

**STAFF REPORT FOR CALENDAR ITEM NO.: 11  
FOR THE MEETING OF: April 14, 2022**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorizing the Executive Director to execute a Professional Services Agreement with Pelli Clarke and Partners, Inc. for Architectural and Engineering services related to the completed Phase 1 facilities (non-DTX scope) on an as-needed basis for a five year term, with options to extend for two additional two-year terms, for an amount not to exceed \$1,600,000.

**BACKGROUND:**

In 2008, at the conclusion of a competitive procurement process, Pelli Clarke Pelli Architects, Inc. (now Pelli Clarke and Partners) (PCPA) entered into an agreement with the TJPA to provide design and construction administration services for Phase 1 of the Transbay Program. The scope of services included the complete design of the Salesforce Transit Center and bus ramps connecting the building to the west approach to the Bay Bridge and bus storage facility, design of the below grade train box, and design of the interconnection and coordination with the Salesforce Tower.

To provide the services, members of the PCPA consultant team served as the Architect of Record (AOR) and the Engineer of Record (EOR) for the various elements of the project. The PCPA team created the design plans for the project to the appropriate codes. Every plan sheet used has a professional stamp from either the AOR or the EOR on the PCPA team. The PCPA team was responsible for documenting and logging the progress of their designed scope to ensure that the contractor built the project as per the approved plans and specifications.

The construction of Phase 1 is now complete. It is anticipated, however, that future construction will affect elements on Phase 1, including the Salesforce Transit Center (e.g., tenant buildout within the facility that requires modifications to the original design, or neighboring parcel development that could affect the completed transit center). The TJPA will require architectural and engineering professional design services (including AOR and EOR) to understand the nature of, and mitigate potential issues related to, proposed modifications to the original structure. Those services are not within the scope of the 2008 agreement with PCPA.

**REPORT:**

The architectural and engineering services the TJPA requires related to proposed modifications and impacts on the original design and as-built construction of Phase 1 facilities are available most efficiently and only from a single source – the PCPA team that designed and performed construction administration for the original project, including the AOR/EOR. The PCPA team is intimately familiar with the design and construction of this very complex structure, the AOR/EOR made nuanced and material decisions over the design and its code compliance, and the PCPA team performed significant review and certification of the final completed project. As the AOR/EOR, there are situations where the PCPA team are the only engineers/architects that are so suited to have the institutional knowledge to protect the TJPA's Phase 1 facilities when evaluating proposed modifications to the facilities or the impact of work on adjacent structures.

Often times, the AOR/EOR will be called upon in an oversight role to peer review another 3<sup>rd</sup> party design to ensure the base TJPA facilities are not compromised for the “Basis of Design”. It is also important that the TJPA maintain any on-going responsibility the PCPA team has for the original design and construction of the Phase 1 facilities, notwithstanding proposed modifications to that original design or changes in conditions on adjacent properties. TJPA staff has identified PCPA and their subconsultants as the only consultant that is qualified as the AOR/EOR for the base building Phase 1 facilities. PCPA is familiar and has the institutional knowledge with the complexities of maintaining the TJPA’s interest. PCPA has been retained previously under other competitive bid processes and has received high accolades related to previous work performed for their AOR/EOR services.

The conclusion, that a sole source justification is merited for this contract, is permitted under TJPA Policy and is in alignment with statements issued by the Federal Transit Administration (FTA) regarding a sole source procurement. In providing guidance to grantees, FTA has explained its view: “If the purpose ... is to bring the A/E Phase I [Project A] firm into the Phase II [Project B] picture in order to interpret Phase I [Project A] preliminary designs to the Phase II [Project B] designers, and/or review the Phase II [Project B] design work in light of Phase I [Project A] requirements, then it would seem logical that the Phase I [Project A] firm would be in a unique position to do this follow-on work as a sole source ....” (FTA, Circular 4220, Ch. VI, section 3.i) The circumstances here for this specific contract are consistent with the example FTA provided as an appropriate basis for a sole source procurement.

The scope of services under the proposed new Professional Service Agreement does not include DTX-related scope. DTX scope is handled under a separate contract. The majority of the design effort for this contract is anticipated to be related to either the reimbursable Parcel F agreement (\$30,000/month for 3 years = \$1,080,000) or the Tenant Improvement support budget (\$12,000/month for 2 years = \$300,000). The remaining \$220,000 of the proposed budget is for oversight support to the miscellaneous Capital Improvement Projects spread out over the 5 year term.

**RECOMMENDATION:**

TJPA staff recommends that the TJPA Board authorize the Executive Director to execute the attached Professional Services Agreement with Pelli Clarke and Partners, Inc. (PCPA) for Architectural and Engineering services related to the completed Phase 1 facilities on an as-needed basis for a five year term, with options to extend for two additional two-year terms, for an amount not to exceed \$1,600,000.

**ENCLOSURES:**

1. Resolution
2. Agreement

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

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

WHEREAS, The construction of Phase 1 of the Transbay Program is now complete. It is anticipated, however, that future construction (such as tenant improvements and on adjacent parcels) will affect elements on Phase 1; and

WHEREAS, The TJPA will require architectural and engineering professional design services (including Architect of Record (AOR) and Engineer of Record (EOR)) to understand the nature of, and mitigate potential issues related to, proposed modifications to the original structure; and

WHEREAS, Pelli Clarke Pelli Architects, Inc. (now Pelli Clarke and Partners, Inc.) provided design and construction administration services for Phase 1, including preparing the complete design of the Salesforce Transit Center, ensuring code compliance, applying professional stamps to plan sheets, and documenting and logging the progress of their designed scope, making the firm uniquely qualified to provide the required services related to that design; and

WHEREAS, A sole source justification in alignment with the TJPA Policy and FTA guidelines has been processed for Pelli Clarke and Partners to provide architectural and engineering services for the existing Salesforce Transit Center and associated facilities (non-DTX scope); now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a Professional Services Agreement with Pelli Clarke and Partners, Inc. in the form presented for Architectural and Engineering services related to the completed Phase 1 facilities (non-DTX scope) on an as-needed basis for a five year term, with options to extend for two additional two-year terms, for an amount not to exceed \$1,600,000

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 14, 2022.

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

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_ 2022, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and PELLI CLARKE & PARTNERS, Inc. (“Architect”).

### Recitals

A. The TJPA requires Architectural and Engineering (A & E) Professional Design Services for the Transbay Transit Center Building (“Program” or “Project”).

B. The architectural and engineering services the TJPA requires are related to proposed modifications and impacts on the original design and as-built construction of Phase 1 of the Program (“original project”). The Architect (previously known as Pelli Clarke Pelli Architects, Inc.) was the Architect that led the team that designed and performed construction administration for the original project, including the Architect of Record (AOR)/Engineer of Record (EOR).

C. The Architect represents that it possesses the requisite professional expertise, experience and resources to perform the Services as set forth in Appendix A Scope of Services (“Services”) in accordance with the terms and conditions of this Agreement.

D. The TJPA and the Architect 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 \_\_\_\_\_, 2022, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_ authorizing the TJPA’s Executive Director to execute this Agreement with the Architect 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. Upon written request from the Architect for the status of funds appropriated for the Program, TJPA shall respond within fifteen (15) days. If the TJPA becomes aware of any material change to its ability to fund services to be provided by the Architect over the next twelve (12) months, it shall promptly notify the Architect.

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 Architect’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

## 2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for 5 (five) years from the Effective Date of the Agreement, as described in Section 3, “Effective Date of Agreement,” provided that (i) the TJPA shall have the right to extend this Agreement for 2 (two) additional 2year (two-year) options by providing to the Architect 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 Architect and the approval of such extension by the TJPA.

## 3. Effective Date of Agreement

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

## 4. Services the Architect Agrees to Perform

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

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

## 5. Compensation

a. All work under this Agreement shall be compensated on an hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed [amount specified here should be for original term and not include option term] One Million, six-hundred thousand and 00/100 Dollars (\$1,600,000). The breakdown of the Architect’s fees appears in Appendix B, Fees.

b. Hourly rates for services may be adjusted annually pursuant to Appendix B.

c. No charges shall be incurred under this Agreement nor shall any payments become due to the Architect until the Services required under this Agreement are received from the Architect and approved by the Executive Director as being in accordance with this Agreement. The TJPA may reasonably withhold payment to the Architect in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the TJPA in connection with the Architect’s negligent errors or omissions.

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

## 6. Guaranteed Maximum Costs

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the Architect for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 5, "Compensation," unless the changed scope is authorized by written amendment and approved as required by law.

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

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

## 7. Payment

Invoices furnished by the Architect 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 Architect must submit required DBE/SBE Progress Payment Reports with every invoice. All amounts paid to the Architect shall be subject to audit by the TJPA.

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

## 8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Architect, subconsultant, 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 Architect, subconsultant or consultant will be deemed to have submitted a false claim to the TJPA if the Architect, subconsultant 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 Architect 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 Architect 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 Architect under this Agreement.

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

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

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

## **12. Qualified Personnel**

The Architect represents to the TJPA that the Architect is qualified to perform the services as contemplated by this Agreement. The Architect represents 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 Architect. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Architect are shown in Appendix A, and can be added/deleted as needed to provide the Services with prior notification to the TJPA.

All personnel, including those assigned at the TJPA's request, must be supervised by the Architect. The Architect 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 Architect, or by any of its employees, even though such equipment be furnished, rented or loaned to the Architect by the TJPA.

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

### **a. Independent Architect**

The Architect or any agent or employee of the Architect shall be deemed at all times to be an independent Architect and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Architect or any agent or employee of the

Architect 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 Architect or any agent or employee of the Architect is liable for the acts and omissions of itself, its employees and its agents. The Architect 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 Architect's performing services and work, or any agent or employee of the Architect providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Architect.

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 Architect'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 Architect 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 Architect 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 Architect for the TJPA, upon notification of such fact by the TJPA, the Architect shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to the Architect under this Agreement (again, offsetting any amounts already paid by the Architect 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 Architect shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Architect is an employee for any other purpose, then the Architect 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 Architect was not an employee.

**15. Insurance**

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

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

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

(3) Business Automobile Liability Insurance with limits not less than \$1,000,000 per

accident for Bodily Injury (including death), Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and

(4) Professional Liability Insurance with limits not less than \$3,000,000 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.

(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, but the inclusion of more than one insured shall not increase the insurer's limits of liability.

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

d. Should any of the required insurance be provided under a claims-made form, the Architect 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 Architect 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 Architect hereby agrees to waive subrogation which any insurer of the Architect may acquire from the Architect by virtue of the payment of any loss. The Architect 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 Architect, its employees, agents and sub-Architects.

i. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Architect under this Agreement. If the Architect 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 Architect. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

## **16. Indemnification**

### **a. General Indemnity**

To the fullest extent permitted by law, the Architect shall indemnify and save harmless the TJPA, its members, directors, officers, and employees (collectively “Indemnitees”), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Architect or its subconsultants) and liabilities (including, without limitation, incidental and consequential damages, court costs, attorney’s fees and costs of investigation), that arise directly or indirectly, in whole or in part, from any negligent, reckless, or willful act or omission of the Architect and subconsultant to the Architect, anyone directly or indirectly employed by them, or anyone that they control (collectively, “Liabilities”), subject to the provisions set forth herein.

#### **(1) Limitations**

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

(3) The Architect assumes no liability whatsoever for the sole negligence, active negligence or willful misconduct of any Indemnitee or the Architects of any Indemnitee.

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

### **b. Copyright Infringement**

The Architect 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 Architect's services under this Agreement.

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

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

## **18. Liability of TJPA**

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

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

By entering into this Agreement, the Architect 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 Architect 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 Architect. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of the Architect'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 Architect substantially fails to perform or observe through no fault of the terminating party 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 Architect substantially fails to perform or observe through no fault of the terminating party any other material term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from TJPA to the Architect.

(3) The Architect (a) 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, (b) makes an assignment for the benefit of its creditors, (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of the Architect or of any substantial part of the Architect's property, or (d) 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 Architect or with respect to any substantial part of the Architect'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 Architect.

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. In addition, the TJPA shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Architect any Event of Default; the Architect shall pay to the TJPA all reasonable costs and expenses incurred by the TJPA in effecting such cure. The TJPA shall have the right to offset from any amounts due to the Architect under this Agreement reasonable damages, losses, costs or expenses incurred by the TJPA as a result of such Event of Default.

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 Architect thirty (30) calendar days written notice of termination and an opportunity for consultation with the TJPA before termination becomes effective. The notice shall specify the date on which termination shall become effective.

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

(1) Promptly discontinuing the performance of all services and other work under this Agreement on the date(s) and in the manner mutually agreed upon by the Architect and 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 and subject to the approval of any affected subconsultants, assigning to the TJPA any or all of the Architect'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 Architect and in which the TJPA has or may acquire an interest.

c. Should Construction Documents be required and, if the TJPA terminates this Agreement for convenience after the completion of the Construction Documents, but prior to the Construction Bid Phase, and the TJPA in its sole discretion could have otherwise proceeded with the

Project but for circumstances outside the control of the Architect, then the TJPA will acknowledge that the Architect will have expended time and effort in excess of that reflected in actual compensation, and accordingly, the TJPA shall pay the Architect two and one-half percent (2.5%) of the total lump sum basic services fee. If the TJPA terminates this Agreement for convenience prior to the completion of Construction Documents or during the Construction Administration phase, the TJPA shall acknowledge additional costs the Architect has incurred in the performance of the Agreement, the termination of which was due to no fault of the Architect and may authorize an equitable adjustment to the Agreement price. The equitable adjustment in price shall include a reasonable profit for services or other work performed prior to the effective date of termination. The equitable adjustment shall provide for payment to the Architect for services rendered and expenses incurred before the termination in addition to termination settlement costs the Architect reasonably incurs relating to commitments which had become firm before the termination. Architect shall submit a final invoice for services actually performed and/or reimbursable expenses incurred, plus any markup as allowed under the Agreement; no amount shall be allowed for anticipated profit on unperformed or unauthorized services or charges.

d. Within thirty (30) days after the specified termination date, the Architect shall submit to the TJPA an invoice, which shall set forth the reasonable cost to the Architect for all services and other work the TJPA directed the Architect 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 Architect may also recover the reasonable cost of preparing the invoice and all costs described in subsection (c) above.

e. In no event shall the TJPA be liable for costs incurred by the Architect or any of its consultants after the termination date specified by the TJPA, except for those costs specifically enumerated and described in the preceding subsections (c & d). Such non-recoverable costs include, but are not limited to, 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 subsections (c & d).

f. In arriving at the amount due to the Architect under this Section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by the Architect's final invoice; and (2) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (e); and (3) in instances in which, in the opinion of the TJPA, the cost of any service or other work covered by the Architect's final invoice is excessively high due to anticipated costs 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.

g. 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 Architect, 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 Sub-Architects.

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

To Architect: Fred W. Clarke III  
Pelli Clarke & Partners  
1056 Chapel Street  
New Haven, CT 06510  
203-777-2515  
[fclarke@pcparch.com](mailto:fclarke@pcparch.com)

Any notice of default must be sent by registered mail.

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

The Architect agrees that all proprietary or confidential information disclosed by the TJPA to the Architect 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 Architect receives advance written approval from the TJPA; or (iii) required by law or judicial order.

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

The Architect 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 Architect agrees to all of the following:

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

- (1) The disclosure is authorized by this Agreement;
- (2) The Architect 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 Architect 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 Architect, or bring a false claim action against the Architect.

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

All Architect 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 Architect or its subconsultants, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by the Architect or its sub-Architects in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the TJPA. However, the Architect may retain and use copies for reference, marketing and promotional purposes and as documentation of its experience and capabilities.

## **28. Works for Hire**

If, in connection with services performed under this Agreement, the Architect or its sub-Architects 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 Architect or its sub-Architects under this Agreement are not works for hire under U.S. law, the

Architect hereby assigns all copyrights to such works to the TJPA and agrees to provide material and execute documents necessary to effectuate such assignment. The TJPA hereby grants to the Architect a free license to use such works solely for the purpose of marketing and promotion, such as to document the Architect's experience and capabilities, and to use or reuse details which are not unique to the design of the Project. With respect to any other use or purpose, including the use or reproduction of the TJPA logo or other iconic representation of the Transit Center Building, the Architect must obtain the prior express written permission of the TJPA.

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

The Architect agrees to maintain and make available to the TJPA, during regular business hours, with seven (7) calendar days notice, accurate books and accounting records relating to its work under this Agreement. The Architect 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 reimbursable expenses and services provided on an hourly basis, whether funded in whole or in part under this Agreement. The Architect 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 Architects' 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 Architect 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 Architect shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Architect 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 Architect 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 Architect acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Architect further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

### **32. Subcontracting**

Subject to specific direction in any NTP, the Architect is permitted to subcontract portions of the work under this Agreement to the following:

Adamson Associates Architects  
401 Wellington Street West, 3<sup>rd</sup> Floor

Toronto, Ontario M5V 1E7 Canada

Peter Walker Partners  
739 Allston Way  
Berkeley, CA 94710

Thornton Tomasetti  
707 Wilshire Blvd, Suite 4450  
Los Angeles, CA 90017

WSP  
425 Market Street, 17<sup>th</sup> Floor  
San Francisco, CA 94105

Meyers + Engineers  
98 Battery Street, Suite 500  
San Francisco, CA 94111

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

### **33. Assignment**

The Services to be performed by the Architect are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Architect 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 Architect, will be paid unless the provider received advance written approval from the TJPA.

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

Through its execution of this Agreement, the Architect acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA pursuant to which the Architect and any

subconsultants 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 Architect 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 Architect 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 Architect further acknowledges that the prohibition on contributions applies to each prospective party to the Agreement; each member of the Architect's board of directors; the Architect'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 Architect; any subconsultant listed in the bid or Agreement; and any committee that is sponsored or controlled by the Architect. Additionally, the Architect acknowledges that the Architect 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 Architect 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 Architect 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 Architect 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 Architect from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Architect's use of profit as a violation of this Section.

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

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

In the performance of this Agreement, the Architect agrees not to discriminate against any TJPA or City employee working with the Architect or subconsultant, applicant for employment with the Architect or sub-Architect, 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 Architect further agrees to make available to employees and applicants for employment, notices setting forth its nondiscrimination policy which is consistent with the provisions of this nondiscrimination clause. The Architect 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 Architect's employment practices.

b. Subcontracts

The Architect 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 subconsultant to comply with such provisions. The Architect's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

The Architect 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, and when provided to the Architect by the TJPA, the Architect 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 Architect 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 Architect 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 Architect and/or deducted from any payments due the Architect.

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

The Architect or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Architect shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Architect 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 Architect will be required to update and submit the TJPA's "Bidders/Proposers Information Request Form," regardless of DBE participation. Upon award of the Agreement and when provided to the Architect by the TJPA, the Architect shall submit the TJPA's "Progress Payment Report" with every invoice, the "Sub-Architect Payment Declaration" within five days of each Architect payment to a sub-Architect, and a "Final Expenditure Report" with the completion of the Agreement.

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

Pursuant to the monitoring requirements outlined in Section IX of the TJPA's SBE Program, when requested by TJPA and when provided with the applicable forms, the Architect 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 Architect shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subconsultant Payment Declaration" within five days of each Architect payment to a subconsultant, and a "Final Expenditure Report" with the completion of the contract.

#### **42. Prompt Payment to Subconsultants**

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

A prime Architect or subconsultant shall pay a subconsultant not later than ten (10) days of receipt of each progress payment for services satisfactorily performed in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subconsultants. 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 Architect or subconsultant 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 Architect or subconsultant in the event of a dispute involving late payment, or nonpayment by the prime Architect, deficient subcontract performance, or noncompliance by a subconsultant. This provision applies to both DBE/SBE and non-DBE/SBE prime Architects and subconsultants.

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

If the TJPA requires retainage from the prime Architect and prompt and regular incremental acceptances of portions, as determined by the TJPA of the contract work and retainage is paid to the prime Architect based on these acceptances, then the prime Architect or subconsultant shall return all monies withheld in retention from all subconsultants 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 Architect 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 Architect or sub-consultant in the event of a dispute involving late payment, or nonpayment by the Architect, or deficient subconsultant's performance, or noncompliance by a subconsultant. This clause applies to both DBE/SBE and non-DBE/SBE subconsultants.

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

The Architect 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 Architect 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 Architect 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 Architect shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Architect'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 Architect understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Architect 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 Architect fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Architect 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 Architect 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 Architect under this Agreement;
  - (3) The right to terminate this Agreement in whole or in part;
  - (4) In the event of a breach by the Architect 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 Architect 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 Architect 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 Architect 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 Architect from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Upon request, the Architect shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subconsultants.

h. The Architect 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 Architect. 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 Architect 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 Architect shall require the sub-Architect 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 Architect and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Architect shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the sub-Architect of the obligations under the MCO and has imposed the requirements of the MCO on the sub-Architect through the provisions of the subcontract. It is the Architect's obligation to ensure that any sub-Architects of any tier under this Agreement comply with the requirements of the MCO. If any sub-Architect under this Agreement fails to comply, the TJPA may pursue any of the remedies set forth in this Section against the Architect.

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 Architect 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 Architect 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 Architect 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 Architect 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 Architect also understands that the MCO provides that if the Architect prevails in any such action, the Architect 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 Architect 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 Architect later enters into an agreement or agreements that cause the Architect to exceed that amount in a fiscal year, the Architect 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 Architect 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 Architect 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 Architect shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Architect 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 Architect 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 Architect's failure to comply with the HCAO shall constitute a material breach of this Agreement. The TJPA shall notify the Architect 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 Architect fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Architect 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 Architect shall require the subconsultants to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Architect shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subconsultant of the obligations under the HCAO and has imposed the requirements of the HCAO on sub-Architect through the subcontract. The Architect shall be responsible for its sub-consultants' compliance with this Chapter. If a subconsultant fails to comply, the TJPA may pursue the remedies set forth in this Section against the Architect based on the sub-Architect's failure to comply, provided that TJPA has first provided the Architect with notice and an opportunity to obtain a cure of the violation.

e. The Architect shall not discharge, reduce in compensation, or otherwise discriminate

against any employee for notifying the TJPA with regard to the Architect'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 Architect 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 Architect 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 TJPA shall keep the Architect informed of the current requirements of the HCAO.

i. Upon request from the TJPA the Architect shall provide reports to the TJPA in accordance with any reporting standards promulgated by the City under the HCAO, including reports on sub-Architects and subtenants, as applicable.

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

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

m. If the Architect is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Architect later enters into an agreement or agreements that cause the Architect'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 Architect 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 Architect 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 Architect 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 Architect 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 Architect agrees to use good faith efforts to comply with the First Source hiring requirements. The Architect 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 Architect's employment records.

c. Hiring Decisions

The Architect 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. Subagreements

Any subagreement entered into by the Architect shall require the subconsultant 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 Architect agrees to comply fully with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T “City Architect/Sub-Architect 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 Architect’s obligations under Chapter 12T is set forth in this Section. The Architect 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 Architect's or subconsultant'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 Architect shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all sub-Architects to comply with such provisions. The Architect's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. The Architect or subconsultant 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 Architect or subconsultant 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 Architect or sub-Architect 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 Architect or subconsultant 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 Architect or Subconsultant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. The Architect and sub-Architects 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 Architect or subconsultant'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 Architect 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 Architect acknowledges and agrees that he or she has read and understood this Section.

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

The Architect 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 Architect agrees that any violation of this prohibition by the Architect, 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, the Architect 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 Architect'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 Architect shall remove all graffiti from any real property owned or leased by the Architect in the City within forty eight (48) hours of the earlier of the Architect'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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect, must be accessible to the disabled public. The Architect 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 Architect 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 Architect, its employees, agents or assigns will constitute a material breach of this Agreement.

#### **63. Authority to Execute Agreement, and Use of Electronic Signatures**

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.

Unless otherwise prohibited by law or TJPA policy, the parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA.

#### **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 Architect 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 Architect’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:

\_\_\_\_\_  
Executive Director

DocuSigned by:  
*Douglas McManamon*  
1F73BFA0E3D8486  
\_\_\_\_\_  
TJPA Legal Counsel

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

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

ARCHITECT

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.

DocuSigned by:  
*Fred Clarke*  
3B9F312D8F334A9...  
\_\_\_\_\_  
Authorized Signature

Fred W. Clarke, FAIA, JIA, RIBA

\_\_\_\_\_  
Printed Name

Partner

\_\_\_\_\_  
Title

Pelli Clarke & Partners, Inc. \_\_\_\_\_  
Architect Name

1056 Chapel Street

\_\_\_\_\_  
Address

New Haven, CT 06510

\_\_\_\_\_  
City, State, Zip Code

203.777.2515

\_\_\_\_\_  
Phone Number

06-1228461

\_\_\_\_\_  
Federal Employer ID Number

## APPENDIX A

### SCOPE OF SERVICES

The Services shall consist of rendering Architectural and Engineering (A & E) Professional Design Services to the TJPA as the Architect of Record (AOR)/Engineer of Record (EOR) role for the base Salesforce Transit Center building and related structures, including the Bus Ramp and surrounding site work, as requested. When called upon, the Architect shall represent the TJPA before governmental agencies and third parties. Following is a non-exhaustive list of the types of activities for which the Architect is expected to provide services and expertise on an as-requested basis:

#### A. Architect of Record/Engineer of Record Services:

- Conduct a Peer Review of the Parcel F (both for the main tower and vent relocation construction) Construction Documents, then monitor & review the Submittals, RFIs while conducting construction observation during the Construction Administration (CA) Phase of the project.
- Assist in review and evaluation of studies submitted by Parcel F Architect(s) on issues such as Vent Shafts, Structural, Architectural and other site specific issues.
- Assist and participate in the process of the Architect (Parcel F or other Architects) in resolving field issues by ensuring that the Basis of Design is preserved.
- Provide bid support services for the TJPA's proposals to Architects, including management of Architect Questions on Bid Documents (QBD) responses and Addenda for various construction projects.
- Provide technical input as the base building AOR/EOR for design/build procurement documents generated by tenant and base building designers.
- Provide design comments and cost information, as needed.
- Assist in coordination and issues of the Phase 1 art program.
- Participate in meetings relevant to the Capital Improvement Program (CIP), Parcel F and other base building construction, in the role of the AOR/EOR, as requested.
- Respond in the capacity of a design oversight role for Parcel F, CIP or any other base building construction submittals and Request for Information (RFI) process.
- Support TJPA in facilitating ongoing activities of the Asset Manager as the program moves from construction to operations. Scope may include tasks as requested:
  - Provide presentations to the TJPA and Asset Manager to ensure Asset Manager understands how the building systems {Mechanical, Electrical, Plumbing, IT, etc.) were designed and implemented into the TTC.
  - Assist the TJPA by responding to any technical questions that the Asset Manager may have.

- Prepare or modify current existing design team drawings including plans, elevations and sections to communicate the building facilities to the Asset Manager.
- Review and evaluate studies and changes to Building Signage as requested by the TJPA.
- Participate in the construction change process for Parcel F, CIP or various other construction projects including negotiations, as requested.
- Participate in the dispute resolution process for Parcel F, CIP or various other construction projects, as requested.
- Provide claims support analysis and requested documentation.
- Development of park specific signage for Biederman Redevelopment Ventures (BRV) .
- Maintain and modify, as needed the Landscape Maintenance Guidelines for the Salesforce Transit Center Landscaping.
- Perform all duties required to decommission the 301 Mission Tower instrumentation located within monitoring wells identified as I-18M, I-19, P-50, P-52, P-53.
- Support coordination with TJPA commissioning activities and asset management team.
- Support coordination with TJPA Leadership in Energy and Environmental Design (LEED) certification associated with Phase 1 base building.
- Provide Phase 1 Construction Warranty support, as needed.
- Provide onsite observations, as requested, of field progress of construction projects to ensure that the plans and submittal drawings are installed in accordance with the approved documents within the capacity of being the base building AOR/EOR.
- Prepare and provide punchlist reviews and documentations for appropriate construction activity, when requested, including quality assurance oversight within the capacity of being the base building AOR/EOR.
- Log and track non-compliant work identified in punchlist and onsite observation process to resolution and acceptance.

#### B. Schedule of Deliverables:

- Provide project documents in native electronic/Adobe PDF (e.g., correspondence, files, submittals, RFI's, reports, meeting minutes, change and close out documentation), progress photos and as-built documentation for Parcel F, tenant buildout and the Capital Improvement Program construction projects, as requested.

Persons providing services

The following key employees of Architect will provide the Services. Staffing for particular services to be provided shall be as specified in individual NTPs:

Name:

Randy Volenec

Role:

Project Manager

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

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

**A. CONTRACT COSTS**

The Contract Costs shall not exceed \$1,600,000. The Contract Costs are made up of (1) Direct Labor Costs of Architect, (2) Other Direct Costs, and (3) Direct Labor Costs of Subconsultants.

**1. Direct Labor Costs - Architect**

The TJPA shall compensate the Architect the Base Hourly Rate multiplied by the number of hours worked in the invoice period. The formula to calculate Direct Labor Costs shall be as follows: (Base Hourly Rate) x number of hours = Direct Labor Costs.

**a. Base Hourly Rate**

The parties intend that the Architect perform services primarily on a cost reimbursable basis. Architect has submitted to the TJPA individual hourly rates (the "Base Hourly Rate"), attached to this Appendix B as Appendix B-1 and B-2. The TJPA acknowledges and agrees that Base Hourly Rates may be adjusted annually beginning January 1, 2023 upon request of the Architect and approval at the sole discretion of the TJPA Interim Executive Director. The amount of such annual adjustment, if any, is limited to a maximum of the CPI annual average percent change increase (San Francisco-Oakland-Hayward for Urban Wage Earners and Clerical Workers, not seasonally adjusted) for the previous calendar year. If the Index declines or shows no increase, Base Hourly Rates shall not increase. Wage rates which are set by a federal or state published scope of work and prevailing wage rate shall be increased in conformance with applicable published increases.

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

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

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

Notwithstanding the above, and subject to approval by TJPA's Executive Director or designee, the Architect may perform services on a lump sum or agreed price and/or time and materials basis. Architect time and materials payments shall conform with the terms and conditions below.

**2. Other Direct Costs**

The Architect will be reimbursed for certain direct reimbursable expenses, or Other Direct Costs ("ODCs"). Reimbursement for ODCs is based upon the Architect's consistent treatment of these types of costs over the Architect's company as a whole. Reimbursement for ODCs shall include actual direct costs

(with no markup) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the TJPA.

The following items will be eligible for reimbursement as ODCs:

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

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

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

### 3. Direct Labor Costs – Sub-Architects

The parties intend that the Architect obtain subcontracted services primarily on a cost reimbursable basis. The approved Subconsultants and their respective Base Hourly Rates and Overhead Rates are listed in Appendix B-2 to this Agreement. All restrictions on the Architect's rate and fee charges shall apply to Subconsultants' rate charges.

#### .B. INVOICE REQUIREMENTS

The Architect shall submit one original invoice package with the appropriate reporting forms and supporting documentation to substantiate services provided and allowable ODCs. Architect will work with TJPA and PM/PC staff to establish an invoice format that will correlate with appropriate Project software and will be used throughout the Project. Each invoice submission must include sufficient information to identify the participation and amount payable to each Sub-Architect. Timesheets, cards or logs must include a brief description of when and what work was performed, memorializing the week's progress. If vehicle travel is authorized, the Architect shall submit mileage logs which include the beginning and ending mileage to substantiate the variable portal-to-portal distance and driving required

while performing the work. Any ODCs must be substantiated with receipts including a brief description for each receipt documenting the purpose of the expense. All invoices must include the contract number, the NTP number (and title, if applicable). Any authorized travel expenses must be approved in advanced by the TJPA and must adhere to "TJPA Travel Policy for Consultants and Subconsultants".

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

### C. LIMITATIONS

Compensation will be allowable only to the extent consistent with federal regulations, including: the Federal Acquisition Regulations, 48 CFR Part 31; the Cost Accounting Standards, 48 CFR Part 30; the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; and the Cost Principles contained in Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

Compensation shall be further subject to the following requirements:

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

APPENDIX B-1
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**SCHEDULE B**  
**Effective July 1, 2021**

**PELLI CLARKE & PARTNERS, INC. PROFESSIONAL HOURLY BILLING RATES**

<u>Employee Classification</u>	<u>Hourly Rate</u>
Fred Clarke	\$ 450
Rafael Pelli	\$ 400
Partner	\$ 310
Sr. Associate Principal	\$ 280
Associate Principal	\$ 260
Proj. Mgr. 1/Design Mgr. 1/Tech. Mgr. 1	\$ 230
Proj. Mgr. 2/Design Mgr. 2/Tech. Mgr. 2	\$ 180
Designer 1/Tech. 1	\$ 165
Designer 2/Tech. 2	\$ 155
Designer 3/Tech. 3	\$ 145
Designer 4/Tech. 4	\$ 125

**NOTES:**

1. Subject to adjustment on January 1 and July 1 of each year based on merit plus the annual increases, rounded to the nearest dollar, as in the Consumer Price Index (all items) for all urban consumers (revised), as published by the U.S. Department of Labor Statistics for US city averages.

## Appendix B-2

<b>I Hourly Rate Sheet 2021-2022</b>		
<b>Adamson Associates Architects</b>		
<b>Title/Position</b>	<b>2021 \$/HR</b>	<b>2022 \$/HR</b>
Principals	\$360.00	\$360.00
Associates Principals	\$330.00	\$330.00
Senior Associates	\$300.00	\$300.00
Associates	\$245.00	\$245.00
Designer 1	\$220.00	\$220.00
Designer 2	\$200.00	\$200.00
Designer 3	\$170.00	\$170.00
Designer 4	\$150.00	\$150.00
Interior Designer 1	\$165.00	\$165.00
Interior Designer 2	\$120.00	\$120.00
Senior Project Manager	\$300.00	\$300.00
Project Manager 1	\$220.00	\$220.00
Project Manager	\$200.00	\$200.00
Job Captain	\$180.00	\$180.00
Drafter 1	\$160.00	\$160.00
Drafter 2	\$150.00	\$150.00
Drafter 3	\$130.00	\$130.00
Drafter 4	\$125.00	\$125.00
Specifications Writer 1	\$200.00	\$200.00
Specifications Writer 2	\$170.00	\$170.00
Contract Administrator 1	\$200.00	\$200.00
Contract Administrator 2	\$170.00	\$170.00
Clerical	\$95.00	\$95.00
NOTES		
Effective January 1, 2021 and good through December 31, 2022		

**Peter Walker and Partners Landscape Architecture, Inc.**  
**General Hourly Billing Rates**  
as of January 1, 2022

<b>Employee Name</b>	<b>Appendix A Category</b>	<b>2022 Billing Rate - Effect. 1/1/22</b>
Findlay, Douglas	Director	<b>395.00</b>
Walker, Peter	Director	<b>495.00</b>
Greenspan, Adam	Director	<b>309.00</b>
Swaintek, Jay	Director	<b>288.00</b>
Dellis, Michael	Partner	<b>247.00</b>
Lindgren, Conard	Partner	<b>263.00</b>
Walker, David	Partner	<b>288.00</b>
Corlett, Jennifer	Senior Associate	<b>132.00</b>
Gual-Ricart, Marta	Senior Associate	<b>132.00</b>
Lees, Eric	Senior Associate	<b>132.00</b>
Park, Na Ra	Senior Associate	<b>165.00</b>
Roppel, Cornelia	Senior Associate	<b>165.00</b>
Greendorfer, Hannah	Associate	<b>108.00</b>
Ng, Kai Chi	Associate	<b>108.00</b>
Walker, Chris	Associate	<b>128.00</b>
Jurgens, Aaron	Landscape Designer	<b>128.00</b>
Lam, Grace	Landscape Designer	<b>103.00</b>
Lee, Sunmee	Landscape Designer	<b>103.00</b>
Mitchell, McKenna	Landscape Designer	<b>103.00</b>
Su, Hyewon	Landscape Designer	<b>128.00</b>
Ward, Andrew	Landscape Designer	<b>103.00</b>
Yue, Charlie	Landscape Designer	<b>103.00</b>
Adjunct Staff	Adjunct Staff	<b>75.00</b>
Harris, Sandra	Staff	<b>100.00</b>
Arroyo, Carmen	Staff	<b>82.00</b>
Beagle Janet	Staff	<b>82.00</b>
Kobayashi, Kazunari	Staff	<b>82.00</b>
Steiner, Reid	Staff	<b>82.00</b>
Starr, Amelia	Staff	<b>88.00</b>

**Appendix A**

Peter Walker, Director  
Douglas Findlay, Director  
Adam Greenspan, Director  
Jay Swaintek, Director  
Partner  
Sr. Associate  
Associate  
Landscape Designer  
Staff

**Year - 2022**

\$495/hr  
\$395/hr  
\$309/hr  
\$288/hr  
\$247 - \$288/hr  
\$132 - \$165/hr  
\$108 - \$128/hr  
\$103 - \$128/hr  
\$75 - \$100/hr



## LOS ANGELES BILLING RATES

TITLE	HOURLY BILLING RATE
ADMINISTRATIVE SUPPORT STAFF .....	\$120.00
BUILDING INFORMATION MODELER .....	\$200.00
ENGINEER/DESIGNER.....	\$205.00
SENIOR ENGINEER/DESIGNER.....	\$225.00
PROJECT ARCHITECT/ENGINEER /DIRECTOR .....	\$255.00
SENIOR PROJECT ARCHITECT/ENGINEER /DIRECTOR .....	\$265.00
ASSOCIATE.....	\$295.00
SENIOR ASSOCIATE.....	\$310.00
VICE PRESIDENT/ ASSOCIATE PRINCIPAL.....	\$365.00
SENIOR VICE PRESIDENT/PRINCIPAL .....	\$385.00
SENIOR PRINCIPAL .....	\$420.00
MANAGING PRINCIPAL.....	\$470.00

Notes: (1) Out-of-pocket expenses including, but not limited to, travel, project-specific IT or telecommunications requirements, third-party printing services, courier service, express mailings, and special consultants, will be billed at our cost

(2) Rates are effective through December 31, 2022.



## Hourly Rates

### *SERVICES*

*Acoustics, Audio-visual, Commissioning, Electrical, Fire Alarm, Lighting, Mechanical, Plumbing, Security, Sustainability, Technologies and Telecommunications*

PRESIDENT	\$ 425
EXECUTIVE VICE PRESIDENT	\$ 425
SENIOR VICE PRESIDENT	\$ 340
VICE PRESIDENT	\$ 270
SENIOR ASSOCIATE	\$ 227
ASSOCIATE	\$ 184
SENIOR ENGINEER	\$ 173
ENGINEER	\$ 140
CAD MANAGER	\$ 135
DESIGN ENGINEER	\$ 130
DESIGNER	\$ 108
CAD OPERATOR	\$ 103
ADMINISTRATIVE	\$ 97

*NOTE: Rates are subject to annual adjustment.*



## 2022 HOURLY RATES

Principal	\$320
Associate Principal	\$275
Senior Associate	\$225
Associate	\$200
Senior Engineer	\$185
Engineer	\$165
Design Engineer	\$145
Designer	\$125
Cx Coordinator	\$150
BIM Coordinator	\$140
BIM Specialist	\$110
Administration	\$ 90

Rates are effective through December 31, 2022

**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 Architect 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 Architect, 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) **Architect** 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 Architect 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 Architect 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 Architect 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, Architect, 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 Architect 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 Architect 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 Architect 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 Architect to the extent the Federal Government deems appropriate.

- (b). The Architect 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 Architect, 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 Architect 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 Architect 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 Architect 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 Architect which are directly pertinent to this Agreement (“Documents”) for the purposes of making audits, examinations, excerpts and transcriptions. Architect 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 Architect, access to Architect'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 Architect 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 Architect 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 Architect 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 Architect 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.*

Architect 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 Architect's responsibility to be aware of any amendments or changes to such federal requirements and directives. Architect'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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect agrees to refrain from discrimination against present and prospective

employees for reason of age. In addition, the Architect 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 Architect 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 Architect 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 Architect shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Architect shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Architect 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 Architect 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 Architect 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 Architect is required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- (d). The Architect 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 Architect's receipt of payment for that work from the TJPA. In addition, the Architect 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 Architect's receipt of the partial retainage payment related to the subcontractor's work.

- (e). The Architect 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 Architect 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 Architect 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 Architect 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 Architects 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 Architect shall submit the "Fly America Certification" if the regulation is applicable to the particular Agreement.
- (c). The Architect 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 Architect 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 Architect in the case of a subcontractor's bill-of-landing).

## 12. ENERGY CONSERVATION REQUIREMENTS

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

The Architect 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 Architect 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 Architect must comply with the requirements described below and in the Agreement.*

The Architect 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 Architect is required to comply with same. In particular, the Architect is required to verify that the Architect, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.
- (b). The Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect shall submit the "Buy America Certification" at the time of bid/offer if the regulation is applicable to the particular agreement. The Prime Architect 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 Architect mails or otherwise furnishes a written appeal to the

Executive Director. In connection with any such appeal, the Architect 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 Architect and the Architect shall abide by the decision.

- (b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Architect 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 Architect 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 Architect 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 Architect must comply with the requirements described below and in the Agreement.*

- (a). The Architect 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 Architect 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 Architect 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 Architect and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Architect 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 Architect or subcontractor under any such Agreement or any other Federal contract with the same Architect, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Architect, such sums as may be determined to be necessary to satisfy any liabilities of such Architect 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 Architect 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 Architect 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 Architect for 100 percent of the Agreement price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the Architect'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 Architect 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 Architect 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 Architect 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 Architect 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 Architect for use in performing the Agreement or as partial compensation (as in retention of salvaged material).
  2. A Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect'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 Architect 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 Architect 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 Architect 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 Architect, 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 Architect 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 Architect does not make payments to a trustee or other third person, the Architect 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 Architect, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Architect 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 Architect 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 Architect, 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 Architect under this Agreement or any other Federal contract with the same Architect, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Architect, 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 Architect 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 Architect, 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 Architect 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 Architect 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. Architects 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Architect, 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 Architect 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 Architect 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 Architect'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 Architect 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 Architect 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 Architect shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). **Subcontracts** - The Architect 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 Architect 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 Architect 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 Architect (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 Architect certifies that neither it (nor he or she) nor any person or firm who has an interest in the Architect'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 3/29/2022 | 8:56:57 AM PDT

Signature  \_\_\_\_\_

Company Name Pell Clarke Pelli

Title Principal

*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 Architect 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 3/29/2022 | 8:56:57 AM PDT

Architect Name Pell Clarke Pelli

Authorized Representative Name Fred Clarke

Signature  \_\_\_\_\_

Title Principal

**OR**

*Certificate of Non-Compliance*

The Architect 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 \_\_\_\_\_

Architect Name \_\_\_\_\_

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date 3/29/2022 | 8:56:57 AM PDT

Architect Name Pell Clarke Pelli

Authorized Representative Name Fred Clarke

Signature  \_\_\_\_\_

Title Principal

**OR**

*Certificate of Non-Compliance*

The Architect 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 \_\_\_\_\_

Architect Name \_\_\_\_\_

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

### NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

Date 3/29/2022 | 8:56:57 AM PDT

Architect Name Pell Clarke Pelli

Authorized Representative Name Fred Clarke

Signature  3B8F312D8F334A9...

Title Principal

**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 statues 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: Pell Clarke Pelli

Authorized Representative Name: Fred Clarke

Authorized Representative Title: Principal

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

Date: 3/29/2022 | 8:56:57 AM PDT

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

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

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

# Professional Service Agreement for EOR/AOR design oversight services

April 14, 2022



TRANSBAY JOINT POWERS AUTHORITY



# Background

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- In 2008, Pelli Clarke Pelli Architects, Inc. (now Pelli Clarke and Partners) entered into an agreement with the TJPA.
  - The scope of services included the design of the Salesforce Transit Center, the bus ramp connecting the Center to the Bay Bridge and the Bus Storage Facility.
  - This 2008 contract is now closed.
- At times, capital improvement work requires expertise and oversight beyond the scope of our building engineering team performing day-to-day maintenance
- Future construction will affect the Salesforce Transit Center that will require architectural and engineering professional design oversight services related to proposed modifications to the original structure.

# Scope of Service

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Anticipated projects that the Engineers and Architects of Record (EOR/AOR) will be called upon to provide design oversight services:

- 1) Neighboring property improvements (Ex. Parcel F-Vent Relo & Pedestrian Bridge) that interface with the Bus Ramp and Transit Center structures.
- 2) Tenant Improvements that modify Base Building MEP, Structural and facilities. (Ex. JSSK and Barebottle)
- 3) Any other future facility modifications or Capital project that may require the oversight of the base building engineer/architect of record expertise and efficiency.
- 4) All services provided under this contract would be non-DTX scope related.

# Recommendation

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TJPA staff recommends that the Board provide authorization to execute a Professional Services Agreement with Pelli Clarke and Partners, Inc. for Architectural and Engineering oversight services related to the completed Phase 1 facilities (non-DTX scope), as-needed, with the following terms:

- a five year duration,
- options to extend for two additional two-year periods,
- a budget amount not to exceed \$1,600,000.



# Questions?

**TJPA**  
TRANSBAY JUNE POWER AUTHORITY

425 Mission Street, Suite 250, San Francisco, CA 94105 • 415.597.4620 • [www.tjpa.org](http://www.tjpa.org)