

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 11
FOR THE MEETING OF: June 10, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a professional services agreement between the Transbay Joint Powers Authority (TJPA) and Treadwell & Rollo, Inc. to provide environmental services during construction for a seven (7) year term and a total fee not to exceed \$650,000 with the option for the TJPA to extend the contract term for an additional 1-year option period.

EXPLANATION:

On February 26, 2010, the TJPA issued a Request for Proposals (RFP) for Environmental Services During Construction. The scope of work included providing assistance in planning, coordination and oversight of abatement work associated with the demolition of the Transbay Terminal and adjacent structures and removal of contaminated soils during the excavation for the new Transbay Transit Center. The successful candidate was required to have experience performing similar services on construction projects in San Francisco in the area governed by San Francisco Health Code Article 22A (Maher Ordinance), which requires soil analysis for a specified list of inorganic and organic chemicals at construction sites.

TJPA currently has contracts with three separate firms—ERM, Geomatrix, and Treadwell & Rollo—for as-needed environmental services. The three contractors have been providing pre-construction services such as subsurface environmental characterizations, environmental site assessments, and site/risk assessments associated with hazardous materials and hazardous waste, as well as monitoring the construction of the temporary terminal. Extending the ERM contract is the subject of another calendar item, and will allow ERM to continue to provide as-needed services for the pre-construction period. The Geomatrix contract has not been utilized beyond two task orders and will expire in November 2010. The Treadwell & Rollo contract will expire and be closed out in July 2010. The new contract with Treadwell & Rollo will be for environmental services during construction rather than pre-construction.

On April 2, 2010, the TJPA received eight proposals in response to the RFP. A selection committee evaluated each proposal for technical merit. Based on the selection committee's evaluation scores, two firms were invited for interviews. Following the interviews, the selection committee ranked Treadwell & Rollo the highest, determining that the firm was well qualified to perform the required services. The selection committee report is attached. TJPA staff subsequently negotiated the attached contract.

The contract would be for a maximum of \$650,000 with a base term of seven years and the option to extend for one year. Hourly rates and fee are fixed for the life of the contract, and overhead rates shall be based on audited rates.

The RFP had an SBE utilization goal of 20%. Treadwell & Rollo exceeded this goal in the proposal and the contract incorporates a 37% SBE goal.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute a professional services agreement between the Transbay Joint Powers Authority (TJPA) and Treadwell & Rollo, Inc. to provide environmental services during construction for a seven (7) year term and a total fee not to exceed \$650,000 with the option for the TJPA to extend the contract term for an additional 1-year option period.

ENCLOSURE:

1. Resolution
2. Selection Committee Report
3. Agreements

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) desires to contract with qualified and experienced firms for Environmental Construction Monitoring Services (Services) for the Transbay Transit Center Program; and

WHEREAS, On February 26, 2010, the TJPA issued a Request for Proposals (RFP) for the Services; and

WHEREAS, The TJPA received eight responses to the RFP that met all minimum requirements and a Selection Committee evaluated the responses per the criteria in the RFP; and

WHEREAS, The Selection Committee ranked the firm of Treadwell & Rollo, Inc. as highest and found that the firm was responsive to the RFP and well qualified to perform the scope of services in a cost-effective manner; and

WHEREAS, TJPA has negotiated the attached agreement with Treadwell & Rollo, providing for a base term of seven years and compensation not to exceed \$650,000, and further providing the TJPA with an option to extend the agreement for an additional one-year term; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a professional services agreement between the TJPA and Treadwell & Rollo to provide environmental construction monitoring services for a seven (7) year term for a total fee not to exceed \$650,000 with the option for the TJPA to extend the contract term for an additional 1-year option period.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 10, 2010.

Secretary, TJPA Board of Directors



Environmental Services During Construction Selection Committee Report April 2010

Executive Summary and Recommendation

In response to Request for Proposals No. 10-01 for Environmental Services during Construction for the Transbay Transit Center, issued on February 26, 2010, the TJPA received eight submittals from firms meeting all minimum qualifications on April 2, 2010. A selection committee convened on April 12, 2010 to evaluate the proposals and shortlisted two respondents. On April 15, 2010, the committee conducted oral interviews with the two respondents and finalized their scoring.

Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA negotiate a contract for services with **Treadwell & Rollo, Inc.**

Background

The TJPA is seeking the services of a qualified firm to provide assistance in planning, coordination and oversight of abatement work associated with the demolition of the Transbay Terminal and adjacent structures and removal of contaminated soils during the excavation for the new Transbay Transit Center. The successful candidate will have experience performing similar services on construction projects in San Francisco in the area governed by San Francisco Health Code Article 22A (Maher Ordinance).

Schedule

- | | |
|-------------------------------------------|-------------------|
| 1) RFP released | February 26, 2010 |
| 2) Pre-proposal Meeting | March 12, 2010 |
| 3) Deadline for submission of questions | March 19, 2010 |
| 4) Responses to questions posted | March 24, 2010 |
| 5) Due date for proposals | April 2, 2010 |
| 6) Selection committee evaluation meeting | April 12, 2010 |
| 7) Interviews | April 15, 2010 |

Selection Committee Members

Edmond Sum, Engineering Manager, TJPA

Carmen Ynami, SF DPW Bureau of Construction Management Site Assessment and Remediation Division

Scott Nakamura, SF DPH Environmental Health Management Hazardous Materials Division

RFP Outreach

An announcement of the RFP appeared in the *San Francisco Chronicle*; a copy of the announcement is Attachment A. On the same day, the TJPA posted the RFP on its website for the public to view

Attachment B

and print and it was also posted on the City Purchaser's Bids and Contracts website. TJPA sent an announcement of RFP availability to all who had registered on the TJPA website for notice of this particular RFP or who had expressed interest in procurements of this type. In total, the announcement was sent to 180 firms and individuals.

A pre-proposal conference was held on March 12, 2010, and 49 individuals attended.

The TJPA received eight submittals on the RFP due date, from:

- Baseline Environmental
- Brown & Caldwell
- Bureau Veritas
- ERM
- Professional Services Industries
- The Consulting Group
- TRC
- Treadwell & Rollo

Selection Committee Evaluation

The selection committee met on April 12, 2010 to review the written proposals and evaluate strengths and weaknesses using the criteria listed in the RFP. Following the discussion, each committee member individually filled out scoring sheets (Attachment B). The TJPA Contracts Compliance Manager collected the scoring sheets and tabulated the results. The scores are shown in Attachment C. Based on the results, the following two firms were invited to interviews:

- Baseline Environmental
- Treadwell & Rollo

Interviews were held with the two teams on April 15, 2010. Each team gave a brief presentation followed by questions from the selection committee. At the completion of the interviews, the selection committee discussed the merits of each team and individually completed scoring sheets (Attachment B). The TJPA Contracts Compliance Manager collected the scoring sheets and tabulated the results. The scores are shown in Attachment C. Treadwell & Rollo scored the highest.

All proposals submitted in response to this RFP are available for review at 201 Mission Street, Suite 2100 upon contacting the TJPA. Proposals will be retained for two years, except for the selected consultant's proposal which will be maintained on permanent record.

Reference

Request for Proposals No. 10-01 for Environmental Services During Construction issued by the Transbay Joint Powers Authority on February 26, 2010.

Attachment A

ANNOUNCEMENT

REQUEST FOR PROPOSALS NO. 10-01 ENVIRONMENTAL SERVICES

The Transbay Joint Powers Authority (TJPA) is issuing a Request for Proposals (RFP) for ENVIRONMENTAL SERVICES DURING CONSTRUCTION OF THE NEW TRANSBAY TRANSIT CENTER from firms with expertise in environmental consulting services associated with planning and oversight of soil, groundwater, and hazardous materials abatement and remediation.

An optional pre-proposal conference will be held on Friday, March 12, 2010 at 10:00 am at TJPA offices, 201 Mission Street, Ste. 2100, San Francisco.

Prospective Respondents may obtain copies of this RFP, including required forms, by visiting the TJPA's website at www.TransbayCenter.org (>TJPA>Doing Business with the TJPA>Current Contract Opportunities) or by contacting the TJPA at (415) 597-4620 or at demolition@TransbayCenter.org. Proposal packages must be received by the TJPA no later than 12:00 noon on Friday, April 2, 2010, at the address above. Late proposal packages will not be considered.

Attachment B

EVALUATION SCORE SHEET Environmental Monitoring During Construction

Name of Respondent: _____

Name of Panelist: _____ Signature of Panelist: _____

Criteria	Value	Reviewer Comment
<p>Qualifications & Experience of Firm <i>(70 point maximum; broken down below)</i></p> <p><u>Minimum Qualifications (Required)</u></p> <ul style="list-style-type: none"> • Relevant experience on construction projects in SF • Key personnel with knowledge of area soil conditions • Key personnel with appropriate CA licenses and/or certifications • Project Manager with experience on construction projects governed by Maher Ordinance • Knowledge of local/state/federal regulations including EPA, Bay Area Regional Water Quality Control Board, Dept. of Toxic Substances, BAAQMD, SF DPH, OSHA, CA DIR, Cal-OSHA • Personnel with Hazwoper training • Personnel with appropriate certifications for Asbestos, Industrial Hygiene, and Lead-based Paint <p><u>Additional Qualifications</u></p> <ul style="list-style-type: none"> • Firm's capabilities and experience (emphasis on San Francisco) – 15 points • Additional qualifications beyond Minimum Qualifications above – 10 points • Relevance of projects, at least one demonstrating experience working under Maher Ordinance – 20 points • Qualifications of proposed staff – 20 points • Additional information demonstrating successful completion of similar services for other public agencies – 5 points 		
<p><i>Project Approach (20 point maximum) to the following:</i></p> <ul style="list-style-type: none"> • Prep for demo/excavation/foundation work including how firm will assess available data and determine need for additional investigations, sampling as needed, assistance with plans • Interface with regulatory agencies such as DPH • Completion of work assignments within required timeframe/on short notice • Approach to assignment of work within team and how team will operate • Possible constraints/issues/problems that should be anticipated and suggested resolutions 		
<p>References <i>(10 point maximum)</i></p>		

Total _____ (100 points maximum)

Attachment B

FIRM NAME: _____

PANELIST: _____

DATE: _____

TJPA INTERVIEW SCORE SHEET
Environmental Consultant

	Description	Score	Notes
1.	Presentation (20 minutes maximum) <i>(maximum 12 points)</i>		
2.	Questions <i>(maximum 88 points;8 points/question)</i>		
	1. Maher Ordinance experience		
	2. Quality Assurance plans/procedures		
	3. Lines of communication		
	4. Level of training; certifications/courses renewed annually		
	5. Specific types of environmental monitoring team can provide		
	6. Hazmat assessment quals & experience		
	7. Managing soil offhaul		
	8. Stormwater pollution prevention regulations		
	9. Monitoring/sampling for de-watering		
	10. UST scenario		
	11. Additional constraints		

TOTAL SCORE: _____ (100 maximum)

Attachment C

Evaluation Scores (100 points max)

Firm	Panelist A	B	C	Total Score
Baseline	81	91	95	267
Brown & Caldwell	66	68	70	204
Bureau Veritas	71	79	85	235
ERM	70	81	79	230
PSI	44	33	58	135
The Consulting Group	51	37	56	144
TRC	71	68	76	215
Treadwell & Rollo	84	94	97	275

Interview Scores (100 points max)

Firm	Panelist A	B	C	Total Score
Baseline	82	79	89	250
Treadwell & Rollo	81	89	83	253

Total Scores

Firm	Evaluation	Interview	Total Score
Baseline	267	250	517
Treadwell & Rollo	275	253	528

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the _____ day of _____ 2010, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Treadwell & Rollo ("Contractor").

Recitals

A. The TJPA requires Environmental Monitoring During Construction ("Services") for the Transbay Transit Center Program ("Program").

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

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

D. The TJPA and the Contractor intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA") and certain contracting requirements of the City and County of San Francisco (the "City").

E. On _____, 2010, 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

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Finance Coordinator. 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.

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.

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 seven years from the Effective Date of the Agreement, as described in Section 3 below, provided that (i) the TJPA shall have the right to extend this Agreement for an additional one-year options by providing to the Contractor written notice of such extension(s) on or before the expiration of this Agreement, and (ii) any such extension(s) shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by resolution adopted by the TJPA Board of Directors.

3. Effective Date of Agreement

This Agreement shall become effective when the Finance Coordinator 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 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.

5. Compensation

All work under this Agreement shall be compensated on an hourly, or fixed fee by deliverable basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement for the contract period exceed six hundred fifty thousand dollars, (\$650,000). For the option period the total compensation under this Agreement shall not exceed seventy thousand dollars (\$70,000.00) The method of calculating charges under this Agreement is set forth in Appendix B, "Calculation of Charges," which is attached to this Agreement and incorporated here by reference as if fully set forth.

Hourly rates for services are to remain fixed during the entire contract period, including any option periods, except for reasonable cost of living increases.

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 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.

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 Finance Coordinator 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, 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 Finance Coordinator.

d. The Finance Coordinator 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. Contractor must submit required DBE 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 the Section entitled "Notices to the Parties".

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

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

10. Taxes

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement,

and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be 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 attached hereto, and shall not be changed or substituted without the prior written consent of the TJPA, but 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 Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by the TJPA.

14. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

The Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The 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 which 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 determined 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 in the following amounts and coverages.

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

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and

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

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

(5) Environmental Pollution Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

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

(1) Name as Additional Insured the TJPA, its members, directors, officers, agents, and employees.

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

c. All policies shall provide thirty (30) days' advance written notice to the TJPA of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled "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 three (3) 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-, 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. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Contractor under this Agreement.

16. Indemnification

a. General Indemnity

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

b. Limitations

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

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

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

c. Copyright Infringement

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

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the TJPA resulting in whole or in part from 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 the Section of this Agreement entitled "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. Left blank by agreement of the parties

20. Default; Remedies

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

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

(2) 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 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 Contractor or with respect to any substantial part of the Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (c) ordering the dissolution, winding-up or liquidation of the Contractor.

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

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

21. Termination for Convenience

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

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

(1) Halting the performance of all services (1) 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, and shall be invoiced as provided in Section 7. 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 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; FTA Requirements; Prompt Payment of Subcontractors.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, 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 written communications sent by the parties may be by U.S. mail, email, or fax, and shall be addressed as follows:

To TJPA: Ms. Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
(415) 597-4615 fax
MAyerdi-Kaplan@TransbayCenter.org

To Contractor: Dorinda C. Shipman, Principal-in-Charge
Treadwell & Rollo, Inc.
555 Montgomery Street, Suite 1300
San Francisco, CA 94111
dcshipman@treadwellrollo.com

Any notice of default must be sent by registered mail.

24. Proprietary or Confidential Information of the TJPA

The Contractor understands and agrees that, in the performance of the work or services under the Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain

proprietary or confidential details, the disclosure of which to third parties may be damaging to the TJPA. The 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. The Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

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.

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

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

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

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

26. News Releases/Interviews

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

27. Ownership of Results

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

28. Works for Hire

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

29. Audit and Inspection of Records

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

30. San Francisco Sunshine Ordinance

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

31. Public Access to Meetings and Records

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

32. Subcontracting

The Contractor is permitted to subcontract portions of the services to be performed under this Agreement as follows:

RGA Environmental; 1466 66th Street; Emeryville, CA 94608
Engineering/Remediation Resources Group, Inc. (ERRG); 115 Sansome Street, Suite 200; San

*Francisco, CA 94104
Gregg Drilling & Testing; 950 Howe Road; Martinez, CA 94553
McCampbell Analytical; 1534 Willow Pass Road; Pittsburg, CA 94565*

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 their services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed.

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; 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 contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any

person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

38. Prohibition on Political Activity with TJPA Funds

In accordance with San Francisco Administrative Code Chapter 12.G, 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 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the 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. Contractor Shall Not Discriminate

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

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses,

and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

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 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.

41. Small Business Enterprise (SBE) Requirements

Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal of 37 percent. Failure of the Consultant to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

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 and non-DBE prime contractors and subcontractors.

b. Prompt Payment of Withheld Funds to Subcontractors

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

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

If a Covered Employee of a Nonprofit Corporation works in San Francisco, than that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the San Francisco Administrative Code. As of January 1, 2009, Chapter 12R's minimum wage is \$9.79 per hour.

b. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for

participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. Each Contractor shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the TJPA may pursue the remedies set forth in this Section against Contractor based on the subcontractor's failure to comply, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

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

45A. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

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

f. Subcontracts

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

45B. Mentorship Program

The Contractor shall cooperate with the TJPA to either expand its existing intern mentoring program, or the Contractor shall create an intern mentoring program specifically for this Project. The purpose of the intern mentoring program shall be to involve local high school youth or residents interested in exploring professional careers in architecture, engineering, construction management, or related

professional services, into the professional services work of the Contractor on the Project. The intern mentoring program will be designed to engage, inform, and challenge youth, and to enlighten and motivate students toward professional careers in architecture, engineering, construction management, and related professional services. The program will include opportunities throughout the period of the Project for local high school youth or local residents to participate as a volunteer or paid intern in the conduct of substantive professional services work of the Contractor on the Project. The Contractor will contact and seek intern applicants from local high schools and community-based organizations. The Contractor shall report to the TJPA those individuals participating in the intern mentoring program, and their activities on the Project.

46. Earned Income Credit (EIC) Forms

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

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

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If, within thirty (30) days after the Contractor receives written notice of such a breach, 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 to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

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 Contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

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. 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

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

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 and County of San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA. This Article is not intended to require the Contractor to breach any lease or

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

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 the Section entitled "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. FTA Requirements

The provisions contained in "FTA Requirements for Professional Services Contracts," attached as Appendix C, 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 FTA terms and

conditions and any other terms and conditions of this Agreement, in the TJPA's sole determination, the FTA terms and conditions shall take precedence.

61. Compliance With Laws

The Contractor shall keep itself fully informed of the Charter of the City and County of San Francisco, of codes, ordinances and regulations of the City, and of all state 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.

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:

Maria Ayerdi-Kaplan, Executive Director

TJPA Legal Counsel

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

Secretary, TJPA Board

CONTRACTOR

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

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

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone Number

Company Name

Federal Employer ID Number

PROFESSIONAL SERVICES AGREEMENT

APPENDIX A

SCOPE OF SERVICES

The TJPA is preparing to demolish the existing Transbay Terminal and build the new multimodal Transbay Transit Center on the site of the existing terminal. The Consultant will provide environmental consulting associated with the demolition of the Transbay Terminal and the excavation and foundation work for the new Transit Center. The TJPA has compiled a history of past land uses and a library of environmental reports assessing soil contamination at the Transbay Terminal site and surrounding areas. This data has been augmented by recent soil and groundwater investigations done by TJPA consultants in 2008 and studies of hazardous materials in the Transbay Terminal and surrounding buildings and areas. Consultant shall perform additional investigations to assess in finer detail soil and groundwater contamination; assist in planning soil and groundwater remediation during excavation, utility construction and foundation work; prepare cost estimates; write reports; and perform field inspections and oversight for various types of regulatory, environmental, and health and safety issues associated with building abatement and demolition, soil remediation, and excavation.

The Consultant shall provide the Services by personnel listed below. Any changes in personnel will be subject to the TJPA's prior review and approval.

The following sections describe the primary scope of work and are not intended to be a complete list of all necessary work.

1. Excavation, Utility Construction and Foundation Work

Significant soil handling will be necessary to build the new Transit Center, which will require excavation, utility construction and foundation work that encompasses land within the footprint of the current Transbay Terminal and extending several hundred feet in all directions. The total length of the new Transit Center foundation is estimated to be approximately 1,300 feet. Excavation, utility construction and foundation work will include, but is not limited to, excavation (between 10 feet and 60 feet) for the lower level of the Transit Center, removal of treated wood piles that form the foundations of the current terminal, relocation and installation of utilities, and installation of shoring walls and buttresses using soil-cement mixing methods for the new Transit Center.

At least one underground storage tank is suspected to exist within the excavation area. Staging area for demolition and construction will be limited; therefore, excavated soils will not be stockpiled on site. Sufficient in situ soil profiling necessary for offhaul and acceptance by landfills must be completed prior to excavation.

Most of the site lies within an area that is governed by Article 22A of the Department of Public Health (commonly referred to as the Maher Ordinance).

The Consultant shall work closely with TJPA and other consultant staff to perform environmental services related to excavation, utility construction and foundation work, including the following:

- a. Perform sampling to adequately delineate soil and groundwater contamination for planning excavation and foundation work.
- b. Ensure that the soil profiling necessary for offhaul and acceptance by landfills is sufficient and completed prior to excavation.
- c. Assist with negotiations with landfill operators for soil disposal.
- d. Assist with development of excavation plans, groundwater management plans, and health and safety plans.

- e. Assist in planning and oversight associated with removal and remediation of underground storage tanks.
- f. Provide risk assessments, estimating, regulatory strategy and liaison, and construction support and monitoring.

2. Lead, Asbestos, PCB, and Universal Waste Abatement

Lead, asbestos, PCB, and other hazardous materials were used in the construction materials for the Transbay Terminal and adjacent structures. Although several abatement programs have removed and replaced many of these materials, significant quantities remain within the terminal structures. Some adjacent structures will also be demolished along with the Transbay Terminal.

The Consultant shall work closely with TJPA and other consultant staff to perform services related to lead, asbestos, PCB, hazardous materials, and Universal Waste abatement, including the following:

- a. Develop abatement plans and cost estimates, and oversee abatement activities prior to and during demolition of the terminal and adjacent structures.
- b. Perform additional sampling and classification as suspect materials are discovered before and during demolition of the terminal and adjacent structures.
- c. Provide air monitoring and sampling in and around the project area including low-volume and high-volume air sampling.
- d. Ensure the abatement contractor has obtained all permits, licenses, and approvals necessary to complete abatement work.
- e. Perform visual surveys and sampling to confirm abatement, including clearance sampling if requested.
- f. Collect and review data and reports generated by the abatement contractor including worker certifications, containment logs, air sampling results, waste disposal manifests, and water discharge results.

The TJPA reserves the right, in its sole discretion, to change this Scope of Services at any time during the term of the Agreement. The Consultant shall be paid for any work that meets the requirements of the Agreement and that is performed prior to the date of such change.

Consultant commits to provide Mr. Peter J. Cusack as the dedicated Project Manager and primary point of contact for all work. Consultant also commits to provide sufficient numbers of properly trained personnel when the work may involve contaminated and hazardous environments at no additional cost to the project for which the work is performed. Training shall be, at a minimum, the 40-hour Hazardous Waste Operations and Emergency Response Training Program (Hazwoper) and the associated 8-hour annual refresher training, in accordance with 29 CFR 1910.120 and 1910.134, and 8 CCR 5144 and 5192. Consultant also commits to provide sufficient personnel who are certified to practice as Asbestos Consultants, Industrial Hygienists, Asbestos Site Surveillance Technicians, and Lead-Based Paint Inspectors/Assessors or Sampling Technicians.

Personnel	Role
Dorinda Shipman	Principal-in-Charge
Peter Cusack	Project Manager
Dr. Estelle Shiroma	Risk Assessment
Matthew Hall	Remediation Engineer
Dustyne Sutherland	Project Scientist
Robert Milano	Field Sampling and Reporting
Anna Estandarte	Field Sampling and Reporting
Thomas Campitelli	Field Sampling and GIS
Steffen Steiner	Asbestos, Lead Based Paint and Universal Waste
Kenneth Pilgrim	Asbestos, Lead Based Paint and Universal Waste
Nigel Arscott	Asbestos, Lead Based Paint and Universal Waste
Rowan Tucker	Construction Remediation Manager
Tyson Appel	Construction Remediation Manager

PROFESSIONAL SERVICES AGREEMENT

APPENDIX B

CALCULATION OF CHARGES

This Appendix B sets forth the method for calculating charges to be invoiced by the Contractor for services rendered under this Agreement. This Appendix B does not modify or affect the Fixed Fee under the Agreement or any maximum fee specified in a Notice To Proceed issued 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. Charges for Services Performed by the Contractor

1. Direct Labor Costs

Contractor has submitted to the TJPA individual hourly base salary rates (the "Base Hourly Rate"), attached to this Appendix B as part of Appendix B-1. 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. In no event shall any Base Hourly Rate exceed \$100, for the original (seven-year) term of this Agreement.

Contractor has also submitted to the TJPA an overhead rate of 275% (the "Overhead Rate"). The Overhead Rate includes all direct and indirect costs of labor for each employee and 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 shall remain in effect during the entire term of this Agreement, including all extensions.

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

2. Profit and Fee

Contractor shall invoice its profit and fee at a rate of 10% (the "Profit/Fee Rate"), up to an amount not to exceed \$60,000.

The Profit/Fee Rate shall remain in effect during the entire term of this Agreement, including all extensions. The Contractor may invoice the Profit/Fee rate only on Direct Labor Costs and on no other charge under this Agreement. Under no circumstances shall the Contractor and/or subcontractor be reimbursed fee for the Overhead Rate exceeding one hundred fifty percent (150%).

B. Charges for Other Direct Costs

Direct reimbursable expenses, or Other Direct Costs ("ODCs"), shall include actual direct costs (with no mark up) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the TJPA. ODCs shall not exceed \$50,000 during the entire term of this Agreement, including all extensions.

The following items will be eligible for reimbursement as ODCs:

- Nuclear Moisture-Density Gauge
- Special Computer or Analytical Software Usage
- Copies and blueprints
 - Printing/reproduction necessary for Project services

Any item not listed above shall not be eligible for reimbursement as an ODC. 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

C. Charges for Services Performed by Subcontractors

The approved Subcontractors and their respective Base Hourly Rates and Overhead Rates are listed in Appendix B-1 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. The Contractor may charge the TJPA only the Subcontractors' Direct Labor Costs (calculated as provided above), multiplied by the Subcontractor's Profit/Fee Rate which shall not exceed 10%, multiplied by a Subcontractor Administration Fee of 2%. No additional Administration Fee shall be charged for Subcontractors at the second tier or lower. All restrictions on the Contractor's rate and fee charges shall apply to Subcontractors' rate charges.

D. 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 day'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, and the task order number and title, if applicable. Any authorized travel expenses must be approved in advance by the TJPA and must adhere to "TJPA Travel Policy for Consultants and Subconsultants" (<http://transbaycenter.org/tjpa/documents>).

APPENDIX B – 1

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

Treadwell & Rollo		
Position Description/Classification	Name of Staff Person	Base Hourly Rate [Maximum]
Principal-in-charge	Dorinda Shipman	76.00
Project Manager	Peter Cusack	50.00
Risk Assessment	Estelle Shiroma	65.00
Project Engineer	Matt Hall	44.00
Project Scientist	Dustyne Sutherland	36.00
Staff Scientist	Robert Milano	31.00
Staff Scientist	Anna Estandarte	30.00
GIS	Thomas Campitelli	31.00
Graphics	Judy Vicente	34.00
Senior Administration Support	LinLi Peng	30.00
Document Processing/Production	Chris Duan	29.00
Intern		20.00
The Overhead Rate is 275.00%.		

Treadwell & Rollo Equipment and Material FEE SCHEDULE

Description/Classification	Base Rate [Maximum]
Slide Hammer & Drive Sampler Assembly	75.00/day
pH, Temperature, Conductivity Meter	50.00/day
Grundfos Pump & Control Box	150.00/day
Hand Auger Assembly	40.00/day
Stainless Steel Bailer	12.00/day
Nuclear Moisture-Density Guage	13.00/hour
Portable Dynamic Cone Penetrometer	20.00/test
Water Level Meter	30.00/day
OVM	100.00/day
Oil/Water Interface Probe	75.00/day
Inclinometer	200.00/day
Inclinometer	30.00/hour
Handheld GPS	50.00/day
Dissolved Oxygen Meter	50.00/day
Peristaltic Pump	50.00/day
Draeger Pump	20.00/day
Digital Camera	20.00/day
LEL/O ₂ Meter	75.00/day
Battery Pack	15.00/day
Roll Tape	10.00/day
Portable Dust Monitor	115.00/day
Portable Dust Monitor	345.00/week
Portable Dust Monitor	1,035.00/month
Mini Troll Pressure Transducer	50.00/day
Mini Troll Pressure Transducer	225.00/week
Data logger - reading Piezometers	25.00/day
Digital Manometer	35.00/day
Digital Manometer	100.00/week
Stainless Steel Soil Sample Tubes, with Caps	7.00 Each
Brass Soil Sample Tube, with Caps	8.00 Each
Master Locks	15.00 Each
Disposable Bailers	12.00 Each
Decon Unit	12.00 Each
2-Inch Well Locking Caps	22.00 Each
4-Inch Well Locking Caps	25.00 Each
Dames & Moore Samples	24.00 Each

RGA Environmental		
Position Description/Classification	Name of Staff Person	Base Hourly Rate [Maximum]
Project Manager	Ken Pilgrim	49.00
Sr. Project Manager	Steff Steiner	57.00
CIH/Principal	Robert Gils	75.00
Industrial Hygienist	Nigel Arscott	28.00
Industrial Hygienist	Mike Reed	28.00
Sr. Industrial Hygienist	John Urban	32.00
Sr. Industrial Hygienist	Steve Gildersleeve	32.00
Sr. Industrial Hygienist	Remington Caldwell	32.00
Industrial Hygienist	Steve Rogers	28.00
Industrial Hygienist	Bill McIlhattan	28.00
Sr. Industrial Hygienist	Mike Bishop	32.00
Administrative Assistant	Robin Painter	20.00
Intern		20.00
The Overhead Rate is 275.00%.		

RGA Environmental Testing & Equipment FEE SCHEDULE	
Description/Classification	Base Rate [Maximum]
<u>ASBESTOS AND LEAD SAMPLE ANALYSES</u>	
PLM - Bulk (24 HOUR TURNAROUND)	20.00 Each
PLM - Bulk (RUSH TURNAROUND)	35.00 Each
PCM - Air (24 HOUR TURNAROUND)	20.00 Each
PCM - Air (RUSH TURNAROUND)	25.00 Each
TEM - Air (24-36 HOUR TURNAROUND)	125.00 Each
TEM - Air (RUSH TURNAROUND)	185.00 Each
LEAD AIR, BULK or WIPE BY FLAME AA (24 HOUR TURNAROUND)	30.00 Each
LEAD AIR, BULK or WIPE BY FLAME AA (RUSH TURNAROUND)	45.00 Each
TOTAL Dust (gravimetric) (24 HOUR TURNAROUND)	20.00 Each
TOTAL Dust (gravimetric) (RUSH TURNAROUND)	25.00 Each
<u>EQUIPMENT</u>	
DustTrak Dust Aerosol Monitor (TSI 8520) & Environmental Enclosure	150.00 / Day
Datalogging Noise Instrument with Environmental Enclosure	150.00 / Day
CO, CO2, Temperature and Humidity Meter	150.00 / Day
Explosive Gas Meter (MultiRAE for 5 Gases – LEL and VOC detection)	75.00 / Day

ERRG		
Position Description/Classification	Name of Staff Person	Base Hourly Rate [Maximum]
Program Manager		68.00
Project Manager		58.00
Senior Project Engineer/Geologist		58.00
Project Engineer/Geologist		41.00
Staff Engineer/ Geologist		30.00
Superintendent		45.00
Foreman		28.00
Operator		35.00
Laborer		28.00
Truck Driver		28.00
Intern		20.00
The Overhead Rate is 240.00%.		

Gregg Drilling Testing, Inc. Equipment and Labor Fee Schedule	
Description/Classification	Base Rate [Maximum]
Mud Rotary Drill Rig/Air Rotary Drill Rig with two person crew, portal to portal, includes one Water Truck	\$325/hour
CME 850 Track mounted HSA/Rotary Drill Rig with two person crew, portal to portal, includes one support truck	\$345/hour
Truck Mounted HSA Drill Rig with two person crew, portal to portal includes one support truck	\$235/hour
Track Mounted HSA / Direct Push Rig with two person crew, portal to portal includes one support truck	\$265/hour
Truck Mounted Direct Push Rig with one person crew, portal to portal	\$165/hour
Air Vacuum Excavation with two person crew portal to portal	\$210/hour
Truck Mounted CPT Rig with two person crew, portal to portal, includes one support truck	\$375.00/hour
Ram-set Sampling Rig, with two operators, portal to portal	\$165/hour
Groundwater Development, Sampling Rig, one operator, portal to portal	\$140/hour
Horiba U-10, Water Quality Meter	\$75/day
Submersible Pump	\$100/day
300 Gallon Water Tank Trailer	\$100/day
Water Truck Rig Tender	\$400/day
Service Truck	\$200/day
Front End Loader/Bobcat	\$300/day
Grout Pump/Steam Cleaner	\$150/day
Service Runs	\$150/hour
Const./Hand Auger Crew (2 person) portal to portal	\$150/hour
Concrete Coring 8" diameter	\$12.50/inch
Steam Cleaning at Yard	\$100/day
Additional Crew Member	\$40/man-hour
Premium Time (after 8 hours on site, nights and weekend work)	\$35/man-hour

Gregg Drilling Testing, Inc. Material Fee Schedule	
Description/Classification	Base Rate [Maximum]
PVC Well Casing - Schedule 40	
3/4, 1-inch diameter	\$3.50/foot
2-inch diameter	\$5.00/foot
4-inch diameter	\$10.00/foot
PVC Well Casing - Schedule 40	
(slot width 0.01-inch and 0.02-inch)	
3/4, 1-inch diameter	\$4.50/foot
2-inch diameter	\$8.00/foot
4-inch diameter	\$14.00/foot
PVC Caps/Plugs/Couplings (threaded)	
3/4, 1-inch diameter	\$3.00/each
2-inch diameter	\$10.00/each
4-inch diameter	\$15.00/each
PVC Caps/Plugs/Couplings (slip on)	
3/4, 1-inch diameter	\$1.50/each
2-inch diameter	\$5.00/each
4-inch diameter	\$10.00/each
Locking Caps	
3/4, 1-inch diameter	\$25.00/each
2-inch diameter	\$35.00/each
4-inch diameter	\$45.00/each
Wood Plugs	\$20.00/each
Monitoring Well Box	\$140.00/each
Anodized Stand Pipe	\$250.00/each
Filter Sand	\$12.00/bag
Bentonite Chips	\$12.00/bag
Bentonite Pellets	\$80.00/bucket
Bentonite Drill Mud/Grout	\$30.00/bag
Ready Mix Concrete	\$8.00/bag
Portland Cement	\$15.00/bag
Asphalt Patch	\$11.00/bag
Sample Rings	\$6.00/each
55-gallon Drum	\$55.00/each
5-gallon Buckets	\$30.00/each
Disposable Tip	\$25.00/each
1/4" or 1/2" Tubing	\$1.00/foot
1/4-inch S.S. implant	\$75.00/each
Vapor sample fittings	\$35.00/sample
Disposable Bailers	\$20.00/each
Traffic Cones	\$25.00/each
Ram-set Anchors	\$6.00/each

McC Campbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
ORGANICS		
Drinking Water – Chromatography		
502.2	VOCs by P&T and GC-ELCD-PID or GC-MS	\$110%
502.2 – TTHMs only	TTHMs (Total Trihalomethanes) by P&T and GC-ELCD or GC-MS	\$80
504.1	EDB, DBCP & 1,2,3-TCP by L-LE and GC-ECD	\$55
505	Regulated OC Pesticides and PCBs by L-LE and GC-ECD	\$75
507	Regulated ON/P Pesticides by L-LE and GC-NPD	\$120
508	Regulated OC Pesticides and PCBs by L-LE & GC-ECD	\$75
515.3	Regulated OC Acidic Herbicides by L-LE, Derivatization & GC-ECD	\$150
524.2	Regulated VOCs by P&T and GC-MS	\$100%
524.2	VOCs by P&T and GC-MS (full method target list + 5oxys + 113Freon)	\$120%
524.2 – TTHMs only	TTHMs (Total Trihalomethanes) by P&T and GC-MS	\$90
524m / SRL 123-TCPA	1,2,3-TCPA ± EDB, DBCP, 1,2-DCA by GC-MS SIM Mode	\$130
524m Chloral Hydrate	Chloral Hydrate by GC-MS SIM Mode	\$130
524m Cyanogen Chloride	Cyanogen Chloride by GC-MS SIM Mode	\$130
524m 1,4-Dioxane	1,4-Dioxane by GC-MS SIM Mode	\$130
525.2	Regulated SVOCs by L-SE and GC-MS	\$180
525.2m T&O	Geosmin & MIB (2-Methylisoborneol) by GC-MS (5ppt RL)	\$160
526	Regulated SVOCs by L-SE and GC-MS	\$150
528	Regulated Phenols by L-SE and GC-MS	\$150
531.1	Carbamates by HPLC w/ Derivatization	\$170
532	Phenyl Ureas by SPE and HPLC	\$160
547	Glyphosate by HPLC w/ Derivatization	\$120 w / \$150 s
548.1	Endothall by GC-ECD	\$160
549.2	Diquat and Paraquat by LSE and HPLC	\$160
550	PNAs by L-LE and HPLC	\$130
550.1	PNAs by SPE and HPLC	\$130

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
550.1m	'Nonylphenol' by SPE and HPLC	\$110
552.1	HAAs by LSE and GC-ECD	\$150
552.2	HAAs by LLE and GC-ECD	\$150
554	Aldehydes / Carbonyls by HPLC w/ Derivatization	\$150
554 Acrolein & 3-HPA	Acrolein & 3-Hydroxypropanal by HPLC w/ Field Derivatization (SFEI 108)	\$150
Effluent – Chromatography		
601m	HVOCs by P&T and GC-MS	\$65
601m-602m	HVOCs and Aromatics by P&T and GC-MS	\$100
602	Aromatic VOCs by P&T and GC-PID	\$45
608	OC Pesticides and PCBs by L-LE and GC-ECD	\$125
608	PCBs only by L-LE and GC-ECD (low level, 0.02 ug/L RL)	\$125
610	PNAs by L-LE and HPLC	\$130
613	2378-TCDD only (5ppq RL)	\$300
613m	Full list + congener groups (5ppq RL for 2378- TCDD)	pending
624	VOCs by P&T and GC-MS excluding Acrolein & 2-CEVE	\$100
624	Acrolein, Acrylonitrile & 2-CEVE by P&T and GC-MS	\$60
625	SVOCs by L-LE and GC-MS	\$230
1630	Methyl mercury	\$150,w / \$170,s
1660	Pyrethrins & Pyrethroids (aqueous or solids)	\$150
BAAQMD 33	CS ₂ Extractable C8-C14 Compounds by GC-FID	\$125
Hazardous Waste , Soils, Groundwater– Chromatography		
7580	Elemental Phosphorous by GC-NPD	\$160
8010Bm	HVOCs by P&T and GC-MS	\$65 ^{&,%}
8010Bm-8021Bm	HVOCs and MBTEX by P&T and GC-MS	\$100 ^{&,%}
8011	EDB & DBCP GC-ECD	\$55
8015B	Fuel Fingerprint / Multi-Range TPH(g,d,mo)	\$45 [@]
8015B	TPH(d, mo, k, jf, bo) by Direct Injection GC-FID	\$45 [@]

McCampbell Analytical Inc.

Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
8015 B	TPH(g, ss, ag) by P & T and GC-FID	\$45 ^{&}
8015 B - MA DEP	Determination of Aromatic, Aliphatic & Total HCs in Specified Carbon Ranges	\$235
8015 B - TPHCWG	Determination of Aromatic, Aliphatic & Total HCs in Specified Carbon Ranges	\$190
8015 B -8021B	TPH(g)-MBTEX by P & T and GC-FID-PID	\$45 ^{&,%}
8021B	MBTEX by GC-PID	\$45 ^{&,%}
8021B	HVOCs and Aromatics by P&T and GC-ELCD-PID or GC-MS	\$100 ^{&,%}
8032A m	Acrylamide by Derivatization & GC-MS	\$250
8041 m	Phenols by GC-MS	\$95
8081A	OC Pesticides by GC-ECD	\$75
8081A LL	OC Pesticides by GC-ECD with lowest detection limits for ESLs	\$100
8081A / 8082	OC Pesticides + PCBs by GC-ECD	\$125
8081A / 8082	Appendix IX / Appendix II OC Pesticides + PCBs by GC-ECD	\$125
8082	PCB Aroclors Only by GC-ECD	\$50
8082	PCB Aroclors and 19 Congeners by GC-ECD	\$135
8082m	PBBs, Hexa- & Octa-, Polybrominated Biphenyls by GC-ECD	\$150
8082m	PBDEs, 8 Congeners (25ppt RL) – Polybrominated Diphenyl Ethers	\$100
8082m	PBDEs, 8 Congeners (1ppt RL) – Polybrominated Diphenyl Ethers	\$160
8082m	PBDEs, >8 Congeners – Polybrominated Diphenyl Ethers	quote
8100 mod.	PNAs / PAHs by GC-MS	\$95
8141A	ON/P Pesticides by GC-NPD	\$130
8141A	Appendix IX / Appendix II ON/P Pesticides by GC-NPD	\$155
8151A	OC Acidic Herbicides by GC-ECD	\$150
8260B	VOCs ± Oxygenates Excluding Acrolein & 2CEVE by P&T and GC-MS	\$100 ^{&,%}
8260B	Acrolein, Acrylonitrile & 2CEVE by P&T and GC-MS	\$60 ^{&,%}
8260B	VOCs ± Oxygenates + TPHgas by P&T and GC-MS	\$150 ^{&,%}
8260B	Oxygenates ± EDB-12DCA by P&T and GC-MS	\$90 ^{&,%}

McCampbell Analytical Inc.

Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
8260B	MTBE + BTEX by P&T and GC-MS	\$90 ^{&,%}
8260B	MBTEX + TPHgas by P&T and GC-MS	\$120 ^{&,%}
8260B	MTBE Only by GC-MS	\$60 ^{&}
8260B	Appendix IX / Appendix II Volatiles	\$200
8260Bm	1,4-Dioxane (2ppb RL) ± EDB, DBCP by GC-MS	\$130
8260Bm / SRL 123-TCPA	1,2,3-TCPA ± EDB, DBCP, 1,2-DCA by GC-MS SIM Mode (10ppt RL)	\$130
8270C	SVOCs by GC-MS	\$180
8270C LL	SVOCs by GC-MS with lowest detection limits to meet more ESLs	\$300
8270C	SVOCs (basic list) + PCBs by GC-MS	\$248
8270C	Phenols Only by GC-MS SIM Mode	\$130
8270C	PNAs / PAHs Only by GC-MS SIM Mode	\$110
8270C	Methamphetamine by GC-MS	\$150
8270C	Morphine by GC-MS	\$150
8270C	Appendix IX / Appendix II Semivolatiles	\$325
8270C SIP	SIP SVOCs by L-LE and GC-MS	\$230
8280	2378-TCDD only (5ppq RL for 2378-TCDD in water)	\$300
8280	Full list + congener groups (5ppq RL for 2378- TCDD in water)	\$600
8310	PNAs / PAHs by HPLC	\$130
8310m / SM 10200	Chlorophyll <i>a</i> & <i>b</i> by HPLC	\$100
8315A	Carbonyls by HPLC	\$150
8315A Acrolein & 3-HPA	Acrolein & 3-Hydroxypropanal by HPLC w/ Field Derivatization (SFEI 108)	\$150
8316	Acrylamide, Acrylonitrile and Acrolein by HPLC	\$130
8318	Carbamates by HPLC	\$170
8330	Nitroaromatics and Nitramines by HPLC	\$145
8332	Nitroglycerin by HPLC	\$130
MAI-Alcohols	Alcohols by Derivatization & HPLC (X to XX ppb sensitivity)	\$150
MAI-Amines	Amines & Protonatable Nitrogenous Compounds by CIC	quote

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
MAI-Epichlorohydrin	Epichlorohydrin by Derivitization & HPLC (XX ppb sensitivity)	\$110
MAI-EthyleneGlycol	Ethylene Glycol by Derivitization & HPLC (X to XX ppb sensitivity)	\$110
MAI-Organic Acids	Various Organic Acids by HPLC-UV; also see Volatile Fatty Acids	\$60-125+ ea
MAI-Organic Lead	Tetramethyl & Tetraethyl Lead by GC (5ppb soil / 250 ppt water)	\$110
MAI-Organic Tin	Mono-, Di-, Tri- & Tetra-Butyl Tin by GC-MS	\$150
MAI-Volatile Fatty Acids	See Anions	---
Organics – Oil & Grease		
413.1	Total Recoverable O&G ± Silica Gel Clean Up	\$150
413.2	Total Recoverable O&G by IR Spectrometry ± S.G. Clean Up	\$45
418.1	Total Recoverable Hydrocarbons by IR Spectrometry ± S.G. Clean Up	\$45
418.1 to constant value	TRPH wo SG, followed by w SG clean up to constant value	\$150
5520B,E±F	O&G ± Silica Gel Clean Up	\$45
5520C±F	O&G by IR Spectrometry ± Silica Gel Clean Up	\$45
9070A	Total Recoverable O&G ± Silica Gel Clean Up	\$45
9071B	Total Recoverable O&G ± Silica Gel Clean Up	\$45
1664A	n-Hexane Extractable Material by Gravimetry ± S.G. Clean Up	\$45
MAI 418m	Quantitative analysis of 'vegetable' & 'petroleum' O&G fractions using IR spectr.	\$200
MAI FAME	Quantitative analysis of 'vegetable' & 'petroleum' O&G fractions by GC-FID	\$300
METALS		
Metals –200.8 / 6020A (ICP-MS) or 200.7 / 6010C (ICP), 200.9 / 7010 (GFAA), 245.2 / 7470 (CV Hg) or 245.7 / 1631E (CVAF Hg); NIOSH		
Groups		
CAM17	Ag, As, Ba, Be, Cd, Co, Cr, Cu, Hg, Mo, Ni, Pb, Sb, Se, Tl, V, Zn	\$110
PP13	Ag, As, Be, Cd, Cr, Cu, Hg, Ni, Pb, Sb, Se, Tl, Zn	\$100
RCRA8	Ag, As, Ba, Cd, Cr, Hg, Pb, Se	\$80
LUFT5	Cd, Cr, Ni, Pb, Zn	\$50
Major Elements as Oxides	Major Elements as Oxides after Alumino-silicate solids / Whole Rock Dissolution	\$160
Individual Elements		

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
ICP / ICP-MS,	Ex, Al, Ag... ; generally, extraction cost is extra except TTLC – see Extractions	\$15 1 st , \$10 ea. addl.
Common Metal		
ICP / ICP-MS,	Ex, Au, S, P... ; generally, extraction cost is extra except TTLC – see Extractions	\$35 - \$50 ea.
Uncommon Metal		
Hydrides by ICP-MS	As, Se ± Sb, Bi, Sn, Te, S, P	\$110-150 ea.
GFAA Metal	As, Pb, Se, Sb, Tl... ; generally, extraction cost is extra except TTLC – see Extractions	\$50 ea.
Special Metals		
Chromium VI	218.6, 7199 (IC); soil prices are for DI STLC or 3060A TTLC	\$35 w, \$85 / \$80 s
Ferrous Iron	SM 3500Fe B4c	\$60
Hg by CVAF	Hg (245.7 / 1631E) – ultra low RL	\$95
Hg by CVAA	Hg (245.2, 245.5, 7470, 7471)	\$50
Hg, organic (Methyl Hg)	See Organics, Chromatography, Effluent, EPA 1630	---
Lead, organic, total	HML 939-M; CA Title 22, Chapter 11, Appendix 11 (unspeciated)	\$60
Lead, organic, speciated	See Organics, Chromatography, MAI-Organic Lead	---
Phosphorous, elemental	See Organics, Chromatography, 7580	---
Tin, organic, speciated	See Organics, Chromatography, MAI-Organic Tin	---
ANIONS		
218.6	Hexachrome by IC; soil prices are for DI STLC or 3060A TTLC	\$35 w, \$85 / \$80 s
300.1 / 300.0 –Water	Common Anions: Cl ⁻ , Br ⁻ , SO ₄ ⁻² , F ⁻ , NO ₃ ⁻ as N, NO ₂ ⁻ as N, PO ₄ ⁻³ as P	\$18 ⁺ ea, \$60 for all
300.1 / 300.0-Water	Uncommon Inorganic Anions: I ⁻ , S ₂ O ₃ ⁻² , SCN ⁻ , IO ₃ ⁻ , SO ₃ ⁻² , etc.	\$60-125 ⁺ ea
300.1– Water, Disinf. ByP.	ClO ₂ ⁻ (Chlorite), ClO ₃ ⁻ (Chlorate), BrO ₃ ⁻ (Bromate w/ 1-2ppb RL), Br ⁻	\$80 ⁺
300.1m –Volatile Fatty acids	Volatile Fatty Acids: acetic, butyric, formic, hexanoic, iso-hexanoic, lactic, pentanoic, iso-pentanoic, propionic, pyruvic.	\$150
300.1-Water, Organic acids, individuals	Water Soluble Organic Anions / Acids: acetate, formate, oxalate, maleic acid, oxamic acid, tartaric acid, etc.	\$60-125 ⁺ ea
300.0 – Soil, CalTrans	Common Anions: Cl ⁻ , Br ⁻ , SO ₄ ⁻² , NO ₃ ⁻ as N, NO ₂ ⁻ as N; CalTrans Extr.	\$33 ⁺ 1 st , \$18 ea. addl
300.0 – Soil, DISTLC	Common Anions: Cl ⁻ , Br ⁻ , SO ₄ ⁻² , NO ₃ ⁻ as N, NO ₂ ⁻ as N; DISTLC Extr.	\$68 ⁺ 1 st , \$18 ea. addl
314	ClO ₄ ⁻ (Perchlorate, 0.5 ppb RL)	\$65 ⁺

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
317	BrO ₃ ⁻ (Bromate w/ 0.5ppb RL)	NA
9056	Cl ⁻ , Br ⁻ , SO ₄ ⁻² , F ⁻ , NO ₃ ⁻ as N, NO ₂ ⁻ as N, PO ₄ ⁻³ as P	\$18 ⁺ ea, \$100 for all
9058	ClO ₄ ⁻ (Perchlorate)	\$90 ⁺ w, \$140 s
WET CHEMISTRY		
Acidity	305.1 / SM2310 B	\$18
AGP	Acid Generating Potential, EPA 600/2-78-054	\$150
ANP	Acid Neutralizing Potential, EPA 600/2-78-054	\$50
AGP, AGPmax, ANP, NNP, NNPmin	EPA 600/2-78-054	\$250
Alkalinity, total	310.1 / SM2320 B	\$18w, \$50s
Alkalinity, speciated	310.1 / SM2320 B	\$18
Ammonia as N, Colorimetry	350.1, 350.2 / SM4500-NH ₃ BFG – SM4500-N _{org} C; AOAC	\$28 w; \$38 s
Ammonia as N, ISE	350.3 / SM4500-NH ₃ D (includes conductivity)	\$28 w; \$38 s
Ammonia, unionized	350.1, 350.2 / SM4500-NH ₃ BFG – SM4500-N _{org} C; 350.3 / SM4500-NH ₃ D (includes pH)	\$44 w; \$55 s
Bench Testing / Pilot Studies	Customized bench studies to evaluate pilot processes	quote
BOD _{5d} / cBOD _{5d}	405.1 / SM5210 B; Biochemical Oxygen Demand, carbonaceous BOD	\$41**
B S & W, approximate	ASTM D 1796-97; Bottom Sediments & Water as Approximate Vol. Phase Proportions	\$20
B S & W, full	ASTM D 1796-97; Bottom Sediments & Water as Vol. Phase Proportions	\$100
Carbon, DOC	415.3 / SM5310 B; Dissolved Organic Carbon	\$35
Carbon, IC	415.3 / SM5310 B; Inorganic Carbon (= Σ CO _{2,aq} + HCO ₃ ⁻ + CO ₃ ⁻²)	\$35 w; \$45, s
Carbon, POC	415.3 / SM5310 B; Purgeable Organic Carbon	\$35
Carbon, TC	415.3, 9060A / SM5310 B; AOAC; Total Carbon	\$35
Carbon, TOC	415.3, 9060A / SM5310 B; AOAC; Total Organic Carbon	\$35 w; \$45 s
Carbon dioxide, aq, free	SM2310 B or 415.3; + pH + SM4500-CO ₂ D calc. at 25°C	\$48 or \$65
Carbon dioxide, air	415.3 / SM5310 B; CO ₂	\$35
Cation Ex. Capacity	see Extractions	---
CBOD	Biochemical Oxygen Demand (Carbonaceous) 405.1 / SM5210 B	\$41
CEC	see Extractions	---

McC Campbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Chloride, potentiometric	SM4500-Cl ⁻ D (only for matrices not amenable to IC)	\$30
Chlorine, residual / total, specific form incl. ClO ₂	330.2 / SM4500-Cl DE / SM4500-ClO ₂ C	\$18 tot + \$80 form
Chlorophyll	see Chromatography \ Hazardous Waste \ 8310m - SM10200	---
Chromium VI	7196A / SM3500Cr B (used when IC is inapplicable)	\$35 w, \$85 s
COD	410.4 / SM5220 D / E / Walkley-Black mod; Chemical Oxygen Demand	\$32
Color	110.2 (non-DW) / SM2120 B (DW)	\$16 / \$60
Color, % Transmission	SM5910 Bm / City of Mt. View; 400-800nm %T	\$40
Conductivity	120.1 / 9050A / SM2510 B, CalTrans 424, SSSA	\$18
Corrosivity toward Steel	1110A	\$120
Cyanide, amenable	335.1,9012B / SM 4500-CN ⁻ G, includes total Cyanide results.	\$110
Cyanide, total	335.2, 335.3 / Kelada-01, 335.4 / 9010C-9012B ; SM4500-CN ⁻ ABCE	\$62
Cyanide, total	9010C & 9012B; SM4500-CN ⁻ ABCE; Total Cyanides in Solids	\$70
Cyanide, extractable	9013-9010C & 9012B / 9014; Base Extractable – Acid Distillable Cyanides in Oils / Greases / Floatables / Organic liquids / coarse debris	\$120
Cyanide, soluble	SM4500-CN ⁻ ABCE; DI Extractable – Acid Distillable Cyanides in Solids	\$120
Cyanide, WAD	SM4500-CN ⁻ ABCI; Buffered Weak Acid Distillable Cyanides in Solids	\$70
DOC	See Carbon, DOC	---
Dissolved O ₂	360.1 / SM 4500-O G	\$20
Flash point	1010	\$40
Fluoride, distilled	SM4500F ⁻ BD (only if 300.1 inappropriate)	\$120
Foaming Agents, anionic	425.1 / SM5540 C; MBAS / Anionic Surfactants	\$35
Foaming Agents, cationic	MAI; PBAS / Cationic Surfactants	\$35
Foaming Agents, non-ionic	SM5540 BD; CTAS / Non-ionic Surfactants	\$120
Free Fatty Acids in Oil	AOAC 940.28	\$50
General Mineral, water	Alkalinity (speciated), Ca, Fe, K, Mg, Mn, Na, Cl ⁻ , SO ₄ ⁻² , EC, pH, TDS	\$150,w
General Mineral, soil	{Ca, K, Mg, Na, Cl ⁻ , SO ₄ ⁻² } using DISTLC extraction, EC, pH, Inorganic Carbon	\$150,s
General Physical	Color, Odor, Turbidity	\$40

McCampbell Analytical Inc.

Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Hardness	SM2340 B & 200.7	\$25
Hexachrome	7196A / SM3500Cr B (used when IC is inapplicable); soil prices are for DI STL / 3060A TTLC w COD & pH	\$35 w, \$85 / \$142 s
Hydrogen Peroxide	MAI - colorimetric	\$35
Inorganic Carbon	See Carbon, IC	---
Karl Fischer Water	9000	\$80
Langlier Index	SM2330 B; CaCO ₃ Saturation Index based on pH, field temperature alkalinity, Ca ⁺² & TDS (or EC) / (Mg + Na + K + Cl + SO ₄)	\$68 / \$134
MBAS	See Foaming Agents, anionic	---
Moisture	ASTM D2216-05	\$10
Nitrogen, Ammonia, Colorimetry	350.1, 350.2 / SM4500-NH ₃ BFG; AOAC	\$28 w; \$38 s
Nitrogen, Ammonia, ISE	350.3 / SM4500-NH ₃ D (includes conductivity)	\$28 w; \$38 s
Nitrogen, Ammonia, unionized	350.1, 350.2 / SM4500-NH ₃ BFG; 350.3 / SM4500-NH ₃ D (includes pH)	\$48 w; \$58 s
Nitrogen, Nitrate + Nitrite	353.2 / SM4500-NO ₃ ⁻ F; Nitrate + Nitrite as N (used when IC is inapplicable)	\$40
Nitrogen, Nitrate	353.2 / SM4500-NO ₃ ⁻ F; Nitrate as N (used when IC is inapplicable)	\$30
Nitrogen, Nitrite	353.2 / SM4500-NO ₃ ⁻ F; Nitrite as N (used when IC is inapplicable)	\$30
Nitrogen, Organic	351.2 + 350.1 / SM4500-N _{org} AD + SM4500-NH ₃ FG; Organic Nitrogen as N (= TKN - Ammonia)	\$62
Nitrogen, TKN	351.2 / SM4500-N _{org} AD; TKN = Total Kjeldahl Nitrogen as N	\$34
Nitrogen, total	415.3m; Total Nitrogen by combustion & NO _x chemiluminescence / TCD	\$35
Nitrogen, total	351.2 + 353.2 / 300.1; [= Σ (TKN + NO ₃ ⁻ + NO ₂ ⁻)]; AOAC	\$100
Nitrogen, total	SM4500-N BC (UV / persulfate oxidation)	\$50
Odor w/o Dechlorination	140.1 / SM2150 B	\$15
Odor after Dechlorination	140.1 / SM2150 B / SM4500-CI DE	\$45
ORP	SM2580 B, MAI; Oxidation-Reduction Potential	\$20 w, \$40 s
Ozone	SM4500 O ₃ B	\$35
Paint Filter Test	9095A	\$15
pH	150.1 / 9045C / SM4500H ⁺ B	\$10
Phenolics, Total	420.1, 420.2, 420.4, 9066; SM5530 BCD	\$45

McCampbell Analytical Inc.

Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Phosphorous, Available	SM4500P E + UCD ANR 340; Available Phosphorous in soil as P	\$35
Phosphorous, Dissolved	365.1, 365.3, 365.4; / SM4500-P BEF; Dissolved Phosphorous as P	\$35
Phosphorous, Hydrolyzable	365.1, 365.3, 365.4; / SM4500-P BEF; Hydrolyzable Phosphorous as P	\$30
Phosphorous, Organic	365.1, 365.3, 365.4; / SM4500-P BEF; Organic (Total - Ortho – Hydrolyzable) Phosphorous as P	\$95
Phosphorous, Ortho	365.1, 365.3, 365.5; SM4500-P BEF; Ortho Phosphorous as P (used when IC is inapplicable)	\$25
Phosphorous, total	365.1, 365.3, 365.4; SM4500-P BEF; AOAC; SSSA #3, #5 Total Phosphorous as P	\$35
Phosphorous, total	SM4500-P I; Total Phosphorous as P	\$35
Physical Properties	API 40RP	\$112
Air Filled Void Space	API 40RP	---
Bulk Density	SSSA #5	\$27
TOC / FOC	415.1, SM5310 B, Total Organic Carbon / ASTM-D2974, Fractional Organic Content	\$75 / \$25
Moisture	ASTM D 2216-05	\$10
Porosity	SSSA #5	---
POC	See Carbon, POC	---
RCI	SW-846, Chapter 7	\$125
Resistivity, soil	CTM 643; includes pH, Cl ⁻ & SO ₄ ⁻²	\$250
Salinity	SSSA V5 Pt3 Chpt14	\$10
SAR, SAR _e	Sodium Adsorption Ratio (includes Na, Ca , Mg analysis)	\$50,w
Settleable Solids	See Solids, Settleable	---
SI	CaCO ₃ Saturation Index, See Langlier Index	---
Silica, Reactive	SM4500-SiO ₂ D	\$30
Solids, Dissolved (TDS)	160.1 / SM2540 C	\$20
Solids, Fixed Dissolved (FDS)	SM2540 CE	\$33
Solids, Settleable	160.5, SM2540 F	\$15
Solids, Total (TS)	160.3 / SM2540 B	\$20
Solids, Suspended (TSS)	160.2 / SM2540 D	\$20

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Solids, Volatile (TVS)	160.4 / SM2540 E	\$20w, \$30s
Specific Gravity	ASTM, MAI	\$10 w, \$75 s
Substance ID	MAI + tests	\$120
Sulfide, aqueous	376.2 / 9034 / SM4500-S ⁻² D; SM4500-S ⁻² F; SM4500-S ⁻² I / distilled	\$27 / \$75
Sulfide, solids	9030B & 9034 / SM4500-S ⁻² D Acid Soluble or Acid Insoluble Sulfides	\$75
Sulfide, extractable	9030B-9031 & 9034 / 376.2 ; Base Extractable – Acid Distillable Sulfides in Oils / Greases / Floatables / Organic liquids / coarse debris	\$120
Sulfite by titration	SM4500-SO ₃ ⁻² B	\$20
Sulfite by IC	300.0, MAI	\$60
Sulfur, total	415.1m; Total Sulfur by combustion & TCD (ICP- MS rec. for aqueous)	\$50
Surfactant, anionic	See Foaming Agents, anionic	---
Surfactant, cationic	See Foaming Agents, cationic	---
Surfactant, non-ionic	See Foaming Agents, non-ionic	---
Tannin & Lignin	SM5550 B	\$35 w, \$50 s
TDS	See Solids, Dissolved	---
TKN	See Nitrogen, TKN	---
TN	See Nitrogen, total	---
TOC	See Carbon, TOC	---
TS	See Solids, Total	---
TSS	See Solids, Suspended	---
Turbidity	180.1 / SM2130 B	\$15
TVS	See Residue, Volatile	---
UV254	SM5910 B	\$40
Water in Solvents	See Karl Fischer Water	---
VCC of Coatings	EPA D24	\$75
VCC for Powder of Coating	SCAQMD 316C	\$72
Air – Chromatography & Other Analytical Techniques (Tedlar, Summa, ST = Sorbent Tube, Filter / Cassette)		
Air Sampling Pump Rentals	Low (<0.2L/min) or high (2-5 L/min) flow	\$60 / 3 days

McCampbell Analytical Inc.

Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Alcohols	NIOSH 1400 / 2000m by HPLC-FLD (Tedlar bag or ST))	\$150
Aldehydes & Ketones	ASTM D 5197-03 by HPLC-UV (ST; also TO-15 from Summa)	\$150
Hexachrome, Particulates	NIOSH 7605 by IC-Colorimetry (Filter)	\$85
LEED Gases	VOCs + Formaldehyde + 4-PCH + CO from summa	\$285
Light Gases, Atmospheric	ASTM D 1946-90 / EPA 3C by GC-PDD / TCD (O ₂ , N ₂ , CO, CO ₂ ,) (Tedlar / Summa; Summa same price as Tedlar if TO-15 requested)	\$110 T, \$150 S
Light Gases, Hydrocarbons	ASTM D 1946-90 / EPA 3C by GC- FID (methane, ethane, ethene, actetylene) (Tedlar / Summa; Summa same price as Tedlar if TO-15 requested)	\$110 T, \$150 S
Light Gases, Atmospheric + Hydrocarbons	ASTM D 1946-90 / EPA 3C by GC-PDD / TCD / FID (O ₂ , N ₂ , CO, CO ₂ , methane, ethane, ethane, actetylene) (Tedlar, Summa; Summa same price as Tedlar if TO-15 requested)	\$165 T / \$205 S
Light Gases, Inert	ASTM D 1946-90 / EPA 3C by GC-PDD / TCD (He, Ne, Ar, Kr, Xe) (Tedlar, Summa)	quote
Light Gases, Hydrogen	ASTM D 1946-90 / EPA 3C by GC-PDD (H ₂) (Tedlar, Summa)	quote
Mercury, vapor	NIOSH 6009 by CVAA or CVAFS (ST)	\$60
Metals, Particulates	NIOH 7303 by ICP-MS (Filter)	\$20 1 st , 10 ea. addl.
Methane, Ethane & Ethene in Water	RSK 175 (VOA)	\$110
OC & ON Herbicides	NIOSH 5602 (ST, pricing includes tubes)	\$218 1 st , \$167 addl
OP Pesticides	NIOSH 5600 (ST, pricing includes tubes)	\$198 1 st , \$147 addl
Organic Lead	NIOSH 2534m (Tetramethyl & Tetraethyl Lead) by GC (ST)	\$110
Particulates, Respirable	NIOSH 0600	\$25
Particulates, Total	NIOSH 0500	\$22
PCBs	NIOSH 5503 by GC-ECD (ST)	\$70
Phenols	NIOSH 2546 by GC-MS SIM mode (ST)	\$130
PNAs	NIOSH 5506 by HPLC UV-FLD (ST)	\$130
TPH (d/o)	NIOSH 1550 by GC-FID (ST)	\$75
TPH(g)	TO-3 by FID (Summa / Tedlar)	\$45 / \$75
TPH(g) Fractionated	MA DEP APH by GC-MS (Summa); ali-aro frac. of vapor phase TPH	\$250
VOCs, LEED Gases	VOCs + Formaldehyde + 4-PCH + CO from summa	\$285

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
VOCs +- TPH(g) soil gas	TO-14, TO-15, soil gas by GC-MS (Summa or Tedlar)	\$200, +\$35
VOCs, IPA only	TO-15, IPA only for soil gas from Tedlar by GC-MS; Client / Lab supplied Tedlar	\$60 / \$75
VOCs +- TPH(g) indoor air	TO-14, TO-15, indoor air by GC-MS, RL= 0.1ppbv (Summa)	\$250, +\$35
VOCs, SIM, indoor air	SIM mode for TO-15 compounds having ESL indoor air limits < 0.1 ppbv	\$300, +\$35
Pesticides & Other Organics in Food (Plant or Animal Matter)		
Acrylamide	EPA 8316m / USFDA / AOAC by HPLC	\$130
Aldehydes & Ketones	EPA 8315m by HPLC-UV	\$150
Carbamates	CDFA PRSM / EPA 8318m by HPLC w/ Derivatization	\$220
OC Acidic Herbicides	CDFA PRSM / EPA 8151m by GC-ECD w/ Derivatization	\$250
OC Pesticides	CDFA PRSM / EPA 8081m by GC-ECD	\$175
ON/P Pesticides	CDFA PRSM / EPA 8141m by GC-NPD	\$230
Phenols	EPA 8270m by GC-MS SIM mode	\$130
PNAs	EPA 8270m by GC-MS SIM mode	\$140
VOCs	EPA 8260m by GC-MS	\$130
Microbiology: Bacteria, Fungi & Algae Testing		
Algae Identification	SM 10900 CD (microscope)	\$100
Aeromonas hydrophila	SM9260 L (SP, MF, MTF)	\$100
Coliforms, Total & E Coli (+/-)	SM9223 B (EST)	\$35
Coliforms, Total & E Coli (Enumeration)	SM9223 B (EST – Idexx Colilert); SM9221 B (MTF/MPN); SM9222 B (MF)	\$45
Enterococci	SM9230 B (MTF/MPN); Idexx Enterolert	\$35
Fecal Coliform	SM9221 E (MTF/MPN); SM9222 D (MF)	\$35
Fecal Streptococci	SM9230 B (MTF/MPN)	\$35
Heterotrophs	Idexx SIM (Spread) Plate; SM9215 C (Spread Plate); SM9215 B (Pour Plate)	\$35
Hydrocarbon Degradars	ASTM D6974-04 modified	---
Iron Utilizers	SM9240D (microscope/culture)	\$45 / \$150
Klebsiella	SM9222 F (MF)	\$60
Legionella	SM9260 J (MF)	\$120

McCampbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Pseudomonas aeruginosa	SM9213 E (MF or Direct Spread Plate Count)	\$60
Salmonella (+/-)	SM9260 B (media culture, presence or absence with serological confirmation)	\$100
Salmonella (Enumeration)	SM9260 D (media culture with serological confirmation)	\$150
Shigella (+/-)	SM9260 E (MF/Centrifugation)	\$100
Staphylococcus aureus	FDA BAM (Direct Spread Plate Count with serological confirmation)	\$85
Sulfur Utilizers	SM9240D (microscope/culture)	\$45 / \$150
Yeast and Mold Count, Total Viable	FDA BAM (Direct Spread Plate Count)	\$35
Acute Toxicity Fish Bioassay Testing		
Prices quoted for Fathead Minnows. For Sheepshead Minnows or Rainbow Trout add \$60 net30 or \$67 post30.		
CA DFG (Polinsi & Miller)	CA Title 22 Hazardous Waste 96h LC ₅₀ Acute Screen	\$240
CA DFG (Polinsi & Miller)	CA Title 22 Hazardous Waste 96h LC ₅₀ Acute Definitive	\$400
EPA 2000 (821-R-02-012)	96h Static Non-Renewal Acute Screen for Effluent	\$240
EPA 2000 (821-R-02-012)	96h Static Non-Renewal Acute Screen for Receiving Water	\$360
EPA 2000 (821-R-02-012)	48h Static Non-Renewal Acute Screen for Effluent	\$200
EPA 2000 (821-R-02-012)	48h Static Non-Renewal Acute Definitive Test for Effluent	\$310
EPA 2000 (821-R-02-012)	96h Static Renewal-1x48h Acute Screen for Effluent	\$280
EPA 2000 (821-R-02-012)	96h Static Renewal-3x24h Acute Screen for Effluent	\$360
EPA 2000 (821-R-02-012)	96h Static Non-Renewal Acute Definitive Test for Effluent	\$350
Extractions / Preparations[^]		
Ashing	Thermal combustion preparation for metals or oxide determinations	\$25
ASTM C 1580-05	DI Extraction of Soils for Sulfate	\$75
Bench Testing / Pilot Studies	Customized bench studies to evaluate pilot processes	quote
Bioavailability	Synthetic stomach acid extraction for metals & organics	\$100
Cal Trans 417 / 422	DI Extraction for anions in soil (DI STLC may yield higher values)	\$15
CEC, NH ₄ Ac	EPA 9080; Cation Exchange Capacity inapplicable to calcareous soils	\$60
CEC, NaAc	EPA 9081; Cation Exchange Capacity that is generally applicable	\$60
CEC, BaAc	EPA 9081m; Cation Exchange Capacity used by	\$60

McC Campbell Analytical Inc.		
Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
	UCD DNR	
Compositing	Less than 5:1 free	\$3 per core
Ex. Cations, NH ₄ Ac	Exchangeable Cations using ammonium acetate	\$25
Ex. Cations, Mehlich	Exchangeable Cations & Heavy Metals using Mehlich III solution	\$25
Ex. Cations, H & S	Exchangeable Cations & Heavy Metals using Havlin & Soltanpour solution	\$25
Filtration	In-house (laboratory) filtration for dissolved metals using 0.45 um filter	\$5
GPC Clean-up, EPA 3640A	Gel Permeation Preparative Chromatography, including QC	\$150
Metals, Available	Metals available for plant uptake using dilute HCl extraction	\$25
Metals, Available	Metals available for plant uptake using dilute HCl & H ₂ SO ₄ extraction	\$25
Metals, Available	Metals available for plant uptake using chelation extraction	\$25
Metals Dissolution	Concentrated oxidizing acids dissolution of solid metals	\$25 - \$100
Silica Gel Clean Up, in-a-vial style (EPA 418.1)	Silica Gel Clean Up of solvent extracts, in-a-vial style (free for 418.1)	\$5 per sample
Silica Gel or other Bench Column Clean Up (EPA 3630C)	Bench Column Clean Up of solvent extracts, cost depends on complexity	\$50-150 per sample
Soil, Saturated Extr.	Just water saturated extraction of soil for EC, pH, solution cations, SAR _e	\$25
Soil, 10:1 Extr.	10ml DI : 1g soil extraction ratio for solution cations, SAR	\$15
STLC	California WET Test	\$50
DI STLC	California WET Test modified to use DI water	\$50
Whole Rock Dissolution	Fusion of rock / alumino-silicate solids	\$80
Zemo Diss. HCs ± SG c.u.	Dawn Zemo Methodology for Dissolved HCs ± SG cleanup	\$quote
EPA 300.0	DI Extraction for anions in soil (Cal Trans 417 / 422 is recommended)	\$15
EPA 1311	TCLP; Toxic Characteristic Leaching Procedure	\$50
EPA 1311	ZHE TCLP for Volatiles (Zero Head Space Extractor = ZHE)	\$100
EPA 1312	SPLP; Synthetic Precipitation Leaching Procedure	\$50
EPA 3050B mod	TTLC, Large volume (70g initial sample weight)	\$125
EPA 3060A	TTLC Hexachrome (included in price of analysis)	\$NC
Miscellaneous		

McC Campbell Analytical Inc.

Method	Analysis	Pricing for 5 Day Turn Around Time Net 30 days
Air Sampling Pump Rentals	Low (0.05 - 0.2L/min) or high (1-5 L/min) flow	\$60 / 3 days; \$90 / 1 wk; \$50 round trip shipping
Chromatogram Fee	Less than 5 per COC free	\$15
EDF Reporting Fee	CA AB 2886	³ \$25 per report*
EPA 5035 Handling Fee	EnCore or VOA style	\$5 per analysis
Open Scan Fee	The five most significant unidentified peaks in GC-MS chromatogram	\$15 per peak
PM10 Monitor	PDR-1000AN Data Logger for continuous PM10 monitoring	\$100/day / \$300/week
24hr, 48hr & 72hr, TAT rush charges are 2X, 1.5X and 1.25X respectively, the 5 day TAT price. Same day rush charge will be 2.5X based on circumstances and availability.		
**BOD _{5d} & cBOD _{5d} require 5 days for testing. Aquatic fish toxicity methods require 4 days for testing. Routine TAT is 8d for these tests. 1.25x multiplier is charged for "rush" (<8d) TAT.		
% Note that VOAs containing water samples that are preserved differently (such as TSP versus HCl) will be analyzed separately and charged separately. For example, water samples from the same monitoring well that are collected in TSP preserved VOAs for MTBE by 8260B and HCl preserved VOAs for 8260B basic list will be analyzed separately and charged for both MTBE by 8260B and for the 8260B target list.		
+ \$10 charge per sample for clean up, when needed, for anions analyzed by IC; already included in TTLC Hexachrome price.		
*** Each phase in a multi-phase sample is charged separately for extraction & testing. For example, a water sample containing >0.5% sediment consists of two phases for STLC & TCLP purposes.		
@ Silica gel clean up is an additional \$5.6 per sample for the in-a-vial style or an additional \$56 per sample for column style; see Extractions Section.		
^ Add \$5 per analysis per sample for "whole container volatiles in soils" analyses (Encore or preserved VOA style).		
^ Extraction / preparation cost may be included in analytical price. If you need clarification please contact our staff.		
* \$25 up to \$5000 invoice total. Invoices greater than \$5000 will be charged at 2% of invoice total.		
# Testing can be done for any of the several hundred analytes listed in our comparison of target lists on our website and we are willing to set up for new compounds if requested. Our reported target list for a given method is comprised of a basic set of analytes to which compounds may be added. In general any analyte requested in addition to our basic target list will be charged \$50.00 plus the basic target list price. Clients who need a different basic target list on a repetitive basis can be accommodated with negotiated pricing. The usual set up charge for a compound that is not part of our current capability is \$250.00 & there is no fixed TAT & no guarantee of finding a successful analytical technique.		

PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

FTA REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

The FTA's requirements for agreements between the TJPA and a third party are summarized below. Certain FTA 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 FTA 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 FTA requirements and any other terms and conditions of the Agreement, in the TJPA's sole determination, the FTA requirements shall take precedence.

The following provisions (1-11) apply to all Agreements (excluding micropurchases).

1. DEFINITIONS

** *The Definitions apply to all Agreements.*

- (a). **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.
- (b). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.
- (c). **Federal Cooperative Agreement** means the instrument by which FTA awards Federal assistance to the TJPA to support a particular Project, and in which FTA takes an active role or retains substantial control.
- (d). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (e). **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. In addition to FTA Directives, certain U.S. DOT directives also apply to the Project.
- (f). **Grant Agreement** means the instrument by which FTA awards Federal assistance to the TJPA to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304.
- (g). **Government** means the United States of America and any executive department thereof.
- (h). **Project** means the task or set of tasks listed in the Approved Project Budget that is the subject of this Agreement, as well as any modifications stated in the Conditions to the Grant Agreement or Federal Cooperative Agreement applicable to the Project. In the case of the formula assistance programs for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. sections 5307, 5310, and 5311, respectively, the term "Project" encompasses both a program and each project within a program, as the context may require, to effectuate the

requirements of the Grant Agreement or Federal Cooperative Agreement.

- (i). **Recipient** means the TJPA.
- (j). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (k). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by FTA.
- (l). **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. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (m). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

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-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 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. FTA does not require the inclusion of these requirements in Subcontracts.*

****** *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 FTA 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 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 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 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 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 FTA Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed,

national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:

- (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA 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 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 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 FY2009-10 Annual Anticipated DBE Participation Level is 25.4 percent.

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

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

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

Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR Section 26.13[b]).

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

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

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

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

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

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

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

8. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

** *This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F and any replacement or revision thereof, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-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 FTA terms and conditions.

9. FLY AMERICA REQUIREMENTS

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

(a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

(b). The Contractor shall submit the "Fly America Certification" if the regulation is applicable to the particular Agreement.

- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

10. CARGO PREFERENCE REQUIREMENTS

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

The Contractor agrees to:

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

11. ENERGY CONSERVATION REQUIREMENTS

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

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

The following provisions (12-13) apply to Agreements exceeding \$10,000.

12. TERMINATION

****** *This requirement applies to all Agreements in excess of \$10,000, except when the Contractor is a nonprofit organization or institution of higher education. When the Contractor is a nonprofit organization or institution of higher education, this requirement applies to all Agreements greater than \$100,000.*

****** *Please be aware that the requirements in the Agreement regarding termination for convenience are more broadly applicable than the FTA Requirements described below. Both the requirements described below and the provisions in the Agreement are applicable to the Agreement.*

- (a). **Termination for Convenience (General Provision)** - The TJPA may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the TJPA. If the Contractor has any property in its possession belonging to

the TJPA, the Contractor will account for the same, and dispose of it in the manner the TJPA directs.

- (b). **Termination for Default [Breach or Cause] (General Provision)** - If the Contractor (1) does not deliver supplies in accordance with the Agreement delivery schedule, or (2) if the Agreement is for services the Contractor fails to perform in the manner called for in the Agreement, or (3) if the Contractor fails to comply with any other provisions of the Agreement, the TJPA may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the TJPA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the TJPA, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- (c). **Opportunity to Cure (General Provision)** - The TJPA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor a period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the TJPA's satisfaction the breach or default of any of the terms, covenants, or conditions of this within ten (10) days after receipt by Contractor of written notice from the TJPA setting forth the nature of said breach or default, the TJPA shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the TJPA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- (d). **Waiver of Remedies for any Breach** - In the event that TJPA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by the TJPA shall not limit the TJPA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
- (e). **Termination for Convenience (Professional or Transit Service Agreements)** - The TJPA, by written notice, may terminate this Agreement, in whole or in part, when it is in the Government's interest. If this Agreement is terminated, the TJPA shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.
- (f). **Termination for Default (Supplies and Service)** - If the Contractor fails to deliver supplies or to perform the services within the time specified in this Agreement or any extension or if the Contractor fails to comply with any other provisions of this Agreement, the TJPA may terminate this Agreement for default. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this Agreement.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the TJPA.

- (g). **Termination for Default (Transportation Services)** - If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this Agreement or any extension or if the Contractor fails to comply with any other provisions of this Agreement, the TJPA may terminate this Agreement for default. The TJPA shall terminate by

delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If this Agreement is terminated while the Contractor has possession of TJPA goods, the Contractor shall, upon direction of the TJPA, protect and preserve the goods until surrendered to the TJPA or its agent. The Contractor and the TJPA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the TJPA.

- (h). **Termination for Default (Construction)** - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this Agreement or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this Agreement, the TJPA may terminate this Agreement for default. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the TJPA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the TJPA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the TJPA in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

- (1). The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, acts of the TJPA, acts of another Contractor in the performance of a Agreement with the TJPA, epidemics, quarantine restrictions, strikes, freight embargoes; and
- (2). The Contractor, within ten (10) days from the beginning of any delay, notifies the TJPA in writing of the causes of delay. If in the judgment of the TJPA, the delay is excusable, the time for completing the work shall be extended. The judgment of the TJPA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the TJPA.

- (i) **Termination for Convenience or Default (Architect and Engineering)** - The TJPA may terminate this Agreement in whole or in part, for the TJPA's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

If the termination is for the convenience of the TJPA, the contracting officer shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the Agreement obligations, the TJPA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the TJPA.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the TJPA.

- (j). **Termination for Convenience of Default (Cost-Type Agreements)** - The TJPA may terminate this Agreement, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the TJPA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the Agreement. The Contractor shall account for any property in its possession paid for from funds received from the TJPA, or property supplied to the Contractor by the TJPA. If the termination is for default, the TJPA may fix the fee, if the Agreement provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the TJPA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the TJPA, the Contractor shall be paid its Agreement close-out costs, and a fee, if the Agreement provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the TJPA determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the TJPA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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 FTA 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 49 CFR Part 29, and the Contractor is required to comply with 49 CFR Section 29, Subpart C. In particular, the Contractor is required to verify that the Contractor, its “principals,” as defined at 49 CFR Section 29.995, and its “affiliates,” as defined at 49 CFR Section 29.905, are not “excluded” or “disqualified,” as defined at 49 CFR sections 29.940 and 29.945.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

The following provisions (15-20) apply to Agreements exceeding \$100,000.

15. BUY AMERICA REQUIREMENTS

****** *This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods valued at more than \$100,000; and agreements for the acquisition of rolling stock valued at more than \$100,000. This requirement does not apply to lower tier Subcontracts.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-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 or the product is subject to a general waiver. General waivers are listed in 49 CFR Section 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR Section 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
- (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.

16. BREACHES AND DISPUTE RESOLUTION

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

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

Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.

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

17. 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 FTA 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). The Contractor and each subcontractor shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting 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 obtaining any Federal contract, grant or any other award covered by 31 U.S.C. Section 1352. The Contractor and each subcontractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to a Federal contract, grant or award covered by 31 U.S.C. Section 1352. Such disclosures are forwarded from tier to tier up to the TJPA.

18. CLEAN AIR

** *This provision applies to all Agreements greater than \$100,000 and to subcontracts greater than \$100,000.*

- (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 the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000.

19. CLEAN WATER REQUIREMENTS

** *This provision applies to all Agreements greater than \$100,000.*

- (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 the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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, FTA 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 FTA 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 FTA 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 FTA. 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 FTA 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 FTA 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.