on any contract or NTP for which funds have not been certified as available in the budget or by supplemental appropriation.

## **7. Payment**

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

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

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

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

## **9. Disallowance**

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

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

## **10. Taxes**

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

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

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

## **12. Qualified Personnel**

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

## **13. Responsibility for Equipment**

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the TJPA.

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

### **a. Independent Contractor**

The Contractor or any agent or employee of the Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall neither have employee status with the TJPA nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

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

b. Payment of Taxes and Other Expenses

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

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

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

## 15. Insurance

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

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

(2) Commercial General Liability Insurance on an occurrence basis, with limits not less than \$2,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal and Advertising Injury, Products and Completed Operations; and

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

(4) Professional Liability Insurance with limits not less than \$2,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

Commercial General Liability and Business Automobile Liability Insurance policies must provide the



following:

(1) Name as Additional Insured the entities indicated in Appendix C, Additional Insureds on the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. The Contractor shall provide thirty (30) days' advance written notice to the TJPA of material change in coverages, reduction or nonrenewal of coverages, or cancellation of coverages for any reason. Notices shall be sent to the address specified in Section 23, "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of five (5) years beyond the expiration of this Agreement, to the effect that, should occurrences during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

h. Regarding Workers' Compensation, the Contractor hereby agrees to waive subrogation which any insurer of the Contractor may acquire from the Contractor by virtue of the payment of any loss. The Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the TJPA for all work performed by the Contractor, its employees, agents and subcontractors.

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

minimum limits of insurance and coverage shall be available to the TJPA.

## **16. Indemnification**

### **a. General Indemnity**

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

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

### **b. Copyright Infringement**

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

## **17. Incidental and Consequential Damages**

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

## **18. Liability of TJPA**

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in Section 5, "Compensation." Notwithstanding any other provision of this Agreement, in no event shall the TJPA be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost

profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

## **19. Liquidated Damages [SECTION NOT APPLICABLE]**

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

## **20. Default; Remedies**

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

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

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

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

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

b. On and after any Event of Default, the TJPA shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, the TJPA shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any Event of Default; the Contractor shall pay to the TJPA on demand all costs and expenses incurred by the TJPA in effecting such cure, with

interest thereon from the date of incurrence at the maximum rate then permitted by law. The TJPA shall have the right to offset from any amounts due to the Contractor under this Agreement between the TJPA and the Contractor all damages, losses, costs or expenses incurred by the TJPA as a result of such Event of Default due from the Contractor pursuant to the terms of this Agreement.

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

## **21. Termination for Convenience**

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

may also recover the reasonable cost of preparing the invoice.

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

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

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

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

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

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

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

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

To TJPA: Interim Executive Director

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

To Contractor: Ajay Singh  
Dabri. Inc.  
850 South Van Ness Avenue  
San Francisco, CA 94110  
(415) 839-8142  
[ajay@dabri.com](mailto:ajay@dabri.com)

Any notice of default must be sent by registered mail.

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

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

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

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

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

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the TJPA to disclose the information; or
- (3) The disclosure is required by law or judicial order.

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

c. Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information,

financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.

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

e. The TJPA recognizes the need to share certain sensitive and confidential security information with the Contractor to allow the Contractor to perform work on the Program. Sensitive and confidential information may appear in records in written or electronic form, including, but not limited to, drawings, photographs, schematics, plans, memorandums, reports, emails, videos, tape recordings, and presentations. The Contractor acknowledges that by granting access to certain sensitive and confidential information, the TJPA has placed a special confidence and trust in the Contractor. In accordance with the terms of the TJPA's Non-Disclosure Agreement (NDA) under which access to sensitive and confidential information would be granted, the Contractor agrees to (1.1) keep such information confidential and treat it in a manner designed to prevent the unauthorized disclosure to third parties; (1.2) not disclose such information to third parties without the express written permission of the Executive Director of the TJPA or designee; and (1.3) If such permission is granted, then provide said information only upon the execution of an NDA by that third party.

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

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

## **27. Ownership of Results**

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

## **28. Works for Hire**

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

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

The Contractor agrees to maintain and make available to the TJPA, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Contractor will

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

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

In accordance with S.F. Administrative Code Section 67.24(e), the Contractors' bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

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

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

### **32. Subcontracting**

Subject to specific direction in any NTP, the Contractor is permitted to subcontract portions of the services to be performed under this Agreement as follows:

RJSD  
582 Market St.  
Ste 1901, San Francisco, 94104

Kleinfelder  
1512 Franklin Street,  
Suite 100 Oakland, CA 94612

APEX Testing Laboratories  
1790 Yosemite Ave.  
San Francisco, CA 94124

Telamon Engineering Consultants, Inc.  
855 Folsom St Ste 142  
San Francisco, CA 94107



The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of the Services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed. The TJPA shall be provided with a copy of each subcontract promptly upon execution.

### **33. Assignment**

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

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

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

### **35. Services Provided by Attorneys**

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

### **36. Conflict of Interest**

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

### **37. Limitations on Contributions**

Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the Agreement must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the Agreement until the later of either the termination of negotiations for such Agreement or six months after the date the Agreement is approved. The Contractor acknowledges that the foregoing restriction applies only if the Agreement or a

combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the Agreement; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or Agreement; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

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

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

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

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

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

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

#### **b. Subcontracts**

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

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

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

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

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

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not

limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of Ninety-One percent (91%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

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

### **a. Prompt Progress Payment to Subcontractors**

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

### **b. Prompt Payment of Withheld Funds to Subcontractors**

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

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

The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set

forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA Agreement during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO.

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

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

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

(1) The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

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

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

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

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

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

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

f. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall

provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

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

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

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

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

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

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

cumulative amount of agreements between the Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

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

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

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

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

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

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

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

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

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

- h. The Contractor shall keep itself informed of the current requirements of the HCAO.
- i. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors and subtenants, as applicable.
- j. The Contractor shall provide the TJPA, or City, with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.
- k. The Contractor shall allow the TJPA, or City, to inspect the Contractor's job sites and have access to the Contractor's employees in order to monitor and determine compliance with HCAO.
- l. The TJPA, or City, may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the TJPA when it conducts such audits.
- m. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

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

- a. Incorporation of Administrative Code Provisions by Reference

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

- b. First Source Hiring Agreement

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

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

- (3) The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. The Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco



Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

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

f. Subcontracts

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

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

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

b. The requirements of Chapter 12T shall only apply to the Contractor’s or subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City and County of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

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

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

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

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

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

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

#### **48. Drug-Free Workplace Policy**

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

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

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

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

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

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

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

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

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

#### **53. Graffiti Removal**

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

public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

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

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

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

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

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

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

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

#### **57. Construction**

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

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

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 54, "Modification of Agreement."

#### **59. Severability**

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

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

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

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

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

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

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

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

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

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

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

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

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

\_\_\_\_\_  
Nila Gonzales, Interim Executive Director

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

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

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

CONTRACTOR

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

I have read and understood Section 47, “MacBride Principles—Northern Ireland,” San Francisco’s statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

Domonique Kaur  
\_\_\_\_\_  
Printed Name

Principal  
\_\_\_\_\_  
Title

Dabri, Inc.  
\_\_\_\_\_  
Contractor Name

850 S Van Ness Avenue  
\_\_\_\_\_  
Address

San Francisco, CA 94110  
\_\_\_\_\_  
City, State, Zip Code

415-839-8142  
\_\_\_\_\_  
Phone Number

94-3392382  
\_\_\_\_\_  
Federal Employer ID Number

## **APPENDIX A**

### **SCOPE OF SERVICES**

The Services shall consist of rendering Construction Management (CM) Services and/or Engineer Services to the TJPA as requested and, when called upon, represent the TJPA before governmental agencies and third parties. Following is a non-exhaustive list of the types of activities for which the selected Respondent(s) would be expected to provide services and expertise on an as-requested basis for general Capital Improvement program delivery along with support related to neighboring projects :

CM Services:

#### A. Preconstruction Services:

- Participate in project team partnering.
- Provide support to the TJPA community and tenant outreach.
- Provide input to assure environmental mitigation requirements are addressed in advance of field construction operations.
- Provide bid support services for the TJPA's proposals to contractors, including management of Contractor Questions on Bid Documents (QBD) responses and Addenda.
- Provide technical input for design/build procurement documents.
- Document existing site conditions prior to start of any contractor work.
- Provide design comments, cost information and constructability review information.
- Provide SBE / DBE contracting support during Contractor procurement process.
- Assist in coordination of art program.
- Participate in meetings relevant to the Capital Improvement Program.
- Provide schedule support by reviewing and analyzing, as needed

#### B. Construction Activities:

- Manage construction submittal and request for information (RFI) process.
- Conduct weekly progress meetings with contractors, TJPA and designers.
- Coordinate and document meetings.
- Prepare reports and document communication.
- Monitor, review and analyze schedule progress and recommend contractor progress payments.
- Manage change process including negotiations.
- Manage dispute resolution process for CIP contracts.
- Provide staff presence during contractor scheduled work shifts.
- Maintain the TJPA Quality Assurance (QA) program.
- Manage and update construction documents as RFI responses and changes are issued. Maintain current document set for use by field staff and inspectors. Maintain the electronic document control process as appropriate per project.

- Coordinate work with federal, state, and local agencies.
- Support coordination with TJPA commissioning activities and asset management team.
- Provide cost control and schedule support.
- Manage the use of document management tools with TJPA and Contractors, as appropriate.
- Provide claims support analysis and requested documentation.
- Coordinate with neighboring or adjacent property owners or construction projects.
- Participate in all meetings relevant to the CIP.

C. Inspection:

- Provide special inspection and testing services, as well as quality assurance oversight.
- Monitor contractor compliance with mitigation measures and environmental monitoring.
- Prepare and manage field reports.
- Log and track non-compliant work to resolution and acceptance.
- Provide off-site special inspection.

D. Schedule of Deliverables:

- Provide project documents (e.g., correspondence, files, submittals, RFI's, reports, meeting minutes, change and close out documentation), progress photos and as-built documentation for the CIP.

Engineer Services:

Provide a Structural Engineer with the experience and knowledge to review planned development on adjacent properties that may impact TJPA facilities, and recommend modifications to a construction activity or site conditions, as appropriate, to mitigate potential impacts to any TJPA facility.



**APPENDIX B**  
**FEES**  
**(CALCULATION OF CHARGES)**

This Appendix B sets forth the method for fees (calculating charges) to be invoiced by the Contractor for services rendered under this Agreement. Contractor represents that all charges invoiced under this Agreement shall be made in good faith for services performed and shall conform to the schedule set forth in this Appendix B. Contractor acknowledges and agrees that all information supporting the amounts listed in this Appendix B and any other requests to the TJPA for payment or approval may be subject to investigation as a false claim, as provided in paragraph 8 of this Agreement.

**A. CONTRACT COSTS**

The Contract Costs shall not exceed Two Million Dollars (\$2,000,000).. The Contract Costs are made up of (1) Direct Labor Costs of Contractor, (2) Other Direct Costs, and (3) Direct Labor Costs of Subcontractors.

**1. Direct Labor Costs - Contractor**

The TJPA shall compensate the Contractor the Base Hourly Rate plus the Overhead (Company Overhead plus Fringe Benefits plus General Admin) Rate multiplied by the number of hours worked in the invoice period. The formula to calculate Direct Labor Costs shall be as follows:  $([Base Hourly Rate] + [Overhead Rate]) \times \text{number of hours} = \text{Direct Labor Costs}$ .

**a. Base Hourly Rate**

The parties intend that the Contractor perform services primarily on a cost reimbursable basis. Contractor has submitted to the TJPA audited individual hourly base salary rates (the "Base Hourly Rate"), attached to this Appendix B as part of Appendix B-1. The TJPA acknowledges and agrees that Base Hourly Rates may be adjusted annually beginning January 1, 2023 upon request of the Contractor and approval at the sole discretion of the TJPA Interim Executive Director. The amount of such annual adjustment, if any, is limited to a maximum of the CPI annual average percent change increase (San Francisco-Oakland-Hayward for Urban Wage Earners and Clerical Workers, not seasonally adjusted) for the previous calendar year. If the Index declines or shows no increase, Base Hourly Rates shall not increase. Wage rates which are set by a federal or state published scope of work and prevailing wage rate shall be increased in conformance with applicable published increases. Notwithstanding the foregoing, in no event during the term (including any extension of the term pursuant to the TJPA's option) shall any Base (Direct) Hourly Rate exceed \$125 (rate cap).

The following direct labor costs (rates which may exceed the Base Hourly Rate rate cap) are allowable only to the extent that they are authorized in an accepted Task Order or by prior written approval of TJPA's Interim Executive Director or designee.

- Principal or Partner costs
- Expert and senior specialist costs
- Administrative costs

The following direct labor costs are not allowable without the prior written approval of TJPA's Executive Director or designee: Premium costs incurred as a result of working overtime or holidays. 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 with the terms and conditions below.

## b. Indirect Costs (Overhead Rate)

Contractor has submitted to the TJPA an audited overhead rate of 128.85% (the "Overhead Rate"). The Overhead Rate includes all indirect costs of labor for each employee. In no event shall the TJPA be responsible to the Contractor for the payment of labor or overhead costs in excess of the Base Hourly Rate plus the Overhead Rate. The Overhead Rate may be adjusted annually by submitting to the TJPA for review and approval previous year audited overhead rate documentation. The established and approved Overhead Rate shall remain in effect during each Task Order; recalculation/adjustment of previously submitted invoicing and billing due to updated approved Overhead Rate will not be allowed.

### 2. Other Direct Costs

The Contractor will be reimburse for certain direct reimbursable expenses, or Other Direct Costs ("ODCs"). Reimbursement for ODCs is based upon the Contractor's consistent treatment of these types of costs over the Contractor's company as a whole. Reimbursement for ODCs shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the TJPA.

The following items will be eligible for reimbursement as ODCs:

- Permit Fees
- Field Testing
- Laboratory Testing
- Meal expenses associated with Project-related meetings
- Courier/Mailing
- Copier and blueprints
  - Copy machine and supplies
  - Miscellaneous reproduction necessary for Project services

Any item not listed above shall not be eligible for reimbursement as an ODC. For the avoidance of doubt, ineligible items include, but are not limited to:

- Travel expenses (unless specifically requested or authorized by TJPA)
- Contractor personnel relocation costs
- Any home office labor charges or pass-through, including but not limited to administrative and clerical personnel time
- Entertainment expenses
- Home office expenses
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, non-Project specific computer hardware or software, communication devices, and electronic equipment
- Meal expenses which are not related to Project-related business trips, including refreshments and working lunches with TJPA staff
- Postage and courier services not requested or approved by TJPA
- Costs of preparing the proposal for the Project
- Taxes
- Insurance premiums
- Cost of any equipment, tools, or vehicles hired, leased or purchased for the performance of services

### 3. Direct Labor Costs - Subcontractors

The parties intend that the Contractor obtain subcontracted services primarily on a cost reimbursable basis. The approved Subcontractors and their respective Base Hourly Rates and Overhead Rates are listed in Appendix B-2 to this Agreement. If a Subcontractor's rates are not audited as of the date of this Agreement, the rates shall be subject to audit and no payments shall be made for a Subcontractors' services until such time as an audit is completed; actual payments shall be made only upon the audited rates. All restrictions on the Contractor's rate and fee charges shall apply to Subcontractors' rate charges.

#### B. CONTRACT FEE

The Contract Fee shall not exceed One Hundred, Forty Thousand Dollars (\$140,000). The Contract Fee is made up of (1) Contractor Fixed Fee, (2) Subcontractor Fixed Fee, and (3) Contractor Administration Fee.

Contractor shall invoice its profit and fee (the "Fixed Fee") at a rate of 7% of Contractor's Direct Labor Cost.

Subcontractors shall invoice their Fixed Fees at the rates specified in Appendix B-2, and in no case at a rate exceeding 7%, for subcontractors' Direct Labor Costs.

Contractor shall invoice a subcontractor administration fee (the "Administration Fee") at a rate of 2% of subcontractors' Direct Labor Costs. No Administration Fee shall be charged for Subcontractors at the second tier or lower.

The Fixed Fee rate and Administration Fee rate shall remain in effect during the entire term of this Agreement, including all extensions. The Contractor may invoice the Fixed Fee rate and Administration Fee rate only on Direct Labor Costs and on no other charge under this Agreement (in particular, there shall be no fee allowed for Contractor's or Subcontractors' Other Direct Costs).

#### C. Invoice Requirements

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

Invoices must be submitted to the TJPA in a complete form which meets all the above-stated requirements within 30 days of the invoice period. Due to fiscal year constraints, all invoicing for a particular fiscal year ending on June 30<sup>th</sup> must be submitted prior to July 15<sup>th</sup>. All invoice items that are not submitted in a timely manner to the fiscal year requirement cannot be reviewed for payment and will be rejected.

#### D. Limitations

Compensation will be allowable only to the extent consistent with federal regulations, including: the Federal Acquisition Regulations, 48 CFR Part 31; the Cost Accounting Standards, 48 CFR Part 30; the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local

Governments, 49 CFR Part 18; and the Cost Principles contained in Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

Compensation shall be further subject to the following requirements:

(i) Conform with the work to be performed pursuant to Task Order and 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.

**APPENDIX B – 1**

**CONTRACTOR'S AUDITED  
INDIVIDUAL HOURLY BASE SALARY RATES**

**Dabri, Inc.**

Effective November 2021

Fringe Benefit:	36.86%
Overhead Rate:	91.99%
General Administration:	0%
Fixed Fee:	7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Project Manager	\$98.00	\$120.00	\$239.97	\$293.84
Resident Engineer	\$85.00	\$110.00	\$208.14	\$269.36
Structures Representative	\$85.00	\$110.00	\$208.14	\$269.36
Cost Estimating	\$85.00	\$110.00	\$208.14	\$269.36
Office Engineer	\$65.00	\$80.00	\$159.17	\$195.90
Construction Manager	\$85.00	\$110.00	\$208.14	\$269.36
QA/QC	\$85.00	\$110.00	\$208.14	\$269.36
Constructability Reviewer	\$85.00	\$115.00	\$208.14	\$281.60
Scheduler	\$85.00	\$110.00	\$208.14	\$269.36
Senior Inspector	\$85.00	\$95.00	\$208.14	\$232.63
Inspector	\$80.00	\$90.00	\$195.90	\$220.38
Safety Manager	\$85.00	\$100.00	\$208.14	\$244.87
LEED/Sustainability Advisor	\$85.00	\$110.00	\$208.14	\$269.36
Electrical/Controls/Communication	\$85.00	\$100.00	\$208.14	\$244.87
BIM/VD&C	\$65.00	\$95.00	\$159.17	\$232.63
Change Order Management	\$80.00	\$98.00	\$195.90	\$239.97
Architects/Permitting/ADA	\$95.00	\$110.00	\$232.63	\$269.36
Document Controls	\$48.00	\$60.00	\$117.54	\$146.92
Environmental Compliance	\$75.00	\$90.00	\$183.65	\$220.38

**APPENDIX B – 2**

**SUBCONTRACTORS' AUDITED  
INDIVIDUAL HOURLY BASE SALARY RATES**

**RJSD**

Effective November 2021

Fringe Benefit:	0.6%
Overhead Rate:	61.44%
General Administration:	29.87%
Fixed Fee:	7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Principal Structural Engineer	\$74.40	\$86.25	\$200.29	\$232.20
Principal Structural Engineer	\$74.40	\$86.25	\$200.29	\$232.20
Structural Designer	\$37.14	\$43.06	\$99.99	\$115.92



**Kleinfelder**

Effective November 2021

Fringe Benefit:	42.66%
Overhead Rate:	65.16%
General Administration:	0%
Fixed Fee:	7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Resident Engineer	\$79.00	\$125.00	\$175.67	\$277.96
Structures Representative	\$68.00	\$125.00	\$151.21	\$277.96
Constructability Reviewer	\$82.00	\$125.00	\$182.34	\$277.96
Construction Manager	\$74.40	\$125.00	\$165.44	\$277.96
Senior Inspector	\$85.00	\$95.00	\$189.01	\$211.25
Inspector	\$80.00	\$90.00	\$177.89	\$200.13
Technician	\$72.00	\$82.00	\$160.10	\$182.34
Claim	\$72.00	\$99.00	\$160.10	\$220.14

**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

SOIL TESTS

<b>SOIL DENSITY TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Standard Proctor	D698, T99	\$	245	each
Modified Proctor	D1557, T180	\$	245	each
Proctor Check Point	T272	\$	140	each
Proctor Oversize Correction	D4718	\$	75	each
Treated Soil Proctor	D558	\$	320	each
Minimum and Maximum Relative Density	D4254, D4253	\$	425	each
Maximum Density by Vibratory Hammer	D7382	\$	550	each
Moisture/Density, TEX 113-E	TEX113-E	\$	275	each
Moisture/Density, TEX 114-E	TEX114-E	\$	275	each
California Impact, CT 216, Dry Method	CT216	\$	225	each
California Impact, CT 216, Wet Method	CT216	\$	225	each

<b>SOIL CLASSIFICATION AND INDEX TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Visual Classification	D2488	\$	30	each
Sieve Analysis, % Finer than 200 Sieve	D1140	\$	90	each
Sieve Analysis, Fine	D422, D6913, T88	\$	130	each
Sieve Analysis, Coarse	D422, D6913, T88	\$	130	each
Sieve Analysis, Coarse and Fine	D422, D6913, T88	\$	165	each
Hydrometer Analysis ( <i>Requires a Sieve Analysis, not included</i> )	D422, D7928	\$	185	each
Water Content	D2216, D4363, T265	\$	25	each
Water Content and Dry Unit Weight	D2216, D2937, D7263	\$	45	each
Atterberg Limits, Single Point	D4318-B, T89, T90	\$	120	each
Atterberg Limits, Multiple Point	D4318-A, T89, T90	\$	185	each
Atterberg Limits, Liquid Limit Only	D4318, T90	\$	115	each
Soil Specific Gravity	D854, T100	\$	225	each
Soil Organic Content	D2974-C	\$	125	each
Fiber Content of Peat Soils	D1997	\$	270	each
Pinhole Dispersion Classification	D4647	\$	525	each
Soil pH	D4972, G51	\$	60	each
Double Hydrometer for Dispersive Soils	D4221	\$	275	each
Soil Resistivity	G187	\$	160	each
Chloride Content		\$	70	each
Sulfate Content		\$	60	each
Thermal Resistivity, Per Point	D5334, IEEE 422	\$	325	each
Thermal Resistivity, Dry-Out Curve	D5334, IEEE 422	\$	950	each

<b>SOIL BEARING PRESSURE TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
California Bearing Ratio, Single Point ( <i>proctor not included</i> )	D1883, T193	\$	350	each
California Bearing Ratio, 3 Points ( <i>proctor not included</i> )	D1883, T193	\$	650	each

<sup>†</sup>Common ASTM, AASHTO and DOT test methods.

- Those beginning with A, B, C, D, E, F, or G are ASTM methods.
- Those beginning with T are AASHTO methods.

**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

SOIL TESTS (continued)

<b>SOIL BEARING PRESSURE TESTS (continued)</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Resistance R-Value	D2844	\$	325	each
Resistance R-Value of Treated Material	D2844	\$	375	each
Rock Correction for R-Value	D2844	\$	85	each
Stabilized Soil UC Strength, 1 Point ( <i>proctor not included</i> )	D1633, D5102	\$	175	each
Stabilized Soil UC Strength, Set of 3	D1633, D5102	\$	950	each
CT373, 1 Lime Content, w/o Opt. Moist.	CT373	\$	175	each
CT373, 1 Lime Content	CT373	\$	370	each
CT373, 3 Lime Contents	CT373	\$	1,100	each
Eades and Grim Test (Opt. Lime Content)	C977	\$	195	each
Resilient Modulus	T307	\$	475	each
CTB Strength, Individual Specimen		\$	185	each
CTB Strength, Set of 3, Without Design		\$	420	each
CTB Complete Mix Design		\$	6,500	each

<b>SOIL STRENGTH AND PERMEABILITY TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Pocket Penetration Value		\$	30	each
Unconfined Compressive Strength	D2166, T208	\$	140	each
Direct Shear, 1 Point	D3080, T236	\$	150	each
Direct Shear, 3 Points	D3080, T236	\$	390	each
Direct Shear, Residual Strength, Each Pt	D3080-Modified	\$	250	each
Consolidation without Time Rate Plots	D2435-Modified	\$	345	each
Consolidation with 2 Time Rate Plots	D2435-A, T216-A	\$	450	each
Consolidation, All Loads with Time Rates	D2435-B, T216-B	\$	630	each
Collapse Potential	D5333	\$	250	each
One Dimensional Swell – Wetting After Loading, Series	D4546-A	\$	300	each
One Dimensional Swell – Wetting After Loading	D4546-B	\$	175	each
One Dimensional Swell – Loading After Wetting	D4546-C	\$	475	each
Expansion Index	D4829	\$	195	each
Denver Swell Test		\$	125	each
Permeability, Rigid Wall	D2434	\$	450	each
Permeability, Flexible Wall	D5084-C	\$	390	each
Triaxial Compression, CU, 1 Point	D4767, T297	\$	500	each
Triaxial Compression, CU, 3 Points	D4767, T297	\$	1,350	each
Triaxial Compression, UU, 1 Point	D2850, T296	\$	210	each
Triaxial Compression, UU, 3 Points	D2850, T296	\$	630	each
Triaxial Compression, UU Saturated, 1 Point	D2850-Modified	\$	300	each
Triaxial Test, TEX117E, Part I	TEX117E	\$	1,950	each
Triaxial Test, TEX117E, Part II	TEX117E	\$	1,950	each

<sup>†</sup>Common ASTM, AASHTO and DOT test methods.

- Those beginning with A, B, C, D, E, F, or G are ASTM methods.
- Those beginning with T are AASHTO methods.

**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

AGGREGATE TESTS

<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Acid Solubility		\$	185	each
ASR Reactivity, Long Method	C227, C1293	\$	1,850	each
ASR Reactivity, Short Method	C1260, C1567	\$	950	each
Cleanness Value	CT227	\$	165	each
Clay Lumps and Friable Particles, per size <i>*(see note below)</i>	C142, T112	\$	105	each
Coarse Specific Gravity & Absorption	C127, T85	\$	85	each
Fine Specific Gravity & Absorption	C128, T84	\$	145	each
Coarse Durability	D3744, T210	\$	150	each
Fine Durability	D3744, T210	\$	150	each
Flat and Elongated Particles, per size <i>*(see note below)</i>	D4791	\$	95	each
Fractured Faces, per size <i>*(see note below)</i>	D5821, T335	\$	105	each
Lightweight Pieces <i>(Per specific gravity of heavy liquid)</i>	C123, T113	\$	330	each
Los Angeles Abrasion, Large Aggregate	C535	\$	200	each
Los Angeles Abrasion, Small Aggregate	C131, T96	\$	200	each
Mortar Sand Strength	C87, CT515	\$	650	each
Organic Impurities	C40, T21	\$	75	each
Sand Equivalent, 1 point	D2419, T176	\$	100	each
Sand Equivalent, 3 points	D2419, T176	\$	150	each
Sieve Analysis, % Finer than 200 Sieve	C117, T11	\$	90	each
Sieve Analysis, Fine	C136, T27	\$	130	each
Sieve Analysis, Coarse	C136, T27	\$	130	each
Sieve Analysis, Coarse and Fine	C136, T27	\$	165	each
Soundness of Aggregate, per size <i>*(see note below)</i>	C88, T104	\$	150	each
Unit Weight	C29, T19	\$	65	each
Water Content	D2216, C566, T255	\$	25	each
Texas Wet Ball Mill	TEX116E	\$	300	each
Decantation Wash	TEX406A	\$	90	each
Uncompacted Void Content of Fine Aggregate	C1252, T304	\$	140	each
<i>*Tests are billed by each size fraction tested. The quantity of fractions tested is dependent on the sample gradation and test method.</i>				

FILTER MEDIA TESTS

<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Filter Media, Sieve Analysis <i>(includes d10, d60, es, cu)</i>	AWWA B100	\$	185	each
Filter Media, Mohs Hardness	AWWA B100	\$	185	each
Filter Media, Percent Silica		\$	200	each
Acid Solubility	AWWA B100	\$	185	each

<sup>†</sup>Common ASTM, AASHTO and DOT test methods.

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- Those beginning with T are AASHTO methods.

**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

CONCRETE TESTS

Test	Standard Test Method <sup>†</sup>	Fee		
Concrete Compression	C39	\$	32	each
Concrete Core Compression	C42	\$	85	each
Concrete Flexural Strength	C78	\$	105	each
Hydraulic Cement Mortar Compression	C109 (field cast)	\$	32	each
Concrete Drying Shrinkage, set of 3	C157	\$	510	Each
Concrete Core Thickness	C174	\$	45	each
Concrete Laboratory Trial Batch*	C192	\$	1,350	each
Concrete Time of Set by Penetration Resistance	C403, C191	\$	2,400	each
Concrete Modulus of Elasticity	C469	\$	350	each
Concrete Splitting Tensile Strength	C496	\$	105	each
Concrete Absorption	C497, C642	\$	160	each
Concrete Cylinder Unit Weight	C567	\$	160	each
Non-Shrink Grout Compression	C1107, C579	\$	32	each
Shotcrete Compression	C1140, C1604	\$	85	each
Concrete Chloride Ion Penetration	C1202	\$	750	each
Concrete Paving Slab Modulus of Rupture	C1782	\$	750	each
Concrete Direct Tensile	D2936, CRD C164	\$	500	each
CLSM Compression	D4832	\$	45	each

*\*Includes 6 cylinders (4x8 or 6x12) or 6 flex beams, additional cylinders, beams, or shrinkage prisms charged at individual unit rates*

ROLLER COMPACTED  
CONCRETE TESTS

Test	Standard Test Method <sup>†</sup>	Fee		
RCC Compression	C1435/C39	\$	65	each
RCC Air Content	C1849	\$	50	each
RCC Unit Weight	C1849	\$	50	each
RCC Consistency and Density (VeBe)	C1170	\$	1,600	each
RCC Accelerated Cure	C1768 - modified	\$	750	each
RCC Trial Batch	ACI 211.1	\$	4,800	each
RCC Aggregate Mixing	ACI 211.1	\$	2,000	each

MASONRY TESTS

Test	Standard Test Method <sup>†</sup>	Fee		
Masonry Grout Compression	C1019, C942	\$	32	each
Masonry Mortar Compression	C270, C780	\$	32	each
Masonry Core Compression and Shear	CA DSA	\$	170	each
Masonry Prism Compression	C1314	\$	125	each
CMU Absorption and Received Moisture	C140	\$	100	each
CMU Compression	C140	\$	105	each
CMU Dimension Verification	C140	\$	45	each
CMU Lineal Shrinkage	C426	\$	250	each
CMU/Seg. Retaining Wall Unit Freeze-Thaw	C1262	\$	1,750	each

<sup>†</sup>Common ASTM, AASHTO and DOT test methods.

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- Those beginning with T are AASHTO methods.

**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

ROCK TESTS

Test	Standard Test Method <sup>†</sup>	Fee		
Rock Sample Preparation	D4543	\$	100	each
Rock Direct Shear, 1 Point	D5607	\$	350	each
Rock Mohs Hardness	IRSM	\$	45	each
Rock Point Load Index, per Point*	D5731	\$	55	each
Rock Slake Durability	D4644	\$	200	each
Rock Splitting Tensile/Brazilian, per Point*	D3967	\$	100	each
Rock Direct Tensile	D2936	\$	250	each
Rock Triaxial Compression	D7012-A	\$	420	each
Rock Triaxial Compression w/Modulus of Rupture	D7012-B	\$	560	each
Rock Unconfined Compression	D7012-C	\$	250	each
Rock Unconfined Compression w/Modulus of Rupture	D7012-D	\$	500	each
<i>Above testing fees include routine sample preparation (end grinding) and sample photographs</i>				
<i>*Point load and splitting tensile test fees are per break, not per set of 10.</i>				

ASPHALT TESTS

<b>BINDER TESTS</b>				
Test	Standard Test Method <sup>†</sup>	Fee		
Absolute Viscosity	D2171	\$	220	each
Bitumen Penetration	D5	\$	85	each
Kinematic Viscosity	D2170	\$	200	each
Recovery by Roto-Vapor	D5404	\$	365	each
Softening Point, Ring & Ball	D36	\$	105	each
Bitumen Recovery by Abson Method	D5404	\$	375	each
Ductility of Bitumen	D113	\$	130	each
Resilience of AR Binders	D5329	\$	80	each

<b>EMULSION TESTS</b>				
Test	Standard Test Method <sup>†</sup>	Fee		
Emulsion Elastic Recovery	D6084, T301	\$	260	each
Emulsion Settlement	D6930, T59	\$	235	each
Emulsion Sieve Test	D6933, T59	\$	105	each
Emulsion Storage Stability	D6930, T59	\$	185	each
Emulsion Torsional Recovery	CT332	\$	160	each
Particle Charge	D7402, T59	\$	105	each
Residue by Evaporation	D6934, T59	\$	115	each
Saybolt Viscosity	D7946, T59	\$	160	each

<sup>†</sup>Common ASTM, AASHTO and DOT test methods.

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- Those beginning with T are AASHTO methods.

**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

ASPHALT TESTS (continued)

<b>MIX PROPERTY TESTS</b>				
<b>Test</b>	<b>Standard Test Method†</b>	<b>Fee</b>		
Air Voids Determination ( <i>calculation only</i> )	D3203, AI-MS-2	\$	60	each
VMA Determination ( <i>calculation only</i> )	AI-MS-2, CT-LP-2	\$	55	each
VFA Determination ( <i>calculation only</i> )	AI-MS-2, CT-LP-2	\$	55	each
Volumetric Properties ( <i>calculation only</i> )	AI-MS-2, CT-LP-2	\$	55	each
AC Moisture Content	T329	\$	60	each
Gradation of Extracted Aggregate	D5444	\$	125	each
AC Content by Extraction	D2172	\$	220	each
AC Content by Ignition Oven	D6307, T308	\$	160	each
AC Ignition Oven Calibration ( <i>determination of mix correction</i> )	D6307	\$	350	each
Hveem Stability	D1560	\$	350	each
Hveem Stability without Compaction	D1560	\$	185	each
Marshall Stability and Flow ( <i>does not include compaction</i> )	D6927	\$	175	each
AC Swell	CT305	\$	500	each
Slurry Seal Wet Track Abrasion	D3910, ISSA TB100	\$	350	each

<b>DESIGN AND DENSITY TESTS</b>				
<b>Test</b>	<b>Standard Test Method†</b>	<b>Fee</b>		
AC Core Thickness	D3549	\$	15	each
AC Core Unit Weight & Thickness	D1188, D2726, D3549	\$	55	each
Unit Weight, Gyrotratory Method	T312	\$	325	each
Unit Weight, Hveem Method	D1561	\$	310	each
Unit Weight, Marshall Method	D6926	\$	225	each
Maximum Theoretical Specific Gravity	D2041	\$	165	each
Moisture Induced Damage	T283	\$	1,470	each
Moisture Vapor Susceptibility	CT307	\$	600	each
Hamburg Wheel Track, Set of 2	T324	\$	1,100	each
Index of Retained Strength	D1075	\$	1,250	each
Indirect Tensile Strength ( <i>does not include compaction</i> )	D6931	\$	1,050	set/3
Indirect Tensile Strength of Cored Specimen	D6931	\$	350	each
Caltrans Tensile Strength Ratio	CT371	\$	2,000	each
Caltrans Opt Bitumen Content OGFC	CT368	\$	1,850	each
Centrifuge Kerosene Equivalent	CT303	\$	300	each
Film Stripping	CT302	\$	150	each
Mix Design, Hveem Method w/RAP	CT367	\$	7,800	each
Mix Design, Hveem Method	CT367	\$	6,000	each
Mix Design, Marshall Method	AI-MS-2	\$	3,250	each
Mix Design, Superpave Method	AI-MS-2	\$	7,500	each

†Common ASTM, AASHTO and DOT test methods.

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**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

METAL TESTS

<b>BOLT TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Bolt Assembly Suite (Bolt, Nut, Washer) *	F606	\$	225	each
Bolt Hardness	E18	\$	30	each
Bolt Proof Load	F606	\$	45	each
Bolt Wedge Tensile	F606	\$	45	each
Nut Hardness	E18	\$	30	each
Nut Proof Load	F606	\$	45	each
Washer Hardness	E18	\$	30	each

*\*An 'assembly' is one bolt, one nut and one washer. The suite consists of a bolt wedge tensile test, bolt and nut proof load tests, and hardness tests on all three pieces.*

<b>REINFORCING BAR TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Bend	A370, E290	\$	45	each
Rebar Tensile, up to No. 11	A370, E8	\$	95	each
Rebar Tensile, No. 14 and No. 18	A370, E8	\$	200	each
Rebar Coupler Slip	A370, A1034, CT670	\$	150	each
Rebar Coupler Tensile, up to No. 11	A370, A1034, CT670	\$	90	each
Rebar Coupler Tensile, No. 14 and No. 18	A370, A1034, CT670	\$	200	each
CT670 Strain (Elongation)	CT670	\$	20	each
Headed Rebar Tensile, up to No. 11	A370, A970	\$	90	each
Headed Rebar Tensile, No. 14 and No. 18	A370, A970	\$	200	each
Modulus of Elasticity*	A370	\$	125	Each
Epoxy Coating Thickness	A775, A934	\$	100	each
Epoxy Coating Continuity – Holiday Test	A775, A934	\$	100	each
Epoxy Flexibility - Bending	A775, A934	\$	75	each

*\*In addition to the testing fee.*

<b>METAL TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
PT Strand Tensile	A370, A1061	\$	165	each
Anchor Bolt Tensile, up to 1.5" dia.	F1554	\$	150	each
Anchor Bolt Tensile, greater than 1.5" dia.	F1554	\$	250	each
Reduced Section Tensile*	A370	\$	125	each
Rockwell Hardness	E18	\$	30	each
Macroetch	E381	\$	250	each
Charpy Impact, Set of 3 **	A370, A673	\$	375	each
Galvanization Thickness	B499, E376	\$	25	each
Fireproofing Density	E605	\$	75	each

*\*Machining test specimens is not included. Additional fees for stress-strain diagram.*

*\*\*Machining test specimens is not included. Additional fees will be assessed for testing at temperatures other than 40°F.*

<sup>†</sup>Common ASTM, AASHTO and DOT test methods.

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**KLEINFELDER FEE SCHEDULE FOR  
GEOTECHNICAL and MATERIALS LABORATORY TESTING SERVICES**

DIMENSION STONE AND ROOFING MATERIAL TESTS

<b>DIMENSION STONE</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Dimension Stone, Absorption/Specific Gravity	C97	\$	220	set/5
Dimension Stone, Compressive Strength	C170	\$	220	set/5
Dimension Stone, Flexural Strength	C880	\$	220	set/5
Dimension Stone, Modulus of Rupture	C99	\$	220	set/5

MISCELLANEOUS TESTS

<b>MISCELLANEOUS TESTS</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Hydraulic Ram Verification	E4	\$	315	each
Tensile and Elastic Modulus Polymer Composite Materials	D3039	\$	650	set/5

SAMPLE PREPARATION

<b>SAMPLE PREPARATION</b>				
<b>Test</b>	<b>Standard Test Method<sup>†</sup></b>	<b>Fee</b>		
Rock Sample Preparation	D4543	\$	100	each
Sample Crushing		\$	150	each
Sample Cutting and Trimming		\$	35	each
Sample Mixing and Processing		\$	105	each
Sample Preparation		\$	55	each
Sample Preparation, per hour		\$	105	each
Sample Remolding		\$	80	each
Contamination Fee		\$	250	each
Sample Disposal Fee		\$	10	each

<sup>†</sup>**Common ASTM, AASHTO and DOT test methods.**

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- Those beginning with T are AASHTO methods.

**APEX Testing Laboratories**  
Effective November 2021

Fringe Benefit: 65.59%  
Overhead Rate: 171.84%  
General Administration: 0%  
Fixed Fee: 7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Senior Inspector	\$47.03	\$59.37	\$169.80	\$214.36
Inspector	\$45.03	\$56.85	\$162.58	\$205.26
Technician	\$45.03	\$56.85	\$162.58	\$205.26



## **LAB TESTING RATES**



## LABORATORY TESTING

### SOILS AND AGGREGATES

#### Aggregate Property Tests:

##### Acid Solubility

4260 ..... \$200.00 each

##### Aggregate Angularity AASHTO T304

4245 Fine Aggregate ..... 255.00 each

##### Clay Lumps and Friable Particles ASTM C142

4211 ..... 155.00 each

##### Cleanliness Value CTM 227

4213 1" x #4 (or finer) ..... 190.00 each

4214 1-1/2" x 3/4" ..... 395.00 each

4290 2-1/2" x 1-1/2" ..... 850.00 each

4291 Pit Run ..... 280.00 each

##### Crushed Particles (percent) CTM 205

4225 ..... 165.00 each

##### Durability Index CTM 229

4230 Coarse Fraction ..... 250.00 each

4231 Fine Fraction ..... 250.00 each

##### Flat and Elongated Particles ASTM D4791

4224 ..... 175.00 each

##### Los Angeles (LA) Abrasion and Impact ASTM C131/CTM 211

4219 500 revolutions ..... 300.00 each

4220 100 & 500 revolutions ..... 300.00 each

##### Los Angeles (LA) Abrasion and Impact ASTM C535

4221 (for large size coarse aggregate) 1000 revolutions ..... 395.00 each

##### Mohs Hardness

4261 ..... 265.00 each

##### Organic Impurities in Fine Aggregates ASTM C40 / CTM 213

4209 ..... 120.00 each

##### Relative Mortar Strength of Portland Cement Concrete Sand CTM 515

4270 ..... 575.00 each

##### Sand Equivalent ASTM D2419/CTM 217

4212 ..... 185.00 each

##### Soundness of Aggregates ASTM C88/CTM 214

4207 by use of sodium or magnesium sulfate, fine or coarse,  
5 cycles (billed per fraction, minimum charge \$250.00) ..... 165.00 each

##### Specific Gravity & Absorption

4215 Fine Aggregate ASTM C128/CTM 207 ..... 175.00 each

4216 Coarse Aggregate ASTM C127/CTM 206 ..... 175.00 each

##### Unit Weight (Bulk Density) and Voids in Aggregate ASTM C29/CTM 212

4210 Unit weight (average of 3 tests) ..... 175.00 each

##### Voids in Mineral Aggregate CTM LP-2

4246 Calculated ..... 125.00 each

#### Compaction Characteristics - Moisture / Density Relationships:

##### Standard Proctor ASTM D698 / AASHTO T99

2237 4" mold ..... \$275.00 each

2238 6" mold ..... 305.00 each

2242 Checkpoint for identification of material ..... 145.00 each

##### Modified Proctor ASTM D1557 / AASHTO T180

2239 4" mold ..... 325.00 each

2240 6" mold ..... 355.00 each

2242 Checkpoint for identification of material ..... 155.00 each

##### Rock Correction of Moisture/Density Curve ASTM D4718

4208 ..... 165.00 each

##### California Impact CTM 216

2243 ..... 345.00 each

#### Classification and Index Tests:

##### Atterberg Limits (Plasticity Index) ASTM D4318

2225 Dry Prep Method B ..... \$270.00 each

2226 Wet Prep Method A ..... 245.00 each

##### Classification of Soils (Unified Soil Classification System ASTM D2487

2234 Visual Classification ..... 65.00 each

2269 Stiffness by ~~Torvax~~ Pocket Penetrometer ..... 65.00 each

##### Moisture Content ASTM D2216

2221 Individual test ..... 40.00 each

##### Moisture and Density ASTM D7263b

2222 Sample Diameter to 3" ..... 110.00 each

2223 Sample to 6" Diameter ..... 180.00 each

##### Organic Content of Peat and Other Organic Soil ASTM D2974

2233 ..... 135.00 each

##### Particle Size Analysis ASTM C136/CTM 202

4203 Coarse aggregate (#4 to 1-1/2" maximum) ..... 195.00 each

4204 Coarse aggregate (#4 to 3") ..... 265.00 each

4205 Total sieve coarse and fine (to 1-1/2" maximum) ..... 345.00 each

4206 Fine aggregate (#4 to #200 w/wash) ..... 155.00 each

4226 Sieve analysis pit run with #200 wash ..... 350.00 each

4202 #200 Wash on Aggregate ASTM C117 ..... 150.00 each

2227 #200 Wash on Soil ASTM D1140 ..... 150.00 each

##### Particle Size Analysis ASTM D422

2228 Sieve (from 1/2" to #200) ..... 165.00 each

2229 Sieve (from 1-1/2" to #200) ..... 295.00 each

2230 Sieve (from 3" to #200) ..... 175.00 each

2231 Hydrometer test w/ sieve D422/ CTM 203 ..... 385.00 each



pH of Soil CTM 643/AASHTO T-228  
4402 ..... 154.00 each

Pinhole Test (Classification of Dispersive Clay) ASTM D4647  
2235 ..... 530.00 each

Porosity (Total)  
4280 Includes ASTM D7263 & ASTM D854 ..... 185.00 each

Specific Gravity of Soils  
4228 by hydrometer ASTM D854/CTM 203 ..... 175.00 each  
2232 (#4) by pycnometer ASTM D854/CTM 209 ..... 145.00 each

**GEOTECHNICAL LABORATORY**

**Consolidation Properties:**

2258 Consolidation (1 cycle, 1 time rate) ASTM D2435 ..... \$475.00 each  
2257 For each additional Time-Rate curve ..... 100.00 each  
2258 Unload-Reload loop (per point) ..... 40.00 each  
2259 Trim to test from 3" sample ..... 52.00 each

**Expansion & Collapse Tests:**

2261 Expansion Index UBC / ASTM D4829 ..... \$495.00 each  
One-Dimensional Swell or Collapse ASTM D4546  
2210 Method A (4-point curve) ..... 1,080.00 each  
2211 Method B ..... 410.00 each  
2212 Method C ..... 465.00 each  
2263 Collapse potential ASTM D5333 ..... 210.00 each  
2264 Shrink-Swell ASTM D3877 ..... 200.00 each  
2265 Expansion pressure free swell ASTM D3877 ..... 200.00 each

**Hydraulic Conductivity:**

Flexible Wall ASTM D5084 (2' - 3")  
2260 Sandy soil ..... \$400.00 each  
2261 Clayey soil ..... 385.00 each

**Soil Strength Tests:**

California Bearing Ratio ASTM D1883  
4240 3 points without compaction curve ..... \$1,050.00 each

**Resistance "R" Value ASTM D2844/CTM 301**

4232 Untreated material ..... 325.00 each  
4234 Cement, lime, or other additives field sample ..... 385.00 each  
4233 Cement, lime, or other additives laboratory mixed ..... 375.00 each

**Direct Shear Tests, per point (2.5" diameter)**

2278 Unconsolidated-Undrained UU ..... 125.00 each  
2279 Consolidated-Undrained CU ..... 165.00 each  
2280 Consolidated-Drained CD (sandy soil) ASTM D3080 ..... 230.00 each  
2281 Consolidated-Drained CD (clayey soil) ..... 225.00 each

**Triaxial Tests, Per Point (2.5" Diameter)**

2270 Unconsolidated-Undrained TX-UU ASTM D2850 ..... 170.00 each  
2271 TX-UU over 70 psi ASTM D2850 ..... 185.00 each  
2274 Consolidated-Undrained TX-CU ASTM D4767 ..... 290.00 each  
2272 TX-CU with pore pressure TX-CU-PP ASTM D4767 ..... 560.00 each  
2277 Staged 3-point TX-CU-PP with pore pressure ..... 1,250.00 each

2273 Consolidated-Drained TX- CD (sandy soil) USACE ..... 700.00 each  
2275 For multi-stage, each additional stress level ..... 300.00 each  
2276 Back pressure saturation ..... 100.00 each

**Unconfined Compressive Strength**

2267 Cohesive soil ASTM D2168 ..... 95.00 each  
4241 Soil-Cement cu (mixed in the lab) ASTM D1633 ..... 195.00 each  
4242 Soil-Cement cu (field mixed) ASTM D1633 ..... 150.00 each

4243 CTB (mixed in the lab) ASTM D1633 ..... 195.00 each  
4244 CTB (field mixed) ASTM D1633 ..... 150.00 each

**Cement Treated Base (CTB) Mix Design:**

2291 Moisture-Density Relations of Soil-Cement Mixture (each cement content) ASTM D558 ..... \$325.00 each  
2292 Particle Size Analysis ASTM C136 ..... 345.00 each  
2293 Soundness of Aggregates by use of sodium or magnesium sulfate, fine or coarse, 5 cycles (billed per fraction, minimum charge \$250.00) ASTM C88 ..... 195.00 each  
2294 LA Abrasion ASTM C131 100 & 500 revolutions ..... 300.00 each  
2295 Wetting & Drying Soil-Cement Mixtures ASTM D659 ..... 850.00 each  
2296 Freeze & Thaw Soil-Cement Mixtures ASTM D560 ..... 1,250.00 each  
4243 CTB Comp. Strength (each cement %) ASTM D1633 ..... 195.00 each  
4250 Cement Treated Base Mix Design Report ..... 450.00 each

**Lime Treated Soil Mix Design:**

2286 Soil-Lime Proportion ASTM D6276 ..... \$350.00 each  
4247 Lime Treated Soil at 1 moisture Content CTM 373 ..... 1,180.00 each

**Additional Costs:**

2282 Preparation for 3" diameter specimen ..... \$75.00 each  
2283 Remold test specimen ..... 85.00 each  
2284 For multi-stage, each additional stress level ..... 75.00 each  
2285 For each re-shear cycle ..... 85.00 each  
2244 Photos ..... 35.00 each  
9801 Foreign Soil Sterilization and Disposal ..... 80.00 each  
9802 Sample Storage ..... QOR  
9803 Shipping of samples: Iners or containers ..... Cost +20%  
9804 Special handling of contaminated samples ..... QOR

**ASPHALTIC CONCRETE**

**CTM 304/366/305**

4101 Stabilometer value of lab mixed sample ..... \$665.00/point  
4102 Stabilometer value of premixed sample ..... 610.00 each  
4103 Swell test or bituminous mixture ..... 289.00 each

**CTM 304/307**

4113 Moisture vapor susceptibility including stabilometer (2 specimens) ..... 265.00 each

**CTM 382/D6307**

4129 Bitumen content of paving mixture by ignition oven (subject to environmental disposal surcharge) ..... 295.00 each  
4104 Correction Factor ..... 325.00 each

**ASTM D5444/CTM 202**

4105 Gradation of extracted sample including #200 wash ..... 195.00 each



ASTM D1559		3119 Splitting tensile test, 6" diameter x 12" cylinder ..... 80.00 each
4106	Marshall test, premixed sample 3 specimen ..... \$385.00 each	
4107	Marshall test, lab mixed 3 specimens ..... 480.00 each	
4109	Mix Design: Marshall Method - no aggregate ..... 2,600.00 each	ASTM C512
4112	Mix Design: Marshall Method - with aggregate ..... 3,200.00 each	9315 Creep of Concrete in compression (by project quote) ..... \$1,500.00/min
4110	Mix Design: <del>Cyaset</del> method - no aggregate ..... 2,400.00 each	9316 Equilibrium Density ASTM C267 ..... 185.00 each
4111	Mix Design: <del>Cyaset</del> method - with aggregate ..... 2,900.00 each	
4138	Marshall RAP Mix Design w/ Agg. Tests, A/MS-2 ..... 4,000.00 each	ASTM C42/C39
4139	Caltrans RAP Mix Design w/ Agg. Tests, C/M 367 ..... 3,600.00 each	3118 Compression test concrete cores ..... 60.00 each
ASTM D3203		3510 Shotcrete core compressive strength (includes lab coring) 95.00 each
4113	Percentage Air Void ..... 125.00 each	ASTM C42 (Cores) with Rebar ..... 250.00 each
CTM 308/ASTM D2728		Grading Nozzleman ..... 350.00 each
4114	Specific gravity of compacted sample ..... 115.00 each	ASTM C78/C293
CTM 308A/ASTM D1188		3135 Flexural strength of concrete, 6" x 6" x 24" specimen ..... 110.00 each
4115	Specific gravity of AC - paraffin coated ..... 125.00 each	ASTM C157 (MODIFIED)
CTM 304/375		3115 Volume change of concrete, per set of 3 (drying shrinkage test), up to 28 days drying (excludes trial batch) ..... 465.00 each
4128	Test maximum density (TMD), set of 5 specimens ..... 400.00 each	ASTM C174
ASTM D2041		Length/Thickness of Concrete Core Test ..... 50.00 each
4116	Rice Gravity ..... 250.00 each	ASTM C109
ASTM D1075		3113 Compression Tests, 2" cube specimen ..... 45.00 each
4133	Index of retained strength, pre-mix ..... 500.00 each	ASTM C192
4134	Index of retained strength, lab mix ..... 780.00 each	3136 Laboratory Trial Batch (by project quote) ..... 800.00/min
4125	Index Retained Stability - <del>pre mix</del> ..... 500.00 each	MASONRY
4126	Index Retained Stability - lab mix ..... 650.00 each	ASTM C140
ASTM D4987/AASHTO		9401 Gross Area Compression ..... \$95.00 each
4127	Tensile strength ratio, pre-mix ..... 1,000.00 each	9405 Net Area Compression ..... 110.00 each
4117	Tensile strength ratio, lab mix ..... 1,500.00 each	9402 Absorption and moisture content (%) ..... 125.00 each
CTM 303		9403 Linear shrinkage (rapid method) (%) ..... 210.00 each
4119	CKE Coarse ..... 150.00 each	ASTM C428
4120	CKE Fine ..... 150.00 each	9406 Linear shrinkage (ASTM C428) (%) ..... 225.00 each
4132	<del>Unstopping</del> CTM 302 ..... 175.00 each	9408 Unit Weight (%) ..... 95.00 each
4121	ATPB mix (grade, remix @ 2/2.5/3%) ..... 365.00 each	9404 Dimensional measurement/Equivalent web thickness (%) ..... 65.00 each
4122	<del>Open</del> graded mix evaluation (grade, recombine, mix @ 3 oil %s, <del>Unstopping</del> ) CTM 368 ..... 440.00 each	OBC Standard
CTM 370		3711 2" x 4" mortar cylinder ..... 45.00 each
4123	Moisture content of AC by microwave oven ..... 75.00 each	3713 Grout sample ..... 45.00 each
4135	Calculate Voids Filled with Asphalt, C/M DP-3 ..... 30.00 each	3708 Composite prism ..... 165.00 each
4136	Calculate LUST Proportion, C/M LP-4 ..... 30.00 each	ASTM C1006
4137	Calculate Air/Voids of HMA, C/M 367 ..... 20.00 each	9407 Splitting tensile (%) ..... 80.00 each
CONCRETE / SHOTCRETE		3717 Compression Test of CMU Core (CBC Title 24) ..... 55.00 each
ASTM C39/C587		3718 Shear Test of CMU Core (both face) (CBC Title 24) ..... 95.00 each
3111	Compression tests, 6" x 12" and 4" x 8" molded <del>cus</del> ..... \$35.00 each	ASTM C531
3112	Unit weight on concrete cylinder ..... 65.00 each	9317 Linear Shrinkage & Coefficient of Thermal Expansion ..... 500.00 each
ASTM C495		BRICK
3117	Lightweight insulating concrete (3" diameter x 6" cylinder) Compression tests ..... 50.00 each	ASTM C67
ASTM C469		9409 Compression test ..... \$60.00 each
9314	Static Young's modulus of elasticity in compression of 6" diameter x 12" cylindrical specimen ..... 395.00 each	9411 Absorption test, saturation coefficient ..... 70.00 each
		9306 Modulus of rupture ..... 55.00 each



**CLAY ROOFING TILE**

9418 UBC Standard 32-12 Breaking Load.....	\$50.00 each
9419 Water Absorption by 24-hour Oven Drying (extra charge for cutting/preparation).....	50.00 each

**BUILT-UP ROOFING**

7026 Basic weight analysis.....	\$200.00 each
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**ASTM D2829**

7025 Ply separation and complete roof analysis.....	525.00 each
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**FIREPROOFING**

6004 Density of sprayed-on fireproofing.....	\$135.00 each
6005 Moisture Content of Sprayed-on Fireproofing.....	65.00 each
ASTM E736 Bond Strength Test.....	60.00 each

**STRUCTURAL STEEL AND CARBON STEEL**

(Sample preparation and machining not included)

**Tensile Testing - yield, ultimate, elongation**

9510 To 1" material thickness, inclusive.....	\$135.00 each
9517 Over 1" up to 1-1/2" thickness.....	145.00 each
9539 Over 1-1/2" thickness.....	195.00 each
9519 End-Welded "Nelson" Studs.....	125.00 each

**Cold Bend Testing:**

9511 To 3/4" material thickness.....	85.00 each
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**Flattening Tests on Pipe:**

9508 To 10" diameter and 3/4" max. wall.....	95.00 each
9543 Guided Side, Root or Face Bends and T-Break.....	85.00 each
9801 Standard Welder Qualification Test.....	365.00 each
9805 Macroetch Examination.....	125.00 each

**REINFORCING STEEL**

**Tensile Testing Full Section (yield/ultimate/elongation):**

9501 Bar Size through #8.....	\$125.00 each
9502 #9 through #11.....	165.00 each
9503 #14.....	220.00 each
9504 #18.....	290.00 each
9505 Welded Hoops through #8.....	250.00 each
9506 Headed Bar through #8.....	150.00 each
9507 Headed Bar #9 through 11.....	165.00 each
9508 Slip Test through 11.....	150.00 each
9552 Coupled rebar through #11.....	195.00 each
9553 Coupled rebar through #14.....	220.00 each
9554 Coupled rebar through #18.....	275.00 each
9509 Cold Bend Testing on Bar Size #11 and smaller.....	85.00 each
9529 Cold Bend Testing on Bar Size #14.....	110.00 each
9530 Fiber Reinforced Composite.....	375.00 each

**TEN SILE TEST BEARING PLATES**

9531 (ASTM A370-17a / ASTM E8-16a).....	\$190.00 each
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**CHEMICAL ANALYSIS**

9632 (ICP-OES).....	\$695.00 each
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**POST-TENSION / PRESTRESS 7-WIRE STRANDS**

Seven-wire strands, ASTM A416, for 1/4" through 1/2" strands

9304 Breaking strength only.....	\$285.00 each
9305 Yield strength, breaking strength & elongation.....	345.00 each

**MECHANICAL TESTING OF METALLIC PRODUCTS**

(sample preparation and machining not included)

9544 Yield strength, tensile, elongation, R/A for 1/2" diameter or sub-size reduced-section specimen.....	\$110.00 each
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**Hardness Testing (3 points/sample)**

9513 Rockwell / Brinell.....	40.00 each
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**Charpy Impact Testing (minimum of 3 specimens):**

9520 Room Temperature.....	45.00 each
9521 To minus 100 degrees Fahrenheit.....	65.00 each
9522 To minus 150 degrees Fahrenheit.....	80.00 each

**HIGH STRENGTH BOLTS, NUTS AND WASHERS**

(Sample preparation and machining not included)

**ASTM A325, A490 AND A449**

9526 Proof load.....	\$75.00 each
Ultimate Tensile.....	50.00 each
9515 Hardness (Rockwell) (*) including sample preparation.....	85.00 each

**Nuts: to 1-1/8" inclusive**

9635 Proof load.....	75.00 each
9636 Hardness (Rockwell) (*) including sample preparation.....	85.00 each

**Washers: all sizes**

9638 Hardness (Rockwell) (*) including sample preparation.....	85.00 each
9616 Carburization Depth.....	60.00 each

**ASTM F959**

9637 Load Indicator Washers (LIW), proof load.....	65.00 each
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**SPECIALTY TESTING**

**ASTM A90**

9700 Weight of galvanized coating (subject to environmental disposal fee).....	\$150.00 each
9701 Other materials-aluminum, brass, bronze, fiberglass, etc.....	65.00 each

9903 Calibration of hydraulic ram system (single ram, one pressure gauge to 30 tons).....	250.00 each
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9904 Calibration of hydraulic ram system (single ram, one Pressure gauge to 100 tons).....	350.00 each
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**ASTM D1559/D6926**

Stability and Flow.....	\$385.00 each
Bulk Specific.....	\$115.00 each
Unit Weight.....	\$115.00 each

**ASTM 2767**

Cores Matt Density.....	\$115.00 each
Cores Joint Density.....	\$115.00 each

**Telamon Engineering Consultants, Inc.**

Effective November 2021

Fringe Benefit: 40.53%  
Overhead Rate: 86.27%  
General Administration: 71.86%  
Fixed Fee: 7%

<b>Classification</b>	<b>Direct Hourly Rate</b>		<b>Fully Burdened Hourly Billing Rate</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Civil Engineer	\$39.00	\$80.00	\$124.63	\$255.65
Surveyor- Field & Manager	\$47.00	\$80.00	\$150.20	\$255.65
CAD Drafter	\$35.00	\$55.00	\$111.85	\$175.76
Project Manager	\$63.00	\$95.00	\$201.33	\$303.59
Principal	\$80.00	\$120.00	\$255.65	\$383.48



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

Transbay Joint Powers Authority (TJPA), its Members, Directors, Officers, Employees and Agents.

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

Salesforce.com and all legal entities controlling, controlled by, or under common control with, directly or indirectly, salesforce.com and all of the officers, directors, permitted assigns, employees and agents.

The Additional Insureds listed in this Appendix may be amended in the future via a request in writing by the TJPA to add other parties based on future requirements.

## APPENDIX D

### USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

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

#### 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

- (b). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA or FRA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

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

## 6. CIVIL RIGHTS REQUIREMENT

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

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

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

- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

**7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

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

- (a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The TJPA's Anticipated DBE Participation Level for each Federal Fiscal Year is published on the TJPA website by August 1 of each year.
  - A separate Agreement goal of \_\_\_\_\_ percent DBE participation has been established for this Agreement.
  - A separate Agreement goal has not been established for this Agreement.
- (b). The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR Section 26.13[b]).
- (c). (Checked box is applicable to this Agreement.)
  - (If a separate Agreement goal has been established, use the following)  
 The Contractor was required to document sufficient DBE participation to meet the separate Agreement goal established for this Agreement or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53.
  - (If no separate Agreement goal has been established, use the following)  
 The Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- (d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of

the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

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

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

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

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

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

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

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

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

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

## **11. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

## **12. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

## **13. RECYCLED PRODUCTS**

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

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

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

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

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

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

- (a). This Agreement is a “covered transaction” for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180, and the Contractor is required to comply with same. In



particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.

- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

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

**15. CLEAN AIR**

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

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

**16. CLEAN WATER REQUIREMENTS**

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

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

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

**17. BUY AMERICA REQUIREMENTS**

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

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

## 18. BREACHES AND DISPUTE RESOLUTION

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

- (a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 19. LOBBYING

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

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

- (a). The contractor shall submit the "New Restrictions on Lobbying Certification" if the regulation is applicable to the particular agreement.
- (b). (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

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

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

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

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

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

**21. SEISMIC SAFETY REQUIREMENTS**

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

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

standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **22. BONDING REQUIREMENTS**

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

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

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

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

#### **(a). Bid Security**

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

#### **(b). Rights Reserved**

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

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

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

the TJPA and pay over to the TJPA the difference between the bid security and the TJPA's total damages, so as to make the TJPA whole.

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

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

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

(a). Performance Bonds

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

(b). Payment Bonds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(a). Minimum Wages**

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

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

- (2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii). The classification is utilized in the area by the construction industry; and
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action

within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii). The classification is utilized in the area by the construction industry; and
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30)



days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

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

apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

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

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

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

(d). **Apprentices and Trainees**

- (1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  
- (2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the

Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- (g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j). **Certification of Eligibility**
  - (1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
  - (2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
  - (3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

**FLY AMERICA CERTIFICATION**

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance*

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

**BUY AMERICA CERTIFICATION**

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

## NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

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

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_



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

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

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

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

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

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

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

**APPENDIX E**  
**PROPERTIES PLANNED FOR ACQUISITION**

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

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

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_ day of November 2021, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Zoon Engineering, Inc. (“Contractor”).

### Recitals

A. The TJPA requires Construction Management Services and Engineer Services (“Services”) for the Transbay Program (“Program”).

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

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

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

E. On November 18, 2021, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_ authorizing the TJPA’s Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

### 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

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

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

c. The TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or Program costs. The TJPA’s budget decisions are subject to the discretion of the TJPA Board of Directors. The Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

### 2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for 5 (five) years from the Effective Date of the Agreement, as described in Section 3, “Effective Date of Agreement,” provided that (i) the TJPA shall have the right to extend this Agreement for 2 (two) additional 2-year (two-year) options by providing to the Contractor written notice of such extension on or before the expiration date of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by the TJPA.

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

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

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

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

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

### **5. Compensation**

a. All work under this Agreement shall be compensated on an hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed Two Million Dollars (\$2,000,000). The breakdown of the Contractor’s fees appears in Appendix B, Fees.

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

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

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

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

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

b. Except as may be provided by laws governing emergency procedures, officers and

employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the Contractor for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 5, "Compensation," unless the changed scope is authorized by written amendment and approved as required by law.

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

d. The Chief Financial Officer is not authorized to make payments on any contract or NTP for which funds have not been certified as available in the budget or by supplemental appropriation.

## **7. Payment**

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

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

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

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

## **9. Disallowance**

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

By executing this Agreement, the Contractor certifies that the Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The Contractor

acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

## **10. Taxes**

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

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

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

## **12. Qualified Personnel**

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

## **13. Responsibility for Equipment**

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the TJPA.

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

### **a. Independent Contractor**

The Contractor or any agent or employee of the Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall neither have employee status with the TJPA nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services

and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

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

b. Payment of Taxes and Other Expenses

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

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

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

## 15. Insurance

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

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

(2) Commercial General Liability Insurance on an occurrence basis, with limits not less than \$2,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal and Advertising Injury, Products and Completed Operations; and

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

(4) Professional Liability Insurance with limits not less than \$2,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

(5) Umbrella Liability Insurance with limits not less than \$5,000,000 each occurrence and

\$5,000,000 aggregate, which coverage shall respond in excess of the coverage described in Section 15(a)(2) and Section 15(a)(3) above.

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

(1) Name as Additional Insured the entities indicated in Appendix C, Additional Insureds on the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. The Contractor shall provide thirty (30) days' advance written notice to the TJPA of material change in coverages, reduction or nonrenewal of coverages, or cancellation of coverages for any reason. Notices shall be sent to the address specified in Section 23, "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of five (5) years beyond the expiration of this Agreement, to the effect that, should occurrences during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

h. Regarding Workers' Compensation, the Contractor hereby agrees to waive subrogation which any insurer of the Contractor may acquire from the Contractor by virtue of the payment of any loss. The Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the TJPA for all work performed by the Contractor, its employees, agents and subcontractors.



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

## **16. Indemnification**

### **a. General Indemnity**

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

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

### **b. Copyright Infringement**

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

## **17. Incidental and Consequential Damages**

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

## **18. Liability of TJPA**

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in Section 5, "Compensation." Notwithstanding any other provision of this Agreement, in no event shall the TJPA be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

## **19. Liquidated Damages [SECTION NOT APPLICABLE]**

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

## **20. Default; Remedies**

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

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

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

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

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

b. On and after any Event of Default, the TJPA shall have the right to exercise its legal and

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

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

## **21. Termination for Convenience**

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to

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

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

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

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

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

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

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

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

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

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

To Contractor: Nabil Hissen  
Zoon Engineering, Inc.  
3960 Adeline Street # 3  
Emeryville, CA 94608  
(925) 451-1585  
[nhissen@zoon-eng.com](mailto:nhissen@zoon-eng.com)

Any notice of default must be sent by registered mail.

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

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

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

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

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

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the TJPA to disclose the information; or
- (3) The disclosure is required by law or judicial order.

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

the approval.

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

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

e. The TJPA recognizes the need to share certain sensitive and confidential security information with the Contractor to allow the Contractor to perform work on the Program. Sensitive and confidential information may appear in records in written or electronic form, including, but not limited to, drawings, photographs, schematics, plans, memorandums, reports, emails, videos, tape recordings, and presentations. The Contractor acknowledges that by granting access to certain sensitive and confidential information, the TJPA has placed a special confidence and trust in the Contractor. In accordance with the terms of the TJPA's Non-Disclosure Agreement (NDA) under which access to sensitive and confidential information would be granted, the Contractor agrees to (1.1) keep such information confidential and treat it in a manner designed to prevent the unauthorized disclosure to third parties; (1.2) not disclose such information to third parties without the express written permission of the Executive Director of the TJPA or designee; and (1.3) If such permission is granted, then provide said information only upon the execution of an NDA by that third party.

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

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

## **27. Ownership of Results**

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

## **28. Works for Hire**

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

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

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

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

In accordance with S.F. Administrative Code Section 67.24(e), the Contractors' bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

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

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

## **32. Subcontracting**

Subject to specific direction in any NTP, the Contractor is permitted to subcontract portions of the services to be performed under this Agreement as follows:

Park Engineering, Inc.  
372 Village Square  
Orinda, CA 94563

Substrate, Inc.  
980270 Crest Rd  
Novato, CA 94945

Applied Materials and Engineering  
980 41<sup>st</sup> Street  
Oakland, CA 94608

The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of the Services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed. The TJPA shall be provided with a copy of each subcontract promptly upon execution.

### **33. Assignment**

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

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

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

### **35. Services Provided by Attorneys**

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

### **36. Conflict of Interest**

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

### **37. Limitations on Contributions**

Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the Agreement must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the Agreement until the later of either the termination of negotiations for such Agreement or six months after the date the Agreement is approved. The Contractor acknowledges that the foregoing restriction applies only if the Agreement or a



combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the Agreement; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or Agreement; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

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

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

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

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

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

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

#### **b. Subcontracts**

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

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

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

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

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

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not

limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of One Hundred percent (100%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

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

### **a. Prompt Progress Payment to Subcontractors**

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

### **b. Prompt Payment of Withheld Funds to Subcontractors**

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

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

The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set

forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA Agreement during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO.

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

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

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

(1) The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

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

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

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

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

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

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

f. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall

provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

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

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

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

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

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

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

cumulative amount of agreements between the Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

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

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

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

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

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

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

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

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

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

- h. The Contractor shall keep itself informed of the current requirements of the HCAO.
- i. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subcontractors and subtenants, as applicable.
- j. The Contractor shall provide the TJPA, or City, with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.
- k. The Contractor shall allow the TJPA, or City, to inspect the Contractor's job sites and have access to the Contractor's employees in order to monitor and determine compliance with HCAO.
- l. The TJPA, or City, may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the TJPA when it conducts such audits.
- m. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

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

- a. Incorporation of Administrative Code Provisions by Reference

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

- b. First Source Hiring Agreement

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

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

- (3) The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. The Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco

Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

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

f. Subcontracts

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

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

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

b. The requirements of Chapter 12T shall only apply to the Contractor’s or subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City and County of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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



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

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

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

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

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

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

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

#### **48. Drug-Free Workplace Policy**

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

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

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

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

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

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

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

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

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

#### **53. Graffiti Removal**

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

public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

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

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

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

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

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

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

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

#### **57. Construction**

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

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

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 54, "Modification of Agreement."

#### **59. Severability**

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

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

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

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

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

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

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

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

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

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

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

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

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

\_\_\_\_\_  
Nila Gonzales, Interim Executive Director

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


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

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

CONTRACTOR

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

I have read and understood Section 47, “MacBride Principles—Northern Ireland,” San Francisco’s statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

Nabil Hissen  
\_\_\_\_\_  
Printed Name

CEO  
\_\_\_\_\_  
Title

ZOON ENGINEERING, INC.  
\_\_\_\_\_  
Contractor Name

3960 ADELIN STREET  
\_\_\_\_\_  
Address

EMERYVILLE, CA 94608  
\_\_\_\_\_  
City, State, Zip Code

(925) 451-1585  
\_\_\_\_\_  
Phone Number

26-2992122  
\_\_\_\_\_  
Federal Employer ID Number

## **APPENDIX A**

### **SCOPE OF SERVICES**

The Services shall consist of rendering [Construction Management (CM) Services and/or Engineer Services] to the TJPA as requested and, when called upon, represent the TJPA before governmental agencies and third parties. Following is a non-exhaustive list of the types of activities for which the selected Respondent(s) would be expected to provide services and expertise on an as-requested basis for the Bus Ramp structures, civil sitework throughout the perimeter of the Transit Center and support for neighboring projects:

CM Services:

#### A. Preconstruction Services:

- Participate in project team partnering.
- Provide support to the TJPA community and tenant outreach.
- Provide input to assure environmental mitigation requirements are addressed in advance of field construction operations.
- Provide bid support services for the TJPA's proposals to contractors, including management of Contractor Questions on Bid Documents (QBD) responses and Addenda.
- Provide technical input for design/build procurement documents.
- Document existing site conditions prior to start of any contractor work.
- Provide design comments, cost information and constructability review information.
- Provide SBE / DBE contracting support during Contractor procurement process.
- Assist in coordination of art program.
- Participate in meetings relevant to the Capital Improvement Program.
- Provide schedule support by reviewing and analyzing, as needed

#### B. Construction Activities:

- Manage construction submittal and request for information (RFI) process.
- Conduct weekly progress meetings with contractors, TJPA and designers.
- Coordinate and document meetings.
- Prepare reports and document communication.
- Monitor, review and analyze schedule progress and recommend contractor progress payments.
- Manage change process including negotiations.
- Manage dispute resolution process for CIP contracts.
- Provide staff presence during contractor scheduled work shifts.
- Maintain the TJPA Quality Assurance (QA) program.
- Manage and update construction documents as RFI responses and changes are issued. Maintain current document set for use by field staff and inspectors. Maintain the electronic document control process as appropriate per project.

- Coordinate work with federal, state, and local agencies.
- Support coordination with TJPA commissioning activities and asset management team.
- Provide cost control and schedule support.
- Manage the use of document management tools with TJPA and Contractors, as appropriate.
- Provide claims support analysis and requested documentation.
- Coordinate with neighboring or adjacent property owners or construction projects.
- Participate in all meetings relevant to the CIP.

C. Inspection:

- Provide special inspection and testing services, as well as quality assurance oversight.
- Monitor contractor compliance with mitigation measures and environmental monitoring.
- Prepare and manage field reports.
- Log and track non-compliant work to resolution and acceptance.
- Provide off-site special inspection.

D. Schedule of Deliverables:

- Provide project documents (e.g., correspondence, files, submittals, RFI's, reports, meeting minutes, change and close out documentation), progress photos and as-built documentation for the CIP.

Engineer Services:

Provide a Structural Engineer with the experience and knowledge to review planned development on adjacent properties that may impact TJPA facilities, and recommend modifications to a construction activity or site conditions, as appropriate, to mitigate potential impacts to any TJPA facility.

**APPENDIX B**  
**FEES**  
**(CALCULATION OF CHARGES)**

This Appendix B sets forth the method for fees (calculating charges) to be invoiced by the Contractor for services rendered under this Agreement. Contractor represents that all charges invoiced under this Agreement shall be made in good faith for services performed and shall conform to the schedule set forth in this Appendix B. Contractor acknowledges and agrees that all information supporting the amounts listed in this Appendix B and any other requests to the TJPA for payment or approval may be subject to investigation as a false claim, as provided in paragraph 8 of this Agreement.

**A. CONTRACT COSTS**

The Contract Costs shall not exceed Two Million Dollars (\$2,000,000). The Contract Costs are made up of (1) Direct Labor Costs of Contractor, (2) Other Direct Costs, and (3) Direct Labor Costs of Subcontractors.

**1. Direct Labor Costs - Contractor**

The TJPA shall compensate the Contractor the Base Hourly Rate plus the Overhead (Company Overhead plus Fringe Benefits plus General Admin) Rate multiplied by the number of hours worked in the invoice period. The formula to calculate Direct Labor Costs shall be as follows: ([Base Hourly Rate] + [Overhead Rate]) x number of hours = Direct Labor Costs.

**a. Base Hourly Rate**

The parties intend that the Contractor perform services primarily on a cost reimbursable basis. Contractor has submitted to the TJPA audited individual hourly base salary rates (the "Base Hourly Rate"), attached to this Appendix B as part of Appendix B-1. The TJPA acknowledges and agrees that Base Hourly Rates may be adjusted annually beginning January 1, 2023 upon request of the Contractor and approval at the sole discretion of the TJPA Interim Executive Director. The amount of such annual adjustment, if any, is limited to a maximum of the CPI annual average percent change increase (San Francisco-Oakland-Hayward for Urban Wage Earners and Clerical Workers, not seasonally adjusted) for the previous calendar year. If the Index declines or shows no increase, Base Hourly Rates shall not increase. Wage rates which are set by a federal or state published scope of work and prevailing wage rate shall be increased in conformance with applicable published increases. Notwithstanding the foregoing, in no event during the term (including any extension of the term pursuant to the TJPA's option) shall any Base (Direct) Hourly Rate exceed \$130 (rate cap).

The following direct labor costs (rates which may exceed the Base Hourly Rate rate cap) are allowable only to the extent that they are authorized in an accepted Task Order or by prior written approval of TJPA's Interim Executive Director or designee.

- Principal or Partner costs
- Expert and senior specialist costs
- Administrative costs

The following direct labor costs are not allowable without the prior written approval of TJPA's Executive Director or designee: Premium costs incurred as a result of working overtime or holidays. 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 with the terms and conditions below.



## b. Indirect Costs (Overhead Rate)

Contractor has submitted to the TJPA an audited overhead rate of 115.18% (the "Overhead Rate"). The Overhead Rate includes all indirect costs of labor for each employee. In no event shall the TJPA be responsible to the Contractor for the payment of labor or overhead costs in excess of the Base Hourly Rate plus the Overhead Rate. The Overhead Rate may be adjusted annually by submitting to the TJPA for review and approval previous year audited overhead rate documentation. The established and approved Overhead Rate shall remain in effect during each Task Order; recalculation/adjustment of previously submitted invoicing and billing due to updated approved Overhead Rate will not be allowed.

## 2. Other Direct Costs

The Contractor will be reimburse for certain direct reimbursable expenses, or Other Direct Costs ("ODCs"). Reimbursement for ODCs is based upon the Contractor's consistent treatment of these types of costs over the Contractor's company as a whole. Reimbursement for ODCs shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the TJPA.

The following items will be eligible for reimbursement as ODCs:

- 
- Permit Fees
- Field Testing
- Laboratory Testing
- Meal expenses associated with Project-related meetings
- Courier/Mailing
- Copier and blueprints
  - Copy machine and supplies
  - Miscellaneous reproduction necessary for Project services

Any item not listed above shall not be eligible for reimbursement as an ODC. For the avoidance of doubt, ineligible items include, but are not limited to:

- Travel expenses (unless specifically requested or authorized by TJPA)
- Contractor personnel relocation costs
- Any home office labor charges or pass-through, including but not limited to administrative and clerical personnel time
- Entertainment expenses
- Home office expenses
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, non-Project specific computer hardware or software, communication devices, and electronic equipment
- Meal expenses which are not related to Project-related business trips, including refreshments and working lunches with TJPA staff
- Postage and courier services not requested or approved by TJPA
- Costs of preparing the proposal for the Project
- Taxes
- Insurance premiums
- Cost of any equipment, tools, or vehicles hired, leased or purchased for the performance of services

## 3. Direct Labor Costs - Subcontractors

The parties intend that the Contractor obtain subcontracted services primarily on a cost reimbursable basis. The approved Subcontractors and their respective Base Hourly Rates and Overhead Rates are listed in Appendix B-2 to this Agreement. If a Subcontractor's rates are not audited as of the date of this Agreement, the rates shall be subject to audit and no payments shall be made for a Subcontractors' services until such time as an audit is completed; actual payments shall be made only upon the audited rates. All restrictions on the Contractor's rate and fee charges shall apply to Subcontractors' rate charges.

#### B. CONTRACT FEE

The Contract Fee shall not exceed One Hundred, Forty Thousand Dollars (\$140,000). The Contract Fee is made up of (1) Contractor Fixed Fee, (2) Subcontractor Fixed Fee, and (3) Contractor Administration Fee.

Contractor shall invoice its profit and fee (the "Fixed Fee") at a rate of 7% of Contractor's Direct Labor Cost.

Subcontractors shall invoice their Fixed Fees at the rates specified in Appendix B-2, and in no case at a rate exceeding 7%, for subcontractors' Direct Labor Costs.

Contractor shall invoice a subcontractor administration fee (the "Administration Fee") at a rate of 2% of subcontractors' Direct Labor Costs. No Administration Fee shall be charged for Subcontractors at the second tier or lower.

The Fixed Fee rate and Administration Fee rate shall remain in effect during the entire term of this Agreement, including all extensions. The Contractor may invoice the Fixed Fee rate and Administration Fee rate only on Direct Labor Costs and on no other charge under this Agreement (in particular, there shall be no fee allowed for Contractor's or Subcontractors' Other Direct Costs).

#### C. Invoice Requirements

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

Invoices must be submitted to the TJPA in a complete form which meets all the above-stated requirements within 30 days of the invoice period. Due to fiscal year constraints, all invoicing for a particular fiscal year ending on June 30<sup>th</sup> must be submitted prior to July 15<sup>th</sup>. All invoice items that are not submitted in a timely manner to the fiscal year requirement cannot be reviewed for payment and will be rejected.

#### D. Limitations

Compensation will be allowable only to the extent consistent with federal regulations, including: the Federal Acquisition Regulations, 48 CFR Part 31; the Cost Accounting Standards, 48 CFR Part 30; the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; and the Cost Principles contained in Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

Compensation shall be further subject to the following requirements:

(i) Conform with the work to be performed pursuant to Task Order and 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.

**APPENDIX B – 1**

**CONTRACTOR'S AUDITED  
INDIVIDUAL HOURLY BASE SALARY RATES**

**Zoon Engineering, Inc.**  
Effective November 2021

Fringe Benefit: 73.65%  
Overhead Rate: 21.13%  
General Administration: 20.4%  
Fixed Fee: 7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Project Manager	\$90.00	\$130.00	\$207.22	\$299.32
Resident Engineer	\$85.00	\$125.00	\$195.71	\$287.80
Structures Representative	\$85.00	\$125.00	\$195.71	\$287.80
Structural Engineer	\$90.00	\$130.00	\$207.22	\$299.32
Office Engineer	\$75.00	\$110.00	\$172.68	\$253.27
Construction Manager	\$80.00	\$120.00	\$184.19	\$276.29
Scheduler	\$80.00	\$120.00	\$184.19	\$276.29
Senior Inspector	\$65.00	\$90.00	\$149.66	\$207.22
Inspector	\$50.00	\$85.00	\$115.12	\$195.71

**APPENDIX B – 2**

**SUBCONTRACTORS' AUDITED  
INDIVIDUAL HOURLY BASE SALARY RATES**

**Park Engineering, Inc.**  
Effective November 2021

Fringe Benefit: 42.17%  
Overhead Rate: 0%  
General Administration: 63.26%  
Fixed Fee: 7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Project Manager	\$90.00	\$130.00	\$197.83	\$285.75
Resident Engineer	\$80.00	\$125.00	\$175.85	\$274.76
Structures Representative	\$80.00	\$125.00	\$175.85	\$274.76
Structural Engineer	\$85.00	\$125.00	\$186.84	\$274.76
Office Engineer	\$50.00	\$85.00	\$109.91	\$186.84
Construction Manager	\$70.00	\$120.00	\$153.87	\$263.77
Scheduler	\$80.00	\$120.00	\$175.85	\$263.77
Senior Inspector	\$65.00	\$95.00	\$142.88	\$208.82
Inspector	\$50.00	\$65.00	\$109.91	\$142.88

**Substrate, Inc.**

Effective November 2021

Fringe Benefit:	30%
Overhead Rate:	30%
General Administration:	50%
Fixed Fee:	7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Project Manager	\$85.00	\$105.00	\$191.00	\$235.94
Resident Engineer	\$75.00	\$85.00	\$168.53	\$191.00
Structures Representative	\$75.00	\$85.00	\$168.53	\$191.00
Structural Engineer	\$80.00	\$95.00	\$179.76	\$213.47
Office Engineer	\$45.00	\$60.00	\$101.12	\$134.82
Construction Manager	\$80.00	\$90.00	\$179.76	\$202.23
Scheduler	\$70.00	\$90.00	\$157.29	\$202.23
Senior Inspector	\$65.00	\$80.00	\$146.06	\$179.76
Inspector	\$55.00	\$70.00	\$123.59	\$157.29



**Applied Materials and Engineering**  
 Effective November 2021

Fringe Benefit: 56.3%  
 Overhead Rate: 101.55%  
 General Administration: 0%  
 Fixed Fee: 7%

Classification	Direct Hourly Rate		Fully Burdened Hourly Billing Rate	
	Low	High	Low	High
Materials Sampler/Tester	\$43.69	\$62.27	\$120.54	\$171.80
Principal/Project Manager	\$75.00	\$105.00	\$206.92	\$289.69



# APPLIED MATERIALS & ENGINEERING, INC.

980 41<sup>st</sup> Street  
Oakland, CA 94608

Tel: (510) 420-8190  
FAX: (510) 420-8186  
e-mail: info@appmateng.com

## 2021 FEE SCHEDULE

The following hourly inspection rates are per State and Federal prevailing wage requirements and will be adjusted as per State/Federal increases.

### INSPECTION RATES

	<u>Per Hour</u>
1 Reinforced & PT Concrete	Per Proposal
2 Shotcrete	Per Proposal
High Strength	
3 Grout	Per Proposal
4 Structural Masonry	Per Proposal
5 Structural Steel	Per Proposal
6 Wood or Metal Framing	Per Proposal
7 Anchor/Dowel Testing	Per Proposal
8 Fireproofing	Per Proposal
9 FRP Application	Per Proposal
10 Compaction Testing/Sampling (Soils, Aggregate or Hotmix Asphalt)	Per Proposal

### UNIT TEST COSTS

Per Set

### SPECIAL INSPECTION DISCIPLINES

1 Concrete Cylinders, per set of 5 (includes pick-up)	\$300.00
2 PT Concrete Cylinders, per set 6 (includes pick-up)	\$320.00
3 PT Strand Tensile, each	\$350.00
4 Shotcrete cores for Nozzleman Qualifications, per set of 3*	\$1,800.00
5 Shotcrete Cores, production, per set of 3 (includes pick-up)	\$350.00
6 Masonry Mortar, per set o 3 (includes pick-up)	\$200.00
7 Masonry Grout, per set of 3 (includes pick-up)	\$220.00
8 Masonry Composite Prisms, per set 3 (includes pick-up)	\$750.00
9 High Strength Grout, per set 6 (includes pick-up)	\$330.00
10 Reinforcing Steel Tensile Test (up to # 10), each	\$110.00
11 Reinforcing Steel Tensile Test (# 10-14), each	\$150.00
12 Reinforcing Steel Bend Test (up to # 10), each	\$150.00
13 Splice (CTM 670) (up to #14), each	\$350.00
14 High Strength Bolt Tensile Properties, per set of 3	\$375.00
15 High Strength Nut Hardness & Proof Load, per set of 3	\$375.00

16	High Strength Washer Hardness & Proof Load, per set of 3	\$375.00
17	FRP Tensile Properties ASTM D3039, per set FRP Bond Strength ASTM D7522, per	\$650.00
18	set	\$750.00
19	Moisture Density Curve or Cal Impact, each	\$350.00
20	Fireproofing Density, each	\$120.00
21	Fireproofing Bond Strength, per set of 3	\$570.00

\* for walls up to 12" thick with nominal reinforcing upto # 8 in size. Extra fees will be applicable for larger bars and for boundary conditions.

### **SOILS & ASPHALT**

	Sieve Analysis,	
1	each	\$240.00
2	Sand Equivalent, each	\$125.00
3	Cleanness Value, each	\$280.00
4	Moisture Content, each	\$55.00
5	Moisture Density Curve, each	\$350.00
6	Percent Crushed Particle, each	\$250.00
7	Flat & Elongated Particles, each	\$250.00
8	Durability Index	\$265.00
9	Atterberg Limits, each	\$280.00
10	R-value, each	\$450.00
11	Stabilometer Value - field sample, per set of 3	\$540.00
12	Hveem Compaction, per set of 3	\$450.00
13	Theoretical Maximum Density, each	\$240.00
14	Asphalt Content, each	\$220.00
15	Asphalt Content- Calibration Factor, each	\$350.00
16	HMA Air Voids, each	\$65.00
17	HMA Bulk Specific Gravity, each	\$65.00
18	Hamburg Wheel Tracker, each	\$1,500.00
19	HMA Tensile Strength Ratio, each	\$1,300.00
20	LA Abrasion, each	\$500.00
21	Fine Angularity, each	\$250.00
22	Void in Mineral Aggregate, each	\$250.00
23	Dust Proportions, each	\$230.00
24	Superpave Production, each	\$4,500.00
25	Superpave JMF Verification or Startup, each	\$7,500.00
26	Marshall Compaction, set of 3	\$750.00
27	Marshall Stability, set of 3	\$450.00

**OTHER COSTS**

**Per Hour**

Administrative	
1 Staff	\$70.00
2 Project Manager	Per Proposal
3 Principal	Per Proposal
Final Affidavit,	
4 each	\$350.00
6 Mix Deisgn or WPS Reviews	\$185.00

**BASIS OF CHARGES**

<b>Minimum charge per call-out, show-up:</b>	4 Hours
<b>Minimum notice for scheduling inspections:</b>	48 Hours
<b>Work from 4-8 hours:</b>	Actual Time
	Portal-to-
<b>Travel to job site or shop:</b>	Portal
<b>Mileage:</b>	\$0.60
	To be
<b>Parking:</b>	provided
	Time & One
Work over 8 hours per day, or on Saturday, per hour	Half
Work on Sundays and Holidays, per hour	Double Time
Night Differential, per	\$30.00 per
hour	hour

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

Transbay Joint Powers Authority (TJPA), its Members, Directors, Officers, Employees and Agents.

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

Salesforce.com and all legal entities controlling, controlled by, or under common control with, directly or indirectly, salesforce.com and all of the officers, directors, permitted assigns, employees and agents.

The Additional Insureds listed in this Appendix may be amended in the future via a request in writing by the TJPA to add other parties based on future requirements.

## APPENDIX D

### USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

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

#### 1. DEFINITIONS

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

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

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

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

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

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

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

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

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

- (b). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA or FRA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

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

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

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

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



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

## 6. CIVIL RIGHTS REQUIREMENT

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

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

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

- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

**7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

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

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

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

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

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

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

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

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

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

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

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

the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

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

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

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

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

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

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

## **10. FLY AMERICA REQUIREMENTS**

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

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

## **11. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

## **12. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

## **13. RECYCLED PRODUCTS**

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

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

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

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

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

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

- (a). This Agreement is a “covered transaction” for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180, and the Contractor is required to comply with same. In

particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.

- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

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

**15. CLEAN AIR**

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

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

**16. CLEAN WATER REQUIREMENTS**

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

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

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

**17. BUY AMERICA REQUIREMENTS**

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

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

## **18. BREACHES AND DISPUTE RESOLUTION**

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

- (a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **19. LOBBYING**

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

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

- (a). The contractor shall submit the "New Restrictions on Lobbying Certification" if the regulation is applicable to the particular agreement.
- (b). (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

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

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

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

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

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

**21. SEISMIC SAFETY REQUIREMENTS**

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

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

standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **22. BONDING REQUIREMENTS**

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

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

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

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

#### **(a). Bid Security**

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

#### **(b). Rights Reserved**

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

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

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



the TJPA and pay over to the TJPA the difference between the bid security and the TJPA's total damages, so as to make the TJPA whole.

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

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

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

(a). Performance Bonds

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

(b). Payment Bonds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(a). Minimum Wages**

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

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

- (2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii). The classification is utilized in the area by the construction industry; and
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action

within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii). The classification is utilized in the area by the construction industry; and
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30)

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

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

apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

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

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

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

(d). **Apprentices and Trainees**

- (1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  
- (2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the

Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- (g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j). **Certification of Eligibility**
  - (1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
  - (2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
  - (3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.



**FLY AMERICA CERTIFICATION**

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance*

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

**BUY AMERICA CERTIFICATION**

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**NEW RESTRICTIONS ON LOBBYING CERTIFICATION**

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

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

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

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

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

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

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

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

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

## APPENDIX E

### PROPERTIES PLANNED FOR ACQUISITION

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

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

# Construction Management & Engineering Services contracts

November 18, 2021



# Background

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- As warranties expire and facility improvements age, capital repair/replacement efforts will accelerate over coming years
- Some capital work requires expertise and oversight beyond the scope of our engineering team performing day-to-day maintenance
- Neighboring projects (i.e. Parcel F) will perform construction that requires compliance with and oversight of contractual obligations to ensure protection of the Trainbox and the Bus Ramp



# List of Anticipated Projects

Location	Item
<b>B1</b>	Howard Street ramp to B-1 "Headache Bar" for vertical clearance restrictions.
	Howard Street automated security gates at the B-1 Ramp Guard Shack for both ramps. Harrison slip ramp gate install was \$100k.
	Howard Street OCS pole relocation at B-1 vehicle ramp. Design already approved for relocation by SFMTA.
	Engineering Workshop secured
	Fencing atop Howard St Ramp walls
	As-needed Waterproofing beyond GCP Warranty
<b>Street Level</b>	Bus Plaza - Driver Restroom Door revamp
	Venue power on Minna and Natoma
	Outdoor gas heaters for retail
	Building Perimeter Bollard coating
	Bike rack window protection
	Natoma dock door (code compliance issue)
	Restroom fixture hardening (Street, Deck, and Park level)
	Boulder Sealer
	Additional crosswalk ADA compliance at Muni Bus Plaza (muni coordinated)
	Retail Door lock replacement
<b>Bus Deck</b>	Inaccessible HVAC support above panels and conduits
	IDF rooms ventilation
	Building Monitoring for seismic movement Two separate scopes to monitoring the entire building: a. Thornton Tomasetti \$206k proposal b. LPI \$114k initial + \$48k annual monitoring proposal
	West end Bus Deck - 'No Pedestrian' permanent barriers and railing
<b>Park Level</b>	Elevator Housing Access (vs. use of lift)
	Holiday lighting elements (new electric locations through out park)
	Greywater System Upgrade
	Assorted Glass Replacement (annual recurring)
<b>BSF</b>	Fence portion replacement
<b>Bus Ramp</b>	Cable Stay Bridge deck methacrylate coating application
<b>Various</b>	SFFD Code compliance signage (for standpipes, etc)

# Scope of Service

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## **Construction Management (CM) Services:**

The TJPA requires CM Services to advise and manage in areas including, but not limited to:

- pre-construction services not related to DTX
- management tasks for the construction of each project identified on the previous slide
- support to the TJPA community and tenant outreach
- dispute resolution and claims support including photos and as-built management

## **Engineering Services (ES):**

The TJPA requires a highly-skilled and experienced Structural Engineer to:

- review the planned developments on adjacent properties that may impact TJPA facilities
- recommend modifications to developer's construction activity or site conditions, as appropriate, to mitigate potential impacts to any TJPA facility

# RFP Summary

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RFP Issued	June 25, 2021
Proposals Due (8 received)	August 6, 2021
Selection Committee evaluations	August 11, 2021
Interviews held (3 firms)	August 24, 2021
Contract preparation commences	August 25, 2021
Contract Negotiations commence	September 8, 2021
Contract Negotiations completed	November 1, 2021

# RFP Summary

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The TJPA received eight (8) proposals on or before the RFP submission date, from:

- Picot Inspection LLC
- ABA Global Inc.
- JBR Partners, Inc.
- **Zoon Engineering, Inc.\*\***
- **Dabri, Inc.\*\***
- CPM Associates, Inc.
- **TRC Engineers, Inc.\*\***
- Townsend Management, Inc.

\*\* Advanced to Interview phase by the Selection Committee

# Award Summary

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- **Dabri, Inc. – 91% SBE** (Neighboring Parcel and Base Building projects, as needed)
- **Zoon Engineering – 100% SBE** (Bus Ramp, Civil and Sitework projects, as needed)
- ✓ Contract Award of not-to-exceed \$2 million is no guarantee for the full amount. Direction via a Notice to Proceed (NTP) letter will be driven by available funding.
- ✓ Contract Duration is for 5 years with optional years

# Recommendation

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- TJPA staff recommends that the Board provide authorization to execute two Professional Services Agreements to create a bench of the following firms to provide services on an as-needed basis for five year terms with options to extend for two additional two year terms, with total compensation under all bench agreements not-to-exceed \$2,000,000:
  - **Dabri, Inc.** (Neighboring Parcel & Base Building projects, if needed)
  - **Zoon Engineering, Inc.** (Bus Ramp, Civil and Sitework projects, if needed)



# Questions?

**TJPA**  
TRANSBAY JOINT POWERS AUTHORITY

425 Mission Street, Suite 250, San Francisco, CA 94105 • 415.597.4620 • [www.tjpa.org](http://www.tjpa.org)