

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: November 12, 2020**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Interim Executive Director to execute a professional services agreement between the Transbay Joint Powers Authority (TJPA) and Sage Method, Inc. (Sage) for Program Management Information System (PMIS) software services for the Downtown Rail Extension (DTX) for a four-year term, with an option to extend the term for two additional three-year periods, and an amount not to exceed \$556,200.

EXPLANATION:

Phase 2 of the Transbay Program (Program), which comprises mainly the Downtown Rail Extension (DTX) project, requires a robust and proven PMIS to support collaboration and documentation between TJPA, Program participants, a multi-disciplinary engineering design team and future project stakeholders specifically for a large and complex public infrastructure project.

In June 2020, the TJPA in partnership with the Metropolitan Transportation Commission, San Francisco County Transportation Authority (SFCTA), Peninsula Corridor Joint Powers Board, California High-Speed Rail Authority, and City and County of San Francisco executed the San Francisco Peninsula Rail Program Memorandum of Understanding (MOU). The MOU and its attached Work Program address topics and tasks such as further engineering development of the DTX, cost estimating, budgeting, scheduling, project sequencing, project management, and delivery methods.

The TJPA is seeking consultants that specialize in the implementation of project management software. The scope of services includes the PMIS and collaborative file sharing application dedicated to the Phase 2 capital components. One software application will be used for the methodical process of collecting and managing Program and project information. The proposed enterprise solution is capable of project-specific customization. Scope includes software licensing, implementation, training, customization, maintenance, support, and closeout processes.

On July 2, 2020, the TJPA issued Request for Proposals (RFP) No. 20-07 for PMIS services. Notices advising potential proposers of the RFP were sent to 1,515 individual contacts who have signed up on the TJPA website for notice of TJPA service contracts as well as vendors listed by the DemandStar system. On August 14, 2020, the TJPA received ten proposals from firms meeting all minimum qualifications in the RFP.

A selection committee evaluated the written proposals for technical merit and determined that all of the respondents were qualified to meet the needs of TJPA. After scoring the written proposals, the selection committee shortlisted and invited four firms for software demonstrations and interviews. Following the interviews, the selection committee evaluated the demonstrations and interview criteria. The selection committee recommended Sage based on the firm's qualifications and price. The selection committee report is attached. The team led by Sage

(including subconsultants Kahua, InnoActive Group and Stellar) currently provides similar services to the following entities: San Francisco International Airport; UCSF; Pacific Gas & Electric Company; Golden Gate Bridge, Highway, and Transportation District; San Francisco Public Utilities Commission; San Francisco Public Works; San Francisco Municipal Transportation Agency – Central Subway; and Caltrain – Modernization. The specific PMIS software, Kahua, has been successfully implemented on large scale complex projects and has been selected by both federal and private teams (General Services Administration, Pennsylvania Turnpike Commission, CBRE, and Lend Lease) for program/project management software.

Based on the selection committee's recommendation, staff negotiated a professional services agreement (Agreement) with Sage, and the firm has signed the Agreement. The Agreement includes an Enterprise Services Agreement describing the terms and conditions related to the Kahua software.

The total compensation under this Agreement in the base term will not exceed \$556,200 for implementation, customization and software licensing. Compensation under the Agreement is primarily composed of (1) hourly rates for services of the Sage team in implementation and customization of the PMIS, and (2) fixed annual software services fees. Each annual software services fee must be pre-paid for the year.

Services and software procured under this Agreement will be authorized by TJPA staff through the issuance of Notice To Proceed (NTP). Task orders will establish a detailed scope of work, specify all deliverables, and include a cost for the work to be performed. They will also specify the maximum allowable amount of compensation similar to the level and scope of engineering services required under Phase 2. The Agreement Appendix B provides for budget and cashflow on a fiscal year basis upon projected Phase 2 project activities.

Staff will issue the first NTP following confirmation from SFCTA that the work is eligible for reimbursement from Prop K allocation number 105-914036 and 105-014037.

A 16.86 percent Small Business Enterprise (SBE) goal has been committed for this Agreement. The following SBE firms were submitted with the proposal and will be working on this contract:

- Sage Method Inc. (Prime)
- InnoActive Group

RECOMMENDATION:

Staff recommends that the Board authorize the Interim Executive Director to execute a Professional Services Agreement in the form attached with Sage Method, Inc. for Program Management Information System software services for a four-year term, with the option to exercise two 3-year extensions, and for an amount not to exceed \$556,200.

ENCLOSURES:

1. Resolution
2. Agreement
3. Selection Committee Report

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

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

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

WHEREAS, Phase 2 of the Transbay Program, which comprises mainly the Downtown Rail Extension (DTX) project, requires the services of a program management information system software consulting firm to provide implementation, service and support of program management software; and

WHEREAS, In June 2020, the TJPA in partnership with the Metropolitan Transportation Commission, San Francisco County Transportation Authority, Peninsula Corridor Joint Powers Board, California High-Speed Rail Authority, and City and County of San Francisco, executed the San Francisco Peninsula Rail Program Memorandum of Understanding (MOU). The MOU and its attached Work Program address topics and tasks such as further engineering development of the DTX, cost estimating, budgeting, scheduling, project sequencing, project management, and delivery methods; and

WHEREAS, On July 2, 2020, TJPA issued Request for Proposals (RFP) No. 20-07 for Program Management Information System software services; and

WHEREAS, On August 14, 2020, TJPA received ten responses to the RFP that met all minimum qualifications and requirements; and

WHEREAS, A selection committee evaluated the written proposals, interviewed four of the ten firms, and determined the proposal submitted by the Sage Method, Inc. team best met the specific needs of TJPA; and

WHEREAS, Based on the selection committee's recommendation, staff negotiated a Professional Services Agreement (Agreement) with Sage Method, Inc., the form of which was presented herewith, to provide the services for a term of four years, with an option to extend the term for two additional three-year periods, at an amount not to exceed \$556,200; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Interim Executive Director to execute the Agreement for Program Management Information System software services with Sage Method, Inc., in an amount not to exceed \$556,200 for a four-year term, with the option to extend the term for two additional three-year periods.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 12, 2020.

Interim Secretary, Transbay Joint Powers Authority



**Program Management Information System Services
Selection Committee Report
November 2020**

Executive Summary and Recommendation

In response to Request for Proposals (RFP) No. 20-07 for Program Management Information System (PMIS) Services for the Transbay Program, issued on Thursday, July 2, 2020, the Transbay Joint Powers Authority (TJPA) received ten proposals from firms meeting all minimum qualifications by the Friday, August 14, 2020 deadline. A selection committee convened twice during August and once in September to evaluate and score first the written proposals, then to participate in and score the interviews of finalist respondents.

Based on the criteria outlined in the RFP, the selection committee recommends Sage Method, Inc. (Sage) as the most qualified firm to provide the services at the best value to the TJPA.

Background

The TJPA is seeking the services of a qualified firm to provide PMIS software services for Phase 2 of the Transbay Program. The selected Respondent (Consultant) will work closely with the TJPA Engineering team, the Phase 2 Program Management/Program Controls team, and Phase 2 Program stakeholders.

Schedule

- | | |
|---|---------------------------------|
| 1) RFP advertised/posted | July 2, 2020 |
| 2) Deadline for Submission of Questions | July 24, 2020 |
| 3) Responses to Written Questions Posted | July 28, 2020 |
| 4) Proposals Due | August 14, 2020 |
| 5) Selection committee evaluation meetings | August 24 and September 1, 2020 |
| 6) Interviews of short-listed firms and final scoring | August 31 and September 1, 2020 |

Selection Committee Members

Jason Blick, TJPA Information Technology Director
Skip Sowko, TJPA Senior Design and Engineering Manager
Edmond Sum, TJPA Engineering Manager
Rick DeMars, Turner Construction Manager (non-voting)
Meghan Murphy, AECOM Phase 2 Project Manager (non-voting)
Jonathan Valencia, HCI Document Control Supervisor (non-voting)

RFP Outreach

The TJPA posted the RFP on its website for the public to view and print and sent announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. In total, the announcement was sent to 1,491 contacts who have

signed up on the TJPA website for notice of all TJPA professional services contracts, and of those, 324 opened the announcement and of that, 142 clicked the RFP link. Further, TJPA staff posted the RFP on DemandStar of which the RFP was broadcast to 24 vendors and posted by 3 planholders.

The TJPA received ten proposals on or before the proposal due date, from:

- Accenture
- Anser Advisory
- ATSER Systems
- Aurigo
- e-Builder
- EPM Solutions
- JLL Technologies
- Sage Method, Inc.
- Lydon Solutions
- Triunity Mammoth

Selection Committee Evaluation

The selection committee met once (on August 24, 2020) to review the written proposals and evaluate strengths and weaknesses using the criteria listed in the RFP. Prior to the discussion, each committee member individually filled out scoring sheets (Attachment B). Based on the results, the selection committee elected to conduct interviews with the four top scored firms. Interviews were held on Monday, August 31, 2020 and on Tuesday, September 1, 2020. Prior to selection committee discussion, each committee member individually filled out interview evaluation scoring sheets (Attachment C). Scores are shown in Attachment D.

The committee recommends Sage as the most qualified to provide Program Management Information System Services for the Transbay Program at the best value.

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

Attachments

- Attachment A, RFP Announcement
- Attachment B, Written Scoring Sheets
- Attachment C, Interview Scoring Sheets
- Attachment D, Overall Scoring Matrix

Reference

Request for Proposals No. 20-07 for Program Management Information System Services issued by the Transbay Joint Powers Authority on July 2, 2020.

Attachment A

RFP ANNOUNCEMENT

The Transbay Joint Powers Authority (TJPA) is issuing a Request for Proposals (RFP) for a Program Management Information System (PMIS) and File Sharing Application(s) (Services) for the Transbay Program from PMIS software vendors to provide, implement, maintain, and support PMIS and file sharing collaborative software for the Program's Phase 2 capital components. The TJPA seeks proposals from qualified firms to work closely with TJPA staff and other contractors to provide the services.

<https://www.tjpa.org/rfp/20-07-program-management-information-system>

The TJPA strongly encourages participation by Local Business Enterprise (LBE), Small Business Enterprise (SBE), and Disadvantaged Business Enterprise (DBE) firms and has established a **5.92% SBE utilization goal** for this contract.

Proposals in PDF (Portable Document Format) or a link to the PDF file on a file share site must be received by the TJPA at RFP@tjpa.org by 2:00 p.m. on Friday, August 14, 2020.

Prospective proposers may obtain copies of this RFP, including required forms, by visiting the TJPA's website at www.tjpa.org or by contacting the TJPA at (415) 597-4620, email: RFP@tjpa.org

Questions may be submitted in writing prior to 2:00 p.m. on Friday, July 24, 2020 to RFP@tjpa.org.

Proposals that are not received by the time and date specified or do not contain all the required information and completed forms may be deemed non-responsive and rejected without consideration.

TJPA reserves the right to waive or correct any defect or informality in any proposal package in its sole discretion. The issuance of this request does not constitute an agreement by TJPA that any contract will be awarded. TJPA reserves the right at any time to reject all proposals and cancel or re-issue the request in its sole discretion.

Attachment B

EVALUATION SCORE SHEET RFP 20-07: PMIS

Name of Respondent: _____

Name of Panelist: _____

Signature of Panelist: _____

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
<p>5.1.1 Introduction, TOC and Executive Summary (2 page limit) [0 points]</p> <p>Submit a letter of introduction and an executive summary of the Proposal. The introductory letter must be signed by a person or persons authorized to obligate the firm (or firms if a joint venture) to honor the commitments set forth in the Proposal package and to verify the accuracy of the information included in the Proposal. Submission of the introductory letter will constitute a representation by the firm or joint venture that it is willing and able to successfully perform the Services, and that all information contained in the Proposal package is true, correct, and not misleading.</p>		
<p>5.1.2 Understand and Approach (5 page limit) [45 points]</p> <p>Describe the Respondent firm's approach to providing the Services. Respondents should demonstrate an understanding of the engagement requirements for the services listed in Section 3 and how the Respondent would tailor its services to meet the needs of the TJPA. The key assessment criteria in Section 3.4 will be considered in the evaluation of Respondent's approach to providing the Services. Provide a process, organization chart of personnel/resources and timeline for implementation of the PMIS. Include with the approach any proposed innovations and project-specific elements.</p> <p>Provide a declaration of the Respondent firm's ability and willingness to commit and maintain staffing, both number and level, to successfully conclude the engagement being proposed. Identified key individuals may not be substituted with other personnel or reassigned to another project without the TJPA's prior approval.</p>		
<p>5.1.3 Qualifications and Experience (5 page limit) [30 points]</p> <p>Provide a brief description of the Respondent firm and describe how the Respondent firm meets the minimum requirements described in Section 4. Be as specific as possible. Provide a general statement of the firm's total size, as well as staff size of the local or regional office proposing to perform the Services.</p> <p>Describe the Respondent firm's background and experience in providing Program Management Information System services to a governmental organization similar to the TJPA. Provide a list of local governmental agencies and relevant industry clients of the local or</p>		

<p>regional office from the past five years. Indicate each organization's name and address, contact person, phone number, email, nature of services provided, dates of engagement, and the names of the Respondent firm's staff who worked on these engagements.</p> <p>Describe the proposed staff that would provide the Services. Specifically, provide their names, titles, business addresses, phone numbers, email addresses, and brief résumés describing the relevant qualifications and work experience. (The length of résumés must be shortened if necessary to avoid exceeding the maximum page limit established for this section.) Describe the role each staff member would play in providing the Services. Clearly show the extent and nature of the involvement of the key individuals who would provide the Services.</p> <p>Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies.</p>		
<p>5.1.3 References [5 points] Provide at least five references for major multiple-project design and construction programs. Provide references for at least five recent clients (preferably other public agencies) of the Respondent and/or any assigned key individuals; include the reference names, current contact information addresses, telephone numbers, email addresses, and specific projects.</p>		
<p>5.2 Cost [20 points] Submit a proposed annual budget range for performing the Services. Provide a pricing sheet, including software and rates for training, technical support, and software customization and report customization. The fee proposal shall include a cost and rate breakdown on the Fee Proposal Form (see Attachment 3). Please use a separate form for each fiscal year budget.</p> <p>Respondent may provide subscription-based pricing on a per-user-per month or year basis. For the proposed annual budget range, Respondent shall assume 25 users for year one. Firms moving forward in the procurement process (invited for interview) will be required to provide current financial statements (current and previous year) prior to negotiations.</p> <ul style="list-style-type: none"> • Pricing, including software and rates for training, technical support and software customization and report customization. • References for major multiple-project design and construction programs. • Process and timeline for implementation. 		

**Total _____
(100 maximum total score possible)**

Attachment C

INTERVIEW EVALUATION SCORE SHEET

RFP 20-07: PMIS

Name of Respondent: _____

Name of Panelist: _____

Signature of Panelist: _____

<i>Criteria</i>	<i>Value</i>	<i>Reviewer Comment</i>
Cost [10 points]		
Document Control [10 points]		
Meetings [10 points]		
Submittals/RFIs [10 points]		
Drawings Log [10 points]		
Document Review Process [10 points]		
Schedule [10 points]		
Special Features (Unique to Respondent) [10 points]		
Follow up Questions [10 points]		
Overall Presentation [10 points] General category reflecting overall quality of presentation and engagement by key individuals in the interviews.		

(100 maximum total score possible)

Total _____

Attachment D

Written Evaluation Scores (100 points max)

Firm	Panelist A	Panelist B	Panelist C	Average Score
Accenture**	72	45	40	52.33
Anser Advisory	83	81	80	81.33
ATSER Systems**	79	75	70	74.67
Aurigo**	55	53	42	50.00
e-Builder	78	88	75	80.33
EPM Solutions**	67	60	55	60.67
JLL Technologies**	47	42	38	42.33
Sage Method, Inc.	87	90	85	87.33
Lydon Solutions	81	85	80	82.00
Triunity Mammoth	74	45	35	51.33

** not selected for interview stage

Interview Evaluation Scores (100 points max)

Firm	Panelist A	Panelist B	Panelist C	Average Score
Anser Advisory	63	67	69	66.33
e-Builder	71	79	70	73.33
Sage Method, Inc.	76	75	76	75.67
Lydon Solutions	73	74	77	74.67

Combined Written and Interview Evaluation Scores (200 points max)

Firm	Panelist A	Panelist B	Panelist C	Average Score
Anser Advisory	146	148	149	147.67
e-Builder	149	167	145	153.67
Sage Method, Inc.	163	165	161	163.00
Lydon Solutions	154	159	157	156.67

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the ___ day of ____ 20___, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Sage Method, Inc. (“Contractor”).

Recitals

A. The TJPA requires Program Management Information System (“Services”) for the Transbay Program (“Program”).

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

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

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

E. On _____, 20___, the TJPA Board of Directors adopted Resolution No. _____ authorizing the TJPA’s Interim Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for four (4) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that (i) the TJPA shall have the option to extend the term of this Agreement for an additional six (6) years total (two-three-year extension options) by providing to the Contractor written notice of such extension on or before the expiration date of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by the TJPA.

3. Effective Date of Agreement

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

4. Services the Contractor Agrees to Perform

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

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

5. Compensation

a. All work under this Agreement shall be compensated on an hourly and on a fixed fee basis, subject to any maximum price set forth in a particular Task Order. In no event shall the total compensation under this Agreement exceed Five Hundred Fifty-Six Thousand Two Hundred Dollars (\$556,200). The breakdown of the Contractor's fees appears in Appendix B, Fees. If the TJPA exercises its option to extend the term of the Agreement, the maximum compensation under this Agreement shall be increased in accordance with Appendix B.

b. Contractor's fees as provided in Appendix B are not subject to adjustment during the term.

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

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

6. Guaranteed Maximum Costs

a. The TJPA's obligation hereunder shall not at any time exceed the amount certified by the Chief Financial Officer for the purpose and period stated in such certification, or the maximum

price set forth in an Task Order with respect to the work covered under that Task Order.

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 Task Order and in excess of the total compensation under this Agreement as stated in Section 5, "Compensation," unless the changed scope is authorized by written amendment and approved as required by law.

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

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

7. Payment

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

The TJPA shall make payment to the Contractor at the address specified in Section 23, "Notices to the Parties." TJPA shall make a good faith effort to pay undisputed amounts within 45 calendar days after receiving a proper invoice from the Contractor.

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

If the Contractor claims or receives payment from the TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Contractor shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to the Contractor under this Agreement 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 imply the acceptance of work or lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may have been apparent or detected at the time such payment was made.

12. Qualified Personnel

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. All personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

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

14. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

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

b. Payment of Taxes and Other Expenses

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

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

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

15. Insurance

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

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

(2) Commercial General Liability Insurance on an occurrence basis, with limits not less than \$1,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal and Advertising Injury, Products and Completed Operations; and

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

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

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

(1) Name as Additional Insured the entities indicated in Appendix C, Additional Insureds.

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

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

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

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

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

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

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

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

16. Indemnification

The Contractor shall indemnify and save harmless the TJPA and its officers, directors, agents and employees from, and if requested shall defend them against, any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or

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

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

The Contractor shall indemnify and hold the TJPA harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the TJPA, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

a. Copyright Infringement

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

17. Incidental and Consequential Damages

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

18. Liability of TJPA

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

19. Liquidated Damages NOT USED

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

20. Default; Remedies

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

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

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

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

22. Rights and Duties Upon Termination or Expiration

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

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

23. Notices to the Parties

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

To TJPA:	Interim Executive Director Transbay Joint Powers Authority 425 Mission Street, Suite 250 San Francisco, CA 94105 (415) 597-4620 info@tjpa.org
To Contractor:	Cari Stieglitz, Chief Executive Officer Sage Method, Inc. 1001 SW Disk Drive, Suite 250 Bend, OR 97702-3754

Any notice of default must be sent by registered mail.

24. Proprietary or Confidential Information of the TJPA

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

25. Protection of Private Information

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

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

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

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

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

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

26. News Releases/Interviews

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

27. Ownership of Results

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

28. Works for Hire

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

29. Audit and Inspection of Records

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

30. San Francisco Sunshine Ordinance

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

31. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a nonprofit organization as defined in Chapter 12L of the S.F. Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set

forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

32. Subcontracting

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

Kahua Inc.
10000 Avalon Blvd., Suite 600
Alpharetta, GA 30009

InnoActive Group
401 Harrison Street, 15G
San Francisco, CA 94105

Stellar Services
70 W. 36th Street, Suite 700
New York, NY 10018

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

33. Assignment

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

34. Non-Waiver of Rights

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

35. Services Provided by Attorneys

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

36. Conflict of Interest

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

37. Limitations on Contributions

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

38. Prohibition on Political Activity with TJPA Funds

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

39. Equal Employment Opportunity/Nondiscrimination; Penalties

a. The Contractor Shall Not Discriminate

In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with the Contractor or subcontractor, applicant for employment with the Contractor or subcontractor, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual

orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

40. Disadvantaged Business Enterprise (DBE) Requirements

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

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

41. Small Business Enterprise (SBE) Requirements

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of sixteen and 86/100 percent (16.86%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

42. Prompt Payment to Subcontractors

a. Prompt Progress Payment to Subcontractors

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

b. Prompt Payment of Withheld Funds to Subcontractors

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

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by the Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar the Contractor from entering into future contracts with the TJPA for three (3) years.

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

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

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

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

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

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

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

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the

MCO. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

d. Any subcontract entered into by the Contractor shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such

Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

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

f. Subcontracts

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

46. Consideration of Criminal History in Hiring and Employment Decisions

a. The Contractor agrees to comply fully with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions”, including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text

of the MCO is available on the Web at <https://sfgov.org/olse>. A partial listing of some of the Contractor's obligations under Chapter 12T is set forth in this Section. The Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

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

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

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

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

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

h. The Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the TJPA shall have the right to pursue any rights or remedies available to the City under

Chapter 12T, including, but not limited to, penalties payable to the City.

47. MacBride Principles – Northern Ireland

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

48. Drug-Free Workplace Policy

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

49. Resource Conservation

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

50. Tropical Hardwood/Virgin Redwood Ban

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

51. Preservative-treated Wood Containing Arsenic

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

52. Food Service Waste Reduction Requirements

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

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

53. Graffiti Removal

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

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

54. Modification of Agreement

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

55. Administrative Remedy for Agreement Interpretation

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

56. Agreement Made in California; Venue

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

57. Construction

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

58. Entire Agreement

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

59. Severability

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

60. USDOT Requirements

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

61. Compliance With Laws

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

62. Compliance with Americans with Disabilities Act

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

63. Authority to Execute Agreement

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

64. Compliance with Naming Rights Agreement

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

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

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

_____, Interim Executive Director

TJPA Legal Counsel

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

Interim Secretary, TJPA Board

CONTRACTOR

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

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

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone Number

Sage Method, Inc.

Federal Employer ID Number

APPENDIX A

SCOPE OF SERVICES

1 SCOPE OF SERVICES

The Contractor will provide a Program Management Information System (PMIS) and collaborative file sharing application dedicated to the Transbay Phase 2 capital components. The Contractor will implement and provide Kahua as the PMIS. Refer to Appendix F for Enterprise Service Agreement (ESA) terms and conditions.

1.1 General

The Contractor will provide start up implementation services that include out of the box (OOB) stand up of Kahua and accompanying project deliverables per phase. The schedule can be found in Section 1.2 Schedule.

The implementation will be completed in five stages (Discover, Define, Refine, Create, Transition). The implementation duration is outlined in the following schedule, which includes non-working times from December 21, 2020 to January 1, 2021. Throughout the implementation Contractor will provide project management time to have weekly meetings and discuss project progress via a provided project status report, 2 week lookahead and milestone/action completion tracking.

1.1.1 Discover

The implementation will be formally kicked off and the Contractor will plan and facilitate a Discover agenda that will cover future road map, requirements and an alignment of the SOW to the roadmap.

1.1.2 Define

The Contractor will submit a formal document that is an output from the sessions for review and approval.

1.1.3 Refine

The Contractor will submit a formal plan for the Create cycle, which includes how and when TJPA teams will be engaged.

1.1.4 Create

During the create/configure cycle, we will set up the basic settings, add/remove or relabel fields and modify the dropdown list values. To maximize time, the Contractor will do coordinate group sessions and configure decisions actively. Contractor will capture the key decisions made and record the session for future reviews. Contractor will also conduct these sessions in a way that potential future development with PMIS tools such as kBuilder or specifically identify workflows for discussion. At the end of each week, the core team will review and accept the configurations completed. The customization scope shall consist of modifications to user reports and templates and limited user interface updates such as website portal appearance. Report

formatting must include user-definable fields for generating logs, transmittals, and cost documentation and publishing meeting minutes, daily reports, and punch lists. Users shall be provided with necessary built-in tools and appropriate training to create and customize reports and templates.

After three weeks of configuration, Contractor will enable three days of “end to end” validation and review of previous configurations and trains the power users at the same time. During the process, Contractor will have enabled time to have weekly meetings and discuss project progress. Contractor also will provide weekly status reports from our project.

1.1.5 Transition

After acceptance of the end to end testing, Contractor will move the configuration over to production and create the base projects to get training started. Contractor will also train Administrators to create additional programs and projects and set user permissions.

Contractor will provide 3 days of power user end to end review, and report training and end user training. Training shall be completed for a minimum of three user levels: administrative (TJPA IT Director and TJPA-designated Document Control Supervisor), power users (TJPA staff, document control specialist, project managers, and project engineers), and entry level users (administrative analyst).

At the end of the project, Contractor have allowed a day to transition the environment and documentation over to TJPA and program management.

The Contractor will provide at a minimum 24 hours of live training and access to additional on-demand video instruction (via the web and native files). Instructional documentation shall be provided in searchable PDF.

1.1.6 Operate & Maintain

Refer to Appendix F for hours of scheduled maintenance and service times.

Closeout of the PMIS shall consist of website portal closure coupled with the backup and migration of all data to a standalone media format (i.e., redundant portable hard drive) from which all data will be accessible to the TJPA.

1.2 Schedule

The summary level schedule and basis of budget is as follows. Contractor will load in the TJPA PM and TJPA Process Team as resources and manage throughout the implementation.

The two phases are as follows:

Phase 1: Implementation Setup (2020-2021)

The Contractor will review, facilitate and implement of out of the box (OOB) processes specified in Phase 1 at the program level only. There will be one partition created that combines application and process efforts in one location.

- A program level file folder structure will be established.
- OOB processes labeled as “Phase 1” in the scope log will be stood up.
- Budget and Funding will be set up to a level one breakdowns structure (summary level) and current funding sources created.
- The current Program schedule will be imported for viewing within Kahua. Users will be specific to the OOB permissions at the program level.
- One training “project” partition will be stood up with no modifications at the project level for TJPA staff to access. No projects will be established that are “production ready”.
- Administrator training will be 1.5 days with the remaining time in Phase 2.

Task Name	Duration
Transbay PMIS Schedule Implementation Phase 1 (Fiscal Year 1)	
Stage 1 – Discover	30 Hours
SOW & PMP	
Discover (Architecture & Roadmap) Event	
Stage 2 – Define	16 Hours
Requirements & Architecture Document (RAD)	
Stage 3 – Refine	8 Hours
Configuration (Iteration) Management Plan	
Stage 4 – Create	184 Hours
Week 1 Process Reviews & Prep	
Week 2 Configuration – Program and Delivery	
Week 3 End to End	
Stage 5 – Transition	60 Hours
Establish Production	
Train the Trainer	
Closeout and Handoff	
Internal Coord & PM	62 Hours
Internal Coord & PM (10%)	

Phase 2: Project Setup (2021-2023)

The Contractor will return and review, facilitate and implement the project partitions, fund allocations, budget and work breakdown (at contractual or SOW level) and permissions for one project case study. This will include OOB setup of processes not utilized to date, including the potential for PO or Contract processes. They will then train TJPA staff to create and populate users in other projects.

Task Name	Duration
Transbay PMIS Schedule Customization Phase 2 (Fiscal Year 2)	
Stage 1 – Discover	24 Hours
SOW & PMP	
Discover (Architecture & Roadmap) Event	
Stage 2 – Define	8 Hours
Requirements & Architecture Document (RAD)	
Stage 3 – Refine	8 Hours
Configuration (Iteration) Management Plan	
Stage 4 – Create	116 Hours
Week 1 Process Reviews & Prep	
Week 2 Configuration – Program and Delivery	
Week 3 End to End	
Stage 5 – Transition	12 Hours
Establish Production	
Internal Coord & PM	12 Hours
Internal Coord & PM (5%)	

1.3 Roles / Responsibilities / Project Deliverables

Roles

This project uses the following roles:

Role Name	Role Description
TJPA Project Manager	Main point of contact for the project. Key approver for TJPA. Jointly manages project with the Contractor PM.
TJPA Process Teams	Assigned process teams with a lead that will make decisions on specific processes. Who participates is determined and outlined in the TJPA Program Management Plan.
Contractor Project Director	Assists in project start up and commercial activities. Participates in weekly meetings and is accountable for overall contract success.
Contractor Project Manager (PM)	Main point of contact. Captures and outlines business process and requirements for the PMIS. Manages changes to the technical scope and documentation (RTM, RAD, SOW, etc.)
Solutions Architect	Responsible for the overall solution and roadmap. Original creator of the Requirements and Architecture document (RAD).
Technical Analyst	Supporting role for business process definition. Responsible for system configuration and updates, technical documentation support.

Responsibilities

The responsibilities for the deliverables are found in the following RASCI chart. The acronyms are as follows:

- R – Responsible for delivery. Driver of the work. There can only be one “R” per deliverable.
- A – Accountable for the delivery or the “Approver”
- C – Contribute because they have information, input or skills needed to complete work.
- I – Informed after the work is completed or approved.

Project Deliverables

Deliverable	Description	Acceptance / Outputs	TJPA PM	TJPA Process Team	Contractor Director	Contractor PM	Solution Architect	Analyst	Other
SOW & Project Management Plan (PMP)	The SOW is baselined in contract approval. The Project Management Plan outlines the processes to manage the project and includes assumptions based on this proposal.	Review of the PMP, Stakeholder Log (TJPA), Discover Evolve Session Scheduled	C	I	A	C	I	I	I
Discover Event	Event will be held for a total of 12 hours not to exceed two weeks in duration.	Notes, flow charts and diagrams that will be used in the RAD	C	C	A	C	R	I	C
Requirements & Architecture Document (RAD)	Deliverable outlines the future state of the system architecture as a basis for the stand up. Allows for discussion on foundations and design.	Formal approval of the RAD by TJPA Project Manager (1 day review cycle)	C	C	A	C	R	I	C
Configuration (Iteration) Management Plan	Deliverable details the configuration cycle, testing and processes that accompany the process. Sets expectations on what is part of this implementation and what is in the future.	Formal approval of the Configuration Management Plan by TJPA Project Manager (1 day review cycle)	C	I	R	I	A	I	I
Process Reviews (Create / Configure Week 1)	High level demonstration of software will be completed by Contractor. Process teams will present existing processes.	TJPA Process Teams have shared process current state.	A	R	I	C	C	C	C
Design / Configure Program and Delivery (Create / Configure Week 2)	Detailed demonstrations of out of the box (OOB) functionality, configuration per standards.	Approved configuration of the OOB processes and reports.	C	C	I	A	R	C	I
Design / Configure Cost and Funding (Create / Configure Week 3) Phase 2	Detailed demonstrations of out of the box (OOB) functionality, configuration per standards.	Approved configuration of the OOB processes and reports.	C	C	I	A	R	C	I
End to End Testing (Create / Configure Week 4)	End to end testing self-completed by TJPA teams. Contractor will update documentation.	Final acceptance of software to approved configuration.	A	R	I	C	I	C	I

Deliverable	Description	Acceptance / Outputs	TJPA PM	TJPA Process Team	Contractor Director	Contractor PM	Solution Architect	Analyst	Other
Move to Production	Contractor will move the configuration over to production and create the base program and training project. Contractor will train TJPA Administrators to create additional programs and projects and set user permissions.	Production ready environment with initial program / project names, funding sources and WBS structure. Training project. Trained administrators.	C	I	I	C	A	R	I
Train the Trainer	Contractor will provide 3 days of power user end to end review, and report training and end user training.	Completed training, recorded online sessions.	C	C	I	R	A		
Closeout and Handoff	Contractor will provide another 8 hours of support to transition the environment.	8 hours support used.	C	I	I	R	C	C	I
Internal Coord & PM	Contractor will facilitate a weekly project status meeting that will include a status report, 2 week lookahead and project progress.	Completion of project.	C	I	A	R	I	I	I

1.4 Technical (Product) Scope

The vendor will deliver a PMIS with out of the box capabilities, to support management of the following program and project components:

- Integration
- Scope
- Time
- Cost
- Quality
- Human Resources
- Communications
- Risks
- Procurement
- Stakeholders

Usability Training and training materials will be provided during the implementation and customization phases.

Functionality / Modules Manage, track, and share all project documentation and file types including submittals, RFI's, communications, punch lists, daily reports, issues, field observations, and more. This includes the ability to import/export data as well as track the time, date and data field history.

Cost Control Provide ability to implement contracts across multiple projects to manage large scale vendor relationships with a single contract. Implement invoicing and change orders across projects, and track and measure the progress of each vendor.

- Create and manage budgets, contracts, change orders, pay apps
- Create and share purchase orders with your vendors
- Receive quotes and invoices from your vendors and subcontractors
- Create and manage invoices, shipments, request for quotes and catalogs
- Collaborate with your vendors to streamline the entire purchasing process from quoting through delivery
- Create accurate, customized cash flow forecasts to understand future cash requirements
- Utilize predefined or custom consumption curves
- Determine project feasibility and efficiently plan and manage budgets
- Manage both inbound and outbound cash
- Forecast for any date range to compare financial progress to project milestones

Funding Management Provide high level financial visibility across the Capital Program. Provide ability to reallocate project funds and manage program-level contingencies.

Schedule Control Import, export and view key project milestones from MS Project and P6.

Process Collaboration Provide the ability for administrators to configure cost related workflows for review and approval. Administrators can create multiple levels of reviews and or approvals which included dollar limits. Administrators can set up signature workflows either using DocuSign or PMIS signature feature.

Document Control Allow ability to interact with documents at the program level, complete daily tasks in a single interface, and view and update documents—including Submittals and RFI's. Provide ability to upload files to a unique folder structure per project, share and access folders or files with other companies

- Create folders and store files
- Markup files, drawings and models
- Maintain file versioning and audit history
- Access files on mobile devices
- Send files for eSignature via DocuSign outside firms

WBS and Program Roll Up Provide ability to create and implement work breakdown structure across programs and projects.

Reporting and Customization Provide live dashboards and reports at any level of program hierarchy, utilizing automatic roll-up functionality alongside drill-down management capabilities.

Security and Administration Provide administrator ability to set permissions at the project, program and application levels. Different configurations can be applied to external companies so they only see the data they need to.

1.4.1 Technical Scope Log

The proposed PMIS will implement the following scope items:

ID	Component Name	Prioritization	Readiness Score (1-4)	Effort Points	Workflow	Assignment Status
1	Program Management (partition hierarchy)	1 – Must Have	3-Standardized	Average	N/A	Phase 1
2	Tasks	1 – Must Have	3-Standardized	Average	N/A	Phase 1
3	Meeting Minutes	1 – Must Have	3-Standardized	Average	N/A	Phase 1
4	Daily Reports	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
5	Quality (Inspections and Testing Reports)	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
6	Punch Lists	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
7	Project Directory	1 – Must Have	3-Standardized	Average	N/A	Phase 1
8	Contacts	1 – Must Have	3-Standardized	Average	N/A	Phase 1
9	RFIs	1 – Must Have	3-Standardized	Average	N/A	Phase 1
10	Submittals	1 – Must Have	3-Standardized	Average	N/A	Phase 1
11	Permits	1 – Must Have	3-Standardized	Average	N/A	Phase 1
12	Transmittals (ie Communications)	1 – Must Have	3-Standardized	Average	N/A	Phase 1
13	Correspondence (ie Communications)	1 – Must Have	3-Standardized	Average	N/A	Phase 1
14	Design Review	1 – Must Have	3-Standardized	Average	N/A	Phase 1
15	Issues (Internal and External List)	1 – Must Have	3-Standardized	Average	N/A	Phase 1
16	File Manager	1 – Must Have	3-Standardized	Average	N/A	Phase 1
17	Schedule Management (P6/MS Project Integration)	1 – Must Have	3-Standardized	Average	N/A	Phase 1
18	Budget Management	1 – Must Have	3-Standardized	Average	N/A	Phase 1
19	Funding Sources	1 – Must Have	3-Standardized	Average	N/A	Phase 1
20	Bid Management	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
21	Contracts	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
22	Change Orders	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
23	Payment Applications	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
24	Purchase Orders	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
25	PO Amendments	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
26	Invoices	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
27	Expenditures	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
28	Cash Flow	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
29	Forecasting	1 – Must Have	3-Standardized	Average	N/A	Phase 2+
30	Work Breakdown	1 – Must Have	3-Standardized	Average	N/A	Phase 1
31	Dashboards (standard dashboards)	1 – Must Have	3-Standardized	Average	N/A	Phase 1
32	Reporting (standard reports)	1 – Must Have	3-Standardized	Average	N/A	Phase 1

1.4.2 Requirements Traceability Matrix (RTM)

The PMIS requirements are as follows. They have been translated into a requirements format that will be managed as the implementation and customization progresses.

ID	Group	Sub-Group	Requirement	Requirement Notes
1.3.1	Technical Requirement	Technical Requirement	Intuitive and user-friendly interface	This is standard system functionality as shown.
1.3.2	Technical Requirement	Technical Requirement	Document Control and logging features	This is standard system functionality as shown.
1.3.3	Technical Requirement	Technical Requirement	Information sharing	This is standard system functionality as shown.
1.3.4	Technical Requirement	Technical Requirement	Process Collaboration	This is standard system functionality as shown.
1.3.5	Technical Requirement	Technical Requirement	Built-in training and instruction manual	Access to the Kahua help center can be accessed from within Kahua.
1.3.6	Technical Requirement	Technical Requirement	Ability to export data to other formats, such as Excel	Records can be exported in Word or PDF
1.3.7	Technical Requirement	Technical Requirement	Robust query / search - day to day data and file searches	Search can be conducted for the environment, project, program and files.
1.3.8	Technical Requirement	Technical Requirement	Robust query / search - Public records requests for information	Search can be conducted for the environment, project, program and files. The included data store gives further access to BI software.
1.3.9	Technical Requirement	Technical Requirement	Robust query / search - legal discovery	Search can be conducted for the environment, project, program and files. The included data store gives further access to BI software.
1.3.10	Project Stakeholders	Technical Requirement	Contacts module	Yes.
1.3.11	Project Risks	Issue Management	Issue action module, with the ability to maintain multiple issue action logs, both internal and external	Yes.
1.3.12	Project Communications	Reports & Dashboards	Customizable dashboard	Yes.
1.3.13	Project Communications	Reports & Dashboards	Customizable reports that can be easily created by users	Yes.
1.3.14	Project Communications	Technical Requirement	Program reporting	Any information entered into the system is exposed to reporting through the data store.
1.3.15	Project Communications	Technical Requirement	Meeting minutes module	Yes.
1.3.16	Project Quality	Technical Requirement	quality, daily inspection and test report module	Using checklists and daily reports.
1.3.17	Project Scope	Technical Requirement	Request for Information module	Yes.

ID	Group	Sub-Group	Requirement	Requirement Notes
1.3.18	Project Scope	Technical Requirement	Submittal module	Yes.
1.3.19	Project Scope	Technical Requirement	Permits module	Yes.
1.3.20	Project Communications	Technical Requirement	Correspondence module	Yes.
1.3.21	Project Cost	Technical Requirement	Robust cost module - cost control features	Ability to add business rules to cost applications.
1.3.22	Project Cost	Technical Requirement	Robust cost module - ability to enter budget items, funding and cost elements	Can enter budget and funding. Both modules included. Standardized WBS included.
1.3.23	Project Communications	Technical Requirement	Robust cost module - produce reports	Any information entered into the system is exposed to reporting through the data store.
1.3.24	Project Cost	Technical Requirement	Robust cost module - schedule management	Milestone application can be tied to cashflow.
1.3.25	Project Quality	Technical Requirement	Punch list module	Yes.
1.3.26	Technical Requirement	Technical Requirement	Secure	Yes. User authentication.
1.3.27	Technical Requirement	Technical Requirement	Login-based with hierarchy of user security and access levels	Yes. User is assigned to a group, which has permissions applied.
1.3.28	Technical Requirement	Technical Requirement	Built-in backup and recovery	Yes.
1.3.29	Technical Requirement	Technical Requirement	Data owned by TJPA	Yes.
1.3.30	Technical Requirement	Technical Requirement	12 TB storage capacity with option for future expansion	Yes.
1.3.31	Technical Requirement	Technical Requirement	Ability to import Phase 1 data and/or database from the current system	Yes.
1.4.1	Project Cost	Cost Control	Set up and track budgets	Yes. Budget application
1.4.2	Project Cost	Cost Control	Time phased budgeting	Yes. Cashflow.
1.4.3	Project Cost	Cost Control	Contract commitments	Yes. Contracts and POs with change.
1.4.4	Project Cost	Cost Control	Track expenditures	Yes. Pay Application and Invoicing.
1.4.5	Project Cost	Cost Control	Calculate and track forecasts (EAC)	Yes. In the cost sheet. Need to define EAC with you.
1.4.6	Project Cost	Cost Control	Design cost trending	Yes. Cashflow.
1.4.7	Project Cost	Cost Control	Set up cost periods	Yes.
1.4.8	Project Cost	Cost Control	Cost element for each period end date kept in database for comparative reporting	Yes. The data store allows connection to a BI tool as well.
1.4.9	Project Cost	Cost Control	Earned value calculations	Yes. Need to define how you calculate though. Not included in OOB scope.
1.4.10	Project Cost	Cost Control	Cost code structures	Yes. Ability to standardize WBS.

ID	Group	Sub-Group	Requirement	Requirement Notes
1.4.11	Project Cost	Cost Control	Contract changes and PCOs for commitment and forecast	Yes. PCO and CO for contract.
1.4.12	Project Cost	Cost Control	Contingency draw down	Yes.
1.4.13	Project Cost	Cost Control	Cash flow feature for budget, actual and forecast	Yes. Cashflow.
1.4.14	Project Cost	Cost Control	Exception reporting / notification features	Yes. Depending on complexity, BI reporting may option.
1.4.15	Project Cost	Funding Management	Track encumbrance of funds	Yes.
1.4.16	Project Cost	Funding Management	Allow multiple funding sources	Yes.
1.4.17	Project Cost	Funding Management	Funding draw down capabilities	Yes.
1.4.18	Project Cost	Funding Management	Funding source for budget, commitment, expenditure and forecast	Yes. Funded versus budgeted. Draw down at the commitment level which extends to expenditures.
1.4.19	Project Cost	Funding Management	Cash flow for funding source	Cash flows for funding can be created using the data store and a BI solution.
1.4.20	Project Time	Schedule Control	Import data to/from P6 & MS Project	Yes. Both are possible, included P6 import/export.
1.4.21	Project Time	Schedule Control	Summary level schedules from P6 or MS Project	Yes. Full import capabilities can show summary. Additional data store can create more complex analysis.
1.4.22	Project Time	Schedule Control	Schedule tools/reports	Yes. Milestones.
1.4.23	Project Scope	Process Collaboration	Process collaboration features - RFIs	Yes.
1.4.24	Project Scope	Process Collaboration	Process collaboration features - Submittals	Yes.
1.4.25	Integration Management	Process Collaboration	Process collaboration features - Action Messaging	Yes. Tasks are OOB and can optionally be added to any other OOB application.
1.4.26	Integration Management	Process Collaboration	Workflow-based document sharing	Yes. Design review workflow via internal or Bluebeam and ability to send from application.
1.4.27	Integration Management	Process Collaboration	Ball in court tracking features	Yes.
1.4.28	Project Scope	Process Collaboration	Drawing/configuration control	Yes. Design review workflow via internal or Bluebeam and ability to send from application.
1.4.29	Project Scope	Process Collaboration	Design management and tracking	Yes. Design review workflow via internal or Bluebeam and ability to send from application.

ID	Group	Sub-Group	Requirement	Requirement Notes
1.4.30	Project Risks	Process Collaboration	Issue-action tracking feature	Yes. Issues.
1.4.31	Integration Management	Process Collaboration	"Ball in Court" tracking feature	Yes.
1.4.32	Integration Management	Process Collaboration	Action-due notices	Yes. Tasks.
1.4.33	Integration Management	Process Collaboration	Escalation of overdue items	Yes.
1.4.34	Integration Management	Document Control	Specific document types - meeting minutes	Yes. Meetings.
1.4.35	Integration Management	Document Control	Specific document types - submittals	Yes.
1.4.36	Integration Management	Document Control	Specific document types - RFIs	Yes.
1.4.37	Integration Management	Document Control	Specific document types - change orders	Yes. PCO and CO for Contract.
1.4.38	Integration Management	Document Control	Document logs per document type	Yes. User definable.
1.4.39	Integration Management	Document Control	Incoming documents	Yes.
1.4.40	Integration Management	Document Control	Original file name hidden for new file name (standard file nr)	Yes.
1.4.41	Integration Management	Document Control	Scanning interface software?	Yes. Any document scanned can be dragged into File manager.
1.4.42	Integration Management	Document Control	Tracking numbers created / assigned	Yes.
1.4.43	Integration Management	Document Control	Document preview capability	Yes. Preview in output or form view options.
1.4.44	Integration Management	Document Control	Searching capabilities	Yes.
1.4.45	Integration Management	Document Control	CADD file support	Yes.
1.4.46	Integration Management	Document Control	Project photos organized and logged	Yes. File manager supports photo upload.
1.4.47	Integration Management	Document Control	Electronic files tracked	Yes.
1.4.48	Integration Management	Document Control	Incoming document response	Yes.
1.4.49	Integration Management	WBS & Program Roll-Up	Supported levels	Up to 10, but our recommendation is five or less. Many times the lower levels can be SOV instead.
1.4.50	Integration Management	WBS & Program Roll-Up	Specific format	WBS format can be created per partition, e.g. project delivery type
1.4.51	Integration Management	WBS & Program Roll-Up	Reports or screens summarized at levels of WBS	Yes.
1.4.52	Project Communications	Reporting & Customization	Standard reports available	Yes.
1.4.53	Project Communications	Reporting & Customization	Discussion of the extent to which input fields, screens and	OOB implementation includes hiding or renaming fields. Adding

ID	Group	Sub-Group	Requirement	Requirement Notes
			reports can be modified or added.	new fields requires kBuilder and can be done in a future phase. Any information entered into the system is exposed to reporting through the data store.
1.4.54	Project Communications	Reporting & Customization	Filtering and grouping capabilities	Yes.
1.4.55	Project Communications	Reporting & Customization	System is capable of creating executive level reports, incl. text, graphics, photos, cost / schedule summaries.	Any information entered into the system is exposed to reporting through the data store.
1.4.56	Project Communications	Reporting & Customization	Publishing and accessing reports.	Reports and dashboards are contained within Kahua. Additional reporting using the data store is with the visualization tool of your choice.
1.4.57	Technical Requirement	Security and Administration	Proprietary system	
1.4.58	Technical Requirement	Security and Administration	Hosted as an ASP	Kahua hosts the solution as a Platform as a Service (PaaS)
1.4.59	Technical Requirement	Security and Administration	Minimum system requirements	N/A: Platform access (desktop installation) requires nominal space as data is stored in the cloud
1.4.60	Technical Requirement	Security and Administration	Multiple administrators	Administrator permissions can be applied to a group
1.4.61	Technical Requirement	Security and Administration	Security features	Users are added to groups. Groups receive permission sets. Permissions are at the partition (program, project, etc.) level.
1.4.62	Technical Requirement	Security and Administration	Tracking user access	Yes.
1.4.63	Technical Requirement	Security and Administration	Project Directory / Contacts list	Yes.
1.4.64	Technical Requirement	Security and Administration	Project directory linked to users	Yes.
1.4.65	Technical Requirement	Security and Administration	Group calendaring, meeting notification or group announcements	Notifications and announcements. Calendar is via the milestone functionality.
1.4.66	Technical Requirement	Security and Administration	User manuals, training and technical support	Yes. You can access Kahua help center via Kahua.
1.4.67	Technical Requirement	Pricing and Administration	Pricing, including software and rates for training, technical support and software	Per the proposal and SOW

ID	Group	Sub-Group	Requirement	Requirement Notes
			customization and report customization.	
1.4.68	Technical Requirement	Pricing and Administration	References for major multiple-project design and construction programs.	Per the proposal and SOW
1.4.69	Technical Requirement	Pricing and Administration	Process and timeline for implementation.	Per the proposal and SOW
1.5.1	Integration Management	File Sharing Application	Secure, login based	Yes.
1.5.2	Integration Management	File Sharing Application	Data owned by TJPA	Yes.
1.5.3	Integration Management	File Sharing Application	Accessible via secure web address	Yes (optional). Included is the desktop interface to cloud data.
1.5.4	Integration Management	File Sharing Application	Version control and file audit functionality	Yes.
1.5.5	Integration Management	File Sharing Application	Live multiple-user editing, review and comment functionality	Yes.
1.5.6	Integration Management	File Sharing Application	Robust query / search function	Yes.
1.5.7	Integration Management	File Sharing Application	Customizable WBS-based directory file tree	Yes.
1.5.8	Integration Management	File Sharing Application	Cross platform compatible	Compatible with native applications on Windows, Android and Apple
1.5.9	Integration Management	File Sharing Application	Cross team/organization/agency collaboration for internal and external organization use	Yes. External can access via a standard license as well.
1.5.10	Integration Management	File Sharing Application	Design and Engineering Collaboration tools	Included integrations with BlueBeam and DocuSign. BlueBeam licenses to be provided by TJPA.
1.5.11	Integration Management	File Sharing Application	Searchable	Yes.
1.5.12	Integration Management	File Sharing Application	Bare metal backup	Kahua hosts the solution as a Platform as a Service (PaaS) and has backup policies.
1.5.13	Integration Management	File Sharing Application	Cloud-based backup	Yes.
1.5.14	Integration Management	File Sharing Application	Active malicious software scanning	N/A. SaaS product with a desktop or browser (option) interface.
1.5.15	Integration Management	File Sharing Application	12 TB storage capacity with option for future expansion	Yes.
1.5.16	Integration Management	File Sharing Application	Upload up to 5 gigabyte	Software does not limit size

APPENDIX B
FEEES

Calculation of Fees, Budget and Cashflow

Direct Labor	Fully Loaded Hourly Rates
Implementation Sage Method, Inc. InnoActive Group Stellar Services	\$180
Customization Sage Method, Inc. InnoActive Group Stellar Services	\$190
Kahua Inc. – Professional Services (Implementation)	\$250

There shall be no mark up by the Contractor for the cost of subcontractors retained by the Contractor in the performance of the Services.

The above hourly rates shall include all incidental expenses of the Contractor, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in - and out-of-house photocopying, charges for sending facsimiles, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Contractor or the Contractor's subcontractors.

Contractor may seek reimbursement of direct travel costs actually incurred by the Contractor in performing the Services if such costs are pre-approved by TJPA in writing. Contractor will not mark up such allowable costs and a receipt or invoice must be submitted documenting allowable travel costs. Any allowable travel costs must be consistent with TJPA's Travel Policy.

Maximum Fee

SERVICE DESCRIPTION		SUBTOTAL	DURATION
Implementation – Sage Method, Inc., InnoActive Group, and Stellar Services (YR 1 Setup and Training)	360 HOURS	\$64,800	03 MONTHS
Implementation - Kahua Inc. Professional Services (YR 1)	48 HOURS	\$12,000	03 MONTHS
Software Services Fee - YR 1	Up to 25 Users	\$90,000	12 MONTHS
Software Services Fee – YR 2	Up to 25 Users	\$90,000	12 MONTHS
Software Services Fee – YR 3	Up to 25 Users	\$90,000	12 MONTHS
Software Services Fee – YR 4*	Up to 25 Users	\$90,000	12 MONTHS
Customization (YR 2 – Advanced Setup)	180 HOURS	\$34,200	01 MONTHS
Customization (YR 2 – 4)	80 HOURS	\$15,200	AS REQUESTED
Software Services Fee - Additional Users (+25 Users/YR) (YR 3 – 4)	2 x \$35,000 SOFTWARE	\$70,000	24 MONTHS
	SUBTOTAL (YEAR 1-4) MAXIMUM FEE	\$556,200	48 MONTHS
Two – 3 YEAR OPTIONS			
YEAR 5 (250 Users)	SOFTWARE SERVICES FEE	\$220,000	12 MONTHS
YEAR 6 (250 Users)	SOFTWARE SERVICES FEE	\$220,000	12 MONTHS

YEAR 7 (250 Users)	SOFTWARE SERVICES FEE	\$220,000	12 MONTHS
YEAR 8 (250 Users)	SOFTWARE SERVICES FEE	\$240,000	12 MONTHS
YEAR 9 (250 Users)	SOFTWARE SERVICES FEE	\$240,000	12 MONTHS
YEAR 10* (250 Users)	SOFTWARE SERVICES FEE	\$240,000	12 MONTHS
	TOTAL (YEAR 1-10) MAXIMUM FEE	\$1,936,200	120 MONTHS

Budget

BUDGET (DECEMBER 2020 – November 2024)			
Year 1	Year 2	Year 3	Year 4
\$166,800	\$129,267	\$130,067	\$130,067

EXTENSION BUDGET (DECEMBER 2024 – November 2030)					
Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
\$220,000	\$220,000	\$220,000	\$240,000	\$240,000	\$240,000

Cashflow by Fiscal Year (Total)

BUDGET (DECEMBER 2020 – June 2024)					
Year 1 (12/20-06/21)	Year 2 (07/21-06/22)	Year 3 (07/22-06/23)	Year 4* (07/23-06/24)		
\$129,300	\$129,267	\$130,067	\$167,567		
EXTENSION BUDGET (DECEMBER 2024 – November 2030)					
Year 5 (07/24-06/25)	Year 6 (07/25-06/26)	Year 7 (07/26-06/27)	Year 8 (07/27-06/28)	Year 9 (07/28-06/29)	Year 10* (07/29-11/30)
\$220,000	\$220,000	\$220,000	\$240,000	\$240,000	\$240,000

***Note – Software coverage extends to November of next FY to allow for transition and exercise of optionally agreement extension for uninterrupted software service.**

Cashflow by Fiscal Year (Software Only)

BUDGET (DECEMBER 2020 – June 2024)					
Year 1 (12/20-06/21)	Year 2 (07/21-06/22)	Year 3 (07/22-06/23)	Year 4* (07/23-06/24)		
\$52,500	\$90,000	\$125,000	\$162,500		
EXTENSION BUDGET (DECEMBER 2024 – November 2030)					
Year 5 (07/24-06/25)	Year 6 (07/25-06/26)	Year 7 (07/26-06/27)	Year 8 (07/27-06/28)	Year 9 (07/28-06/29)	Year 10* (07/29-11/30)
\$220,000	\$220,000	\$220,000	\$240,000	\$240,000	\$240,000

***Note – Software coverage extends to November of next FY to allow for transition and exercise of optionally agreement extension for uninterrupted software service.**

Software amount is prepaid per fiscal year and will be invoiced at the beginning of a task order/fiscal year.

APPENDIX C
ADDITIONAL INSUREDS

Transbay Joint Powers Authority

The Member Agencies of the TJPA:

Alameda-Contra Costa Transit District
California High-Speed Rail Authority
City and County of San Francisco
Peninsula Corridor Joint Powers Board – Caltrain
State of California, Department of Transportation

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

Salesforce.com and all legal entities controlling, controlled by, or under common control with, directly or indirectly, salesforce.com

And all of the officers, directors, agents, permitted assigns, and employees of each of the above.

The Additional Insureds listed in this Appendix shall also include such other parties as the TJPA may request from time to time.

APPENDIX D

USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

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

1. DEFINITIONS

** *The Definitions apply to all Agreements.*

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

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

2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

** *This requirement applies to all Agreements.*

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

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

** *This provision applies to all Agreements.*

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

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

4. ACCESS TO DOCUMENTS

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

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

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

5. FEDERAL CHANGES

** *This requirement applies to all Agreements.*

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

to such federal requirements and directives. Contractor's failure to so comply shall constitute a material breach of this Agreement.

6. CIVIL RIGHTS REQUIREMENT

** *This requirement applies to all Agreements.*

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

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21; and U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR parts 27 and 37.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
 - (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
 - (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective

employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

- (a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The TJPA's Anticipated DBE Participation Level for each Federal Fiscal Year is published on the TJPA website by August 1 of each year.

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

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

- (b). The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR Section 26.13[b]).

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

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

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

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

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

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

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

8. AMERICANS WITH DISABILITIES ACT

** *This requirement applies to all Agreements.*

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

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

** *This requirement applies to all Agreements.*

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

10. FLY AMERICA REQUIREMENTS

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

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

11. CARGO PREFERENCE REQUIREMENTS

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

The Contractor agrees to:

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

12. ENERGY CONSERVATION REQUIREMENTS

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

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

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

13. RECYCLED PRODUCTS

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

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

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

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

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

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

- (a). This Agreement is a “covered transaction” for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180, and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

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

15. CLEAN AIR

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

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

16. CLEAN WATER REQUIREMENTS

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

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

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

17. BUY AMERICA REQUIREMENTS

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

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

18. BREACHES AND DISPUTE RESOLUTION

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

- (a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from

the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

- (b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. LOBBYING

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

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

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

submit Standard Form- LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. Such forms are forwarded from tier to tier up to the TJPA.

20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

21. SEISMIC SAFETY REQUIREMENTS

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

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

22. BONDING REQUIREMENTS

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

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

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

(1). Bid Bond Requirements (Construction)

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

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the TJPA) shall prove inadequate to fully recompense the TJPA for the damages occasioned by default, then a bidder agrees to indemnify the TJPA and pay over to the TJPA the difference between the bid security and the TJPA’s total damages, so as to make the TJPA whole.

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

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

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

- (a). Performance Bonds

1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
 2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (b). Payment Bonds
1. The penal amount of the payment bonds shall equal:
 - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
 - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
 - (iii) \$2.5 Million if the Agreement price is more than \$5 Million.
 2. If the original Agreement price is \$5 Million or less, the TJPA may require additional protection, as required by subparagraph 1, if the Agreement price is increased.
- (3). **Performance and Payment Bonding Requirements (Non-Construction)**
- The Contractor also may be required to obtain performance and payment bonds when necessary to protect the TJPA's interest.
- (a). The following situations may warrant a performance bond:
1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).
 2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 3. Substantial progress payments are made before delivery of end items starts.
 4. Agreements are for dismantling, demolition, or removal of improvements.
- (b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
 2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.
- (d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
 - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
 - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or

(iii) \$2.5 Million if the Agreement price is increased.

(4). Advance Payment Bonding Requirements

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

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

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

(6). Warranty of the Work and Maintenance Bonds

(a). The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b). The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

23. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

** *This requirement applies to any Agreement for construction greater than \$2,000. "Construction," for purposes of this requirement, includes "actual construction, alteration and/or repair, including painting and decorating." (29 CFR Section 5.5[a]).*

(a). Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered

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

- (2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.
- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the

classification under this Agreement from the first day on which work is performed in the classification.

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

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

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

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

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

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

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

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

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

(d). **Apprentices and Trainees**

- (1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the

registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 - (3). Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

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

FLY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

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

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

Date _____

Signature _____

Company Name _____

Title _____

Explanation: _____

BUY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

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

Certificate of Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

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

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

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

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

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

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

Bidder/Offeror Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date: _____

APPENDIX E
PROPERTIES PLANNED FOR ACQUISITION

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

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

APPENDIX F
ENTERPRISE SERVICES AGREEMENT

APPENDIX F**ENTERPRISE SERVICES AGREEMENT***SIGNATURE PAGE*

This Enterprise Services Agreement (“Agreement”), effective as of the Effective Date set forth below, is entered into by and between the entity identified as Customer below (“Customer”) and Kahua, Inc., with its principal place of business located at 10000 Avalon Boulevard, Suite 600 Alpharetta, GA 30009 (“Kahua”). The parties acknowledge and agree that they have read and understand the Terms and Conditions of this Agreement and, upon execution, are legally bound by it. This Agreement is affixed to a primary agreement between Customer and Sage Method, Inc., and includes this “Signature Page”, the attached Terms and Conditions, all statements of work entered into in connection with this Agreement (“Statement(s) of Work” or “SOW”), and any schedules, exhibits, or other attachments incorporated herein.

CONTRACT DETAILS	
Customer Legal Name	Transbay Joint Powers Authority
Type of Legal Entity	Government Agency
Notice Contact Information	Transbay Joint Powers Authority 425 Mission Street, Suite 250 San Francisco, CA 94105 Attn: Edmond Sum
Effective Date	December 1, 2020
Initial Term	Four (4) Year Term, subject to the terms and conditions of the agreement between Sage Method Inc. and TJPA, with two 3-Year options to extend
Licensed Business	The Transbay Program (Program) will connect eleven bus and rail transit agencies under one roof in a state-of-the art multimodal transit center in downtown San Francisco, to be constructed in two phases. Upon completion of Phase 1, eight local and regional bus agencies will begin operations at the Salesforce Transit Center (transit center). Commuter and high-speed rail will be added in Phase 2, which will complete the design and construction of the Downtown Rail Extension (DTX) tunnel and the build-out of the below-grade train station facilities at the transit center. Phase 2 will also build a new underground station along the DTX alignment, an intercity bus facility, and a pedestrian tunnel between the transit center and the Embarcadero BART/ Muni Metro station.
Number of Licensed Users	Please see agreement between Sage Method, Inc. and TJPA at Appendix B
Fees	See Billable Parameters in Schedule B.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective on the Effective Date.

Kahua, Inc.

Transbay Joint Powers Authority

 Name: Chris Faklaris

 Name: Nila Gonzales

Title: Vice President, Sales

Title: Interim Executive Director

Date:

Date:

1. GENERAL. The following terms and conditions (“Terms and Conditions”) provide for terms that are common to this Agreement, including all Schedules. All Services will be provided to Customer according to these Terms and Conditions, all Statements of Work, and all schedules, exhibits, or other attachments made a part of this Agreement. In the event of a conflict between these Terms and Conditions and any Statement of Work or Schedule, the primary agreement between Sage Method, Inc. and TIPA Terms and Conditions will control, unless expressly stated to the contrary in the SOW or Schedule. Capitalized terms not otherwise defined herein shall have the meaning set forth in Schedule A.

2. SOFTWARE SERVICES

2.1 License. During the Term and subject to the terms of this Agreement, Kahua grants Customer a limited, non-exclusive, non-transferable license for its Licensed Users to access and use the Software Services for their intended purposes in accordance with any applicable documentation. Customer and its Licensed Users shall use the Services only for the internal business uses of Customer in connection with the Licensed Business. Most Software Services are made available solely on a hosted (i.e. SaaS) basis, provided that the Platform “Host” and certain plug-ins may be provided as downloadable executable files or in a similar manner. Except as otherwise expressly provided herein, Customer may not use the Software Services for Services of Customer that are different from the Licensed Business. Kahua reserves the right to make changes and updates to the functionality and/or documentation of the Software Services from time to time.

2.2 Licensed Users. A Licensed User account may not be shared or used by more than one individual person. Customer may add, replace, or delete Licensed Users as often as they want by inactivating the Licensed Users listed in the account manifest provided in the Platform and reassigning to a new Licensed User, up to the applicable maximum number of Licensed Users for which Customer has paid and selected.

2.3 Support Services; Service Levels. Kahua will provide support services to Customer as set forth in Schedule C, and Kahua shall provide the Platform in accordance with the service level terms set forth in Schedule C.

2.4 Applications. As part of the Software Services, Kahua offers certain products and services that provide discrete functionality when used in conjunction with the Platform (“Application(s)”). These Applications may be proprietary work of Kahua (“Kahua Application(s)”) or may be the proprietary work of third parties (“TP Application(s)”) who have granted Kahua the right to sublicense the Applications solely for use in conjunction with the Platform.

2.5 Third Party Solutions. The Services may include or incorporate software, solutions or services of third parties, including TP Applications (collectively, “Third Party Solutions”). From time to time, the Services may require Customer to obtain a license for TP Applications to access or use certain functionality. The Kahua online “kStore” will contain a description of published

Third Party Solutions or other third-party materials for which Customer is required to obtain a license in order to access or use certain functionality of the Software Services. Additionally, the owner of a TP Application may offer updates, patches, or new versions of the TP Applications from time to time through the kStore, or separate support services purchased directly from the owner.

3. PROFESSIONAL SERVICES. Kahua shall perform the professional services (“Professional Services”) described in one or more SOWs agreed upon by Kahua and Customer. If Customer requests additional services, then Kahua will provide a proposed SOW for Customer’s consideration. The charges for Professional Services will be those set forth in the SOW, and if no charges or rates are set forth in the SOW, then the charges will be calculated at the then-current rates of Kahua and subject to such deposit or advance payment as the parties may agree. Maintenance and support of code or functionality created by means of Professional Services will likewise be on a SOW-basis unless otherwise agreed in writing. Unless otherwise expressly set forth in a SOW, the deliverables provided or created under this Section and all interests therein, including inventions, patents, copyrights and all other intellectual property rights, shall remain solely with Kahua.

4. RIGHTS RESERVED. Kahua and its suppliers retain all rights in the Software Services and, except as otherwise expressly set forth in an applicable SOW, materials, deliverables, products and intellectual property arising from the Professional Services. This Agreement and the SOWs grant no ownership rights to Customer or any other party. No license is granted to Customer except for use of the Services as expressly stated herein. The Kahua name, the Kahua logo, and the product names associated with the Services are trademarks of Kahua or third parties, and they may not be used without Kahua’s or such third party’s prior written consent. Subject to the confidentiality restrictions as described in Section 7, Kahua shall be free to use its general knowledge, skills, and experience, and any ideas, concepts, know-how and techniques used in the course of providing the Services on other engagements.

5. FEES AND PAYMENT TERMS.

5.1 Fees. Customer shall pay all fees set forth in this Agreement, including (a) the fees and charges for the Software Services in accordance with the Billable Parameters and (b) the Professional Service fees and charges set forth in any applicable SOW or otherwise. Customer and its Licensed Users are authorized to use the Software Services only to the extent Customer has paid the applicable license fees and charges, which must not exceed (i) the number of Licensed Users authorized with respect to the Software Services, (ii) the other parameters set forth in Schedule B of this Agreement (“Billable Parameters”). Customer shall pay the applicable fees and charges of Kahua at its then-current rates for any usage of the Software Services that exceeds the Billable Parameters.

5.2 Payment Terms. Kahua will invoice for Software Services fees annually in advance and Professional Services as described in the applicable SOW. All invoices for any fees or charges that are

not reasonably disputed by Customer are due and Customer will make good faith effort to pay within forty-five (45) calendar days of invoice date for undisputed invoices. Refer to TJPA primary agreement with Sage Method, Inc. for payment and compensation terms. All amounts are payable in United States dollars. If Customer in good faith disputes any amounts set forth in a properly prepared invoice, it shall so notify Kahua in writing and the parties agree to promptly work together in good faith to resolve the dispute in a prompt and expeditious manner, making a good faith effort to resolve within thirty (30) days from the date of notice of such dispute.

5.3 Taxes. In addition to the fees payable hereunder, Customer agrees that it will be responsible for any sales, use or similar tax in connection with the provision of the Services. Kahua shall use their best interpretation of the guidelines, statutes and/or laws of the relevant state or jurisdiction to determine the applicability of sales, use or similar taxes to be invoiced. All such taxes will be itemized separately on the applicable invoices and will be collected and remitted to the appropriate state or jurisdiction by Kahua. Taxes shall not include any personal property taxes on property Kahua owns or leases, any franchise and privilege taxes on Kahua's business and/or taxes based on Kahua's net income or gross receipts.

6. CUSTOMER OBLIGATIONS; RESRICTIONS.

6.1 Technical Requirements. Customer must have required equipment, software, and Internet access to be able to use the Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely Customer's responsibility.

6.2 Use of Services. Customer and its Licensed Users shall use the Services solely as permitted or required by this Agreement. While Licensed Users may be any employees or any other person that Customer authorizes to use the Services for its internal business (including independent contractors and third party consultants using the Services for the benefit of Customer), Customer may not alter, resell or sublicense the Services or provide the Services as a service bureau. Customer agrees not to reverse engineer the Services or its software or other technology. Customer will not use or access the Services to: (i) build a competitive product or service, or (ii) make derivative works based upon the Services. Customer will not "frame" or "mirror" the Services. Customer acknowledges and agrees that any reverse engineering of the Services or the software associated with the Services will (i) void Kahua's indemnification obligations to Customer and the warranties granted in this Agreement; and (ii) automatically release Kahua from any obligation to provide Support Services and permit Kahua to terminate this Agreement and all SOWs and all use of the Services by Customer. Kahua is entitled to suspend immediately without notice any Customer or Licensed User account and access and use of the Services if Customer or Licensed User engages in an activity that is causing direct harm to Kahua's computers, systems or infrastructure or is in violation of any applicable state or federal laws.

6.3 Objectionable Matter. Customer agrees not to, and shall ensure its Licensed Users do not, submit any information or material that is illegal, knowingly incorrect or misleading, defamatory, indecent, obscene, threatening, infringing, or invasive of personal privacy (collectively "Objectionable Matter"). Kahua is entitled to investigate and audit Customer and the information and material submitted by Customer to verify whether Customer has submitted any Objectionable Matter. Kahua may remove any Objectionable Matter, but Kahua is not obligated to do so. Customer and Customer's Licensed Users shall comply with all applicable laws regarding Customer Data and use of the Services.

6.4 User Accounts. Customer is responsible for all activities that occur under Customer's Licensed User accounts. Customer is responsible for maintaining the security and confidentiality of all Licensed User usernames and passwords. Customer agrees to notify Kahua promptly of any unauthorized use of any username or password or account or any other known or suspected breach of security. Each Licensed User will require a unique username and password login credentials to access the Software Services.

7. NON-DISCLOSURE AND CONFIDENTIALITY.

7.1 Disclosure. Each party may disclose to the other party certain Confidential Information of such party or of such party's associated companies, distributors, licensors, suppliers, or customers. "Confidential Information" means any information, marked as "Confidential" and that is of value to its owner and is treated as confidential, including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing; "Disclosing Party" refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents; and "Receiving Party" refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Receiving Party's employees or agents.

7.2 Requirement of Confidentiality. The Receiving Party agrees: (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party, provided that the Receiving Party (i) may disclose the Confidential Information of the Disclosing Party to its, and its affiliates', officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 7, or (ii) as required by law; (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations or as otherwise authorized under the Agreement; and (c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party. The obligations in this Section 7 shall survive termination and continue for so long as the applicable information constitutes Confidential Information. Confidential Information shall not include information that: (a) is already known to the Receiving Party

ENTERPRISE SERVICES AGREEMENT

TERMS AND CONDITIONS

without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

7.3 Compelled Disclosure. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy. If, after providing such notice as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

7.4 Data Use. Customer agrees that data derived by Kahua from Kahua's performance of the Services or input by Customer may be used for the purposes of analysis, including statistical analysis, trend analysis, creation of data models, and creation of statistical rules. The results of such analysis may be used by Kahua for any lawful purpose.

8. CUSTOMER DATA. All Customer Data submitted by Customer to Kahua or to the Services, whether submitted by Customer or by its Licensed Users, will remain the sole property of Customer. Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of, and copyright permissions for, all Customer Data. Kahua may use the Customer Data to provide the Services to Customer. Kahua will make daily differential backups and weekly full backups of Customer Data. Such backups will be stored at a location selected at Kahua's sole discretion. Customer grants to Kahua a non-exclusive license to use, copy, store, transmit and display Customer Data to the extent reasonably necessary to provide and maintain the Services, including publication of contact information to enable collaboration between customers of the Services.

9. LIMITED WARRANTY; DISCLAIMER.

9.1 Limited Warranty. Kahua warrants that the Professional Services shall be performed in a professional and workmanlike manner and that Kahua and Kahua's personnel have the required skills and experience to perform the Professional Services. Kahua warrants that the deliverables provided by Kahua pursuant to a SOW will perform in all material respects with the specifications described in the applicable SOW. Kahua will use commercially reasonable efforts to repair or provide a workaround that is materially consistent with the functionality as described in the applicable SOW for any Professional Services or SOW deliverable failing to meet the foregoing remedy for which it receives written notice from Customer within thirty (30) calendar days after

performance describing such failure, which shall be Customer's exclusive remedy and Kahua's sole and complete obligation with respect thereto.

9.2 Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 9.1, EACH PARTY DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS TO THE OTHER PARTY REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY PROVIDER. NO WARRANTY IS MADE THAT USE OF THE SERVICES WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT THE SERVICES FUNCTIONALITY WILL MEET CUSTOMER'S REQUIREMENTS.

9.3 Third Party Solutions. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, KAHUA DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, OR ASSUME ANY LIABILITIES UNDER THIS AGREEMENT, WITH REGARD TO ANY THIRD PARTY SOLUTIONS (INCLUDING ALL TP APPLICATIONS), WHICH CUSTOMER ACKNOWLEDGES AND AGREES ARE BEING ACCESSED AND USED AT CUSTOMER'S OWN RISK.

10. LIMITATION OF LIABILITY.

10.1 Exclusion of Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE, REVENUE, PROFIT, OR DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 Liability Cap. EXCEPT WITH REGARD TO CUSTOMER'S PAYMENT OBLIGATIONS, OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY EXCEED FEES PAID OR PAYABLE FOR THE CORRESPONDING SERVICES BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.3 Exceptions. The foregoing limitations shall not apply to if, and only to the extent that, such limitations are prohibited by applicable law.

11. INDEMNIFICATION.

11.1Kahua Indemnification. Kahua shall defend Customer and its officers, directors, employees, agents, successors and permitted assigns against any third-party claim, suit, action or proceeding (each, an "Action") based on a claim that Customer's receipt or use of the Platform, Software Services, or Kahua Applications in accordance with this Agreement infringes any intellectual property right or misappropriates any trade secret of a third party, and shall pay all settlements entered into and damages awarded against Customer to the extent based on such an Action; provided, however, that Kahua shall have no obligations under this Section 11.1 with respect to claims to the extent arising out of: (a) any instruction, information, designs, specifications or other materials provided by Customer to Kahua; (b) use of the Services in combination with any materials, software, or equipment not supplied to Customer or specified by Kahua in writing; or (c) any modifications or changes made to the Services by or on behalf of any person or entity other than Kahua. If the Platform, Software Services, or Kahua Applications, or any part thereof, become, or in the opinion of Kahua may become, the subject of a claim of infringement or misappropriation, Kahua may, at its option: (i) procure for Customer the right to use such Platform, Software Services, or Kahua Applications free of any liability; (ii) replace or modify the Platform, Software Services, or Kahua Applications to make them non-infringing; or (iii) terminate this Agreement and refund to Customer any portion of the fees prepaid by Customer for the infringing Platform, Software Services, or Kahua Applications. THIS SECTION STATES KAHUA'S SOLE OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

11.2Customer Indemnification. Customer shall defend Kahua and its officers, directors, employees, agents, affiliates, successors and permitted assigns against all Actions based on a claim that any information or materials provided by Customer, or Kahua's receipt or use thereof, infringes any intellectual property right or misappropriates any trade secret of a third party, and shall pay all settlements entered into and damages awarded against Kahua to the extent based on such an Action.

11.3Indemnification Procedures. The indemnifying party shall solely control the defense and settlement of the applicable Action. The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that requires the indemnified party to pay monies or admit liability without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 11.3 shall not relieve the indemnifying party of its obligations under this Section 11

except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

12. TERM AND TERMINATION.

12.1Term. The Term of this Agreement will begin on the Effective Date and, subject to the terms and conditions of the agreement between Sage Method, Inc. and TJPA, will end at the end of the Initial Term set forth on the Signature Page, counted from the Effective Date ("Initial Term").

12.2Termination; Suspension. Without prejudice to any other remedies and in addition to any other termination rights herein, the parties shall have the right to terminate this Agreement as provided below:

a. By either party if the other party commits a material breach of this Agreement and such breach remains uncured 30 days after written notice of such breach is delivered to such other party including the failure to pay any fees due to Kahua; or

b. By either party if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws

c. Otherwise as provided in the agreement between Sage Method, Inc. and TJPA.

12.3Effect. Upon termination or expiration of this Agreement or any Statement of Work for any reason, all rights, licenses, and access to the Services granted by Kahua to Customer under this Agreement or SOW, as applicable, will immediately cease. The termination or expiration of an SOW shall have no impact on the continuing validity and effect of any other SOWs that may have been entered into between the parties prior to such expiration or termination, unless and to the extent such other SOWs are also terminated. Within 30 days after termination or expiration of this Agreement, each party shall return or destroy the Confidential Information of the other party then in its possession.

12.4Survival. Any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

13. DISPUTE RESOLUTION. The parties agree that, except as otherwise provided below, they shall first attempt to resolve any dispute, claim or controversy relating in any way to this Agreement (a "Dispute") between an officer of each party who has authority to resolve the Dispute. If any Dispute cannot be settled in this manner within sixty (60) calendar days of written notice being served by a party on the other party, the parties agree that the Dispute may be settled by a court of competent jurisdiction. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for a temporary restraining order,

preliminary injunction, or other interim, conservatory or equitable relief, as necessary.

14. GENERAL.

14.1 Insurance. During the term of this Agreement, Kahua shall maintain the insurance outlined in Schedule D.

14.2 Disaster Recovery. During the Term, Kahua shall maintain and comply with its disaster recovery and business continuity plan (the "Business Continuity Plan"), which shall include processes and procedures designed to restore the Software Services in the event of an outage.

14.3 Export. Customer will ensure the Services or associated software are not exported or re-exported (whether by access of the Services or associated software or otherwise) without Kahua's prior written consent or in violation of applicable law.

14.4 Governing Law. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of California without giving effect to any choice or conflict of law provision or rule. The United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties.

14.5 Conflicting Terms. In the event of a conflict between these Terms and Conditions and any Statement of Work or Schedule, the primary agreement between Sage Method, Inc. and TJPA Terms and Conditions will control, unless expressly stated to the contrary in the SOW or Schedule. Otherwise, notwithstanding the content of any Customer purchase order or any other document or record, whether in writing or electronic, relating to the subject matter of this Agreement, the terms of this Agreement shall govern and any conflicting, inconsistent, or additional terms contained in such documents shall be null and void.

14.6 Notice. Customer shall provide Kahua in writing with accurate billing and contact information as Kahua may reasonably require. Customer agrees to accurately update this information promptly by means of e-mail to sales@kahua.com, and in any case within thirty (30) calendar days, if there is any change. Either party may give notice by means of electronic mail to the other party's e-mail address on record or by written communication sent by first class mail or by courier service to the other party's address on record. Such notice will be deemed to have been given upon the expiration of 36 hours after mailing (if sent by first class mail) or sending by courier or 12 hours after sending (if sent by e-mail), or, if earlier, when received. A party may, by giving notice, change its applicable address, e-mail, or other contact information.

14.7 Assignment. Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided that upon prior written notice to the other party, either party may assign the Agreement to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any

of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14.8 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another.

14.9 Severability. In case any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

14.10 Entire Agreement. This agreement is affixed to a primary agreement between Sage Method, Inc. and TJPA. This Agreement, and the primary agreement to which it is affixed, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto.

14.11 Amendment; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14.12 Force Majeure. Neither party shall be liable for delay or failure in performing any of its obligations hereunder due to causes beyond its reasonable control, including an act of nature, war, natural disaster, governmental regulations, terrorism, communication or utility failures or casualties or the failures or acts of third parties.

14.13 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

14.14 Relationship of Parties. Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute one party

ENTERPRISE SERVICES AGREEMENT

TERMS AND CONDITIONS

as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

14.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

SCHEDULE A DEFINITIONS

1. “Customer Data” means data, information or material that is, in the course of utilizing the Software Services, either: (i) provided or submitted by Customer or any Licensed User through the Services or otherwise to Kahua; or (ii) automatically generated by the Software Services.
2. “Initial Term” has the meaning set forth on the Signature Page.
3. “Licensed Business” has the meaning set forth on the Signature Page.
4. “Licensed Users” means the Users paid for by Customer for use of the Software Services (including those initially set forth on the Signature Page) and the number of Users paid for by Customer for each Application set forth on Schedule B or the applicable documentation for such Software Services or any relevant Application order, as well as such additional Users paid for subsequently and set forth on the applicable documentation for ordering such additional Users. “User” means (i) any employee of Customer, or (ii) independent contractor.
5. “Platform” means the Kahua Platform, including the search, workflow and authentication engines, for developing and operating Applications.
6. “Services” means the Software Services and Professional Services.
7. “Software Services” the Platform, Applications and Support Services made available to Customer.
8. “Term” means the Initial Term and applicable Renewal Terms.

SCHEDULE B BILLABLE PARAMETERS

Enterprise License

Customer is purchasing licenses per agreement between Sage Method Inc. and TJPA at Appendix A for the following Applications:

Kahua Platform License

- o Projects
- o Community
- o Project Directory
- o File Manager
- o File Viewer/Markup
- o Log Views
- o Import/Export
- o Processing/Workflow
- o Multi-Edit
- o Audit Trail/History
- o Task Manager
- o Permissions/Security
- o Report Writer
- o Portable View Templates
- o File Sync
- o Mobile Access
- o DocuSign
- o kBuilder
- o API's

Construction Document Management Suite

- o RFIs
- o Submittals
- o Daily Reports
- o Punch Lists
- o Issues
- o Meetings
- o Field Observations
- o Communications

Design Management Suite

- o Drawings
- o Specifications
- o Bluebeam Revu Integration (Bluebeam license not included)

Cost Management Suite

- o Contracts
- o Budget Management
- o Change Orders
- o Pay Apps
- o Purchase Orders
- o Purchase Orders Amendments
- o Invoices
- o Work Breakdown Structure

Other Applications:

- o Portfolio Management
- o Capital Planning
- o Cash Flow Forecasting
- o Bid Management
- o Data Store
- o Schedule Management
- o Sources of Funds

Payment Fees, Rates, Schedule, and Terms and Conditions – Refer to agreement between Sage Method, Inc. and TJPA, including at Appendix B

SCHEDULE C

SUPPORT AND SERVICE LEVELS

1. Scope of Agreement. During the Term of the Agreement to which this Schedule is attached and so long as Customer is not in breach of any obligations, Kahua agrees to provide the support services set forth below.

2. Response Time by Priority. Upon receipt from Customer of a report of an Error affecting Customer’s use of the Software Services, Kahua shall take reasonable measures to remedy the reported Error. Kahua may request certain information (data, screen shots, etc.) to properly validate and reproduce the Error. All resolution times will begin after Kahua validates and reproduces the Error. Kahua will provide response and resolution for reported Errors, in accordance with the following schedule:

Severity Categories	Definition	Time to Respond	Time to Resolution
Priority 1	Production system is completely unavailable or is inoperable, or is affected such that critical business processes are completely unavailable or inoperable.	Within 1 hour	Kahua will use reasonable efforts to provide a fix, or acceptable work around, and work continuously to resolve following receipt of notification and validation of Priority 1 issue.
Priority 2	Production system is available, but non-critical business processes and multiple users are substantially impacted, or are affected such that critical business processes are unavailable or inoperable.	Less than 4 hours	Kahua will make reasonable efforts to provide a fix or acceptable workaround within five (5) business days from the time Kahua is able to replicate the Error
Priority 3	Production system is available, but a single user or non-critical business processes are adversely impacted, or the test or development systems functions, but multiple users are impacted.	2 business days	Kahua will make reasonable efforts to provide a fix or acceptable workaround within ten (10) business days or provide in a scheduled service or maintenance release.

For purposes of this Schedule, “**Business Hours**” means 7:00 am – 10:00 pm (Eastern Time), Monday – Friday excluding holidays. All categories above specifically apply only to those issues that are within the control of Kahua.

3. Support Services. Subject to the terms and conditions of this Agreement, including payment of the fees to Kahua, Kahua shall provide the following support services (“Support Services”) during the Term from Kahua’s facilities:

a. **Telephone Assistance.** Kahua shall provide telephone assistance on an on-call basis during Business Hours. Kahua shall provide such telephone assistance (i) for consultation in the use, operation and maintenance of the Software Services as Kahua considers in its sole discretion reasonable to aid Customer in the use of the Software Services; and (ii) for the correction of Errors discovered by Customer. “Error” means a material failure of the Software Services to substantially perform the functions described in the corresponding documentation. Kahua will use reasonable efforts to return Customer’s calls to Kahua’s designated Support Services telephone number during the hours described above within two (2) business hours of such call. Customer shall only permit authorized Customer personnel to call Kahua for Support Services. Customer agrees that the placing of a service call by its personnel authorizes Kahua to undertake corrective action as determined by Kahua, and Customer will be responsible for any fees or expenses that result from such actions in accordance with this Agreement. The preferred method to communicate an issue to Kahua Technical Support is through e-mail at support@kahua.com. Alternatively, Customer may call Technical Support directly at 770-641-9994. Customer may also use either method to submit comments, questions and suggestions regarding the Software Services. Kahua may, but will not be obligated to, develop or implement any changes based on submitted comments or suggestions, which will be solely owned by Kahua.

b. **Software Services Updates.** Kahua shall supply Customer with Software Services updates including improvements, enhancements, or modifications to the Software Services that Kahua generally makes available to its other Customers and for which Kahua does not charge separately. The Software Services updates shall be treated as part of the Software Services for purposes of this Agreement.

c. **Limitations & Exclusions.** Kahua has the right to discontinue provision of Support Services in the event of: (i) Errors that arise out of improper handling or use of the Services by Customer, its employees, or agents, including use inconsistent with the documentation and this Agreement; (ii) Errors that arise out of changes, alterations, or revisions made by or on behalf of Customer; (iii)

Errors that arises out of Customer's use of Services or equipment not expressly approved by Kahua in writing; (iv) problems arising out of Customer data, network, database, hardware, or operational or environmental factors not within the direct control of Kahua; (v) failure by Customer to install mandatory Software Services updates provided to Customer by Kahua from time to time (Kahua only agrees to provide Support Services for the most current version of the Software Services or on versions developed, configured, customized and maintained by Kahua for Customer, or as designated by Kahua and the version of the Software Services resulting from execution of the immediately preceding Software Services update as provided by Kahua); (vi) Errors arising out of Applications or other third party software or hardware; or (vii) Errors that are not reproducible by Kahua. If Kahua elects to provide Support Services for any of the preceding events, then Customer shall reimburse Kahua for all time spent by Kahua at Kahua's then-prevailing time and materials rates and for Kahua's reasonable expenses incurred in responding to correcting Errors arising from subsections (i) through (vi) above and any other false maintenance or support claims, or repairing any Customer alterations or revisions to the Services.

4. System Availability. Kahua will have at least 99.7% uptime during which the Platform will be available for Customer's use under the Agreement, as measured yearly, excluding scheduled downtime (as described below).

a. Unscheduled Downtime. Kahua will notify Customer within one hour of any known and verified unscheduled downtime of the Platform, and update the status to Customer hourly until the Platform is back up. Kahua will immediately notify Customer when the Platform is restored.

b. Scheduled Downtime. Scheduled downtime may include scheduled maintenance, upgrades of hardware or Services, or upgrades to increase storage capacity. Scheduled maintenance, while being conducted, may degrade the quality of the Software Services provided which may include an outage of the Software Services; provided, however, that an outage related to scheduled maintenance shall not be deemed to be non-Availability. Normal windows for scheduled maintenance are between Fridays' at 10:00 PM to Saturdays' at 2:00 AM, Local Time. Local Time shall refer to Eastern Standard Time or Eastern Daylight Time, whichever is in effect at the time. The Customer will be notified of scheduled downtimes that are expected to exceed one hour at least twenty four (24) hours before downtime occurs.

5. Customer's General Responsibilities.

a. Reporting Errors promptly and accurately.

b. Designating two members of Customer's technical staff who shall be Customer's representatives for contact with Kahua regarding Support Services.

c. Providing sufficient information for Kahua to duplicate the Error, as described in the documentation, so Kahua can duplicate the Error, assess the situation, and/or undertake any needed or appropriate corrective action hereunder.

d. Afford Kahua reasonable access to and use of the Software Services, and, if necessary, Customer's systems as may be necessary to diagnose and repair any Errors.

e. Comply with the documentation and any operator or trouble shooting procedures for the Services provided by Kahua.

f. Otherwise following instructions or suggestions from Kahua regarding use, maintenance, upgrades, repairs, workarounds, or other related matters. This includes upgrading to new versions of any software provided to Customer.

SCHEDULE D

INSURANCE

1. **Commercial General Liability Insurance.** Commercial General Liability insurance coverage, including contractual liability, with minimum limits of One Million Dollars (\$1,000,000) on a per occurrence basis.
2. **Worker's Compensation Insurance.** Worker's Compensation Insurance in statutory amounts, or equivalent if not required by the state where services are performed, and Employer's Liability coverage with limits of liability of not less than \$1,000,000 covering all employees of Kahua employed in, on or about Customer's property.
3. **Errors and Omissions Insurance with Technology Services Coverage.** Errors and Omissions insurance, with minimum limits of One Million Dollars (\$1,000,000) on a per occurrence basis, with an aggregate Two Million Dollar (\$2,000,000) limit.
4. **Crime Insurance or Fidelity Bond.** If applicable, Crime Insurance or Fidelity Bond with a minimum amount of \$1,000,000 and having a third-party endorsement covering Kahua and all of Kahua's employees who have access to or are responsible for handling Customer's funds or account information.
5. **Employment Practices Liability Insurance.** When worked is performed on Customer's premises, Employment Practices Liability Insurance with a minimum limit of \$1,000,000 and having a third party endorsement.
6. **Cyber Liability Insurance.** Cyber Liability Insurance, when work performed requires or allows Kahua to be connected to Customer's networks or Customers Data is stored on Kahua's networks. A minimum limit of \$1,000,000 shall be provided. The insurance shall include coverage for loss, disclosure and theft of data.