



**TRANSBAY JOINT POWERS AUTHORITY**

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ALAMEDA-CONTRA COSTA TRANSIT DISTRICT  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
CITY AND COUNTY OF SAN FRANCISCO, BOARD OF SUPERVISORS  
CITY AND COUNTY OF SAN FRANCISCO, MAYOR'S OFFICE  
PENINSULA CORRIDOR JOINT POWERS BOARD  
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

**Executive Director: Maria Ayerdi-Kaplan**

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**REQUEST FOR PROPOSALS No. 15-02**  
**ACTUARIAL VALUATION OF**  
**OTHER POST-EMPLOYMENT BENEFITS (OPEB)**

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**Key RFP Dates**

RFP Issued:	Tuesday, March 10, 2015
Deadline for Submission of Questions:	Tuesday, March 24, 2015, 5:00 pm
Answers to Written Questions Posted:	Friday, March 27, 2015
Proposals Due:	Tuesday, April 7, 2015, 3:00 PM
Interviews:	TBD if necessary
Contract Approval:	May 2015

## CONTENTS

## PAGE

<b>1.0 INTRODUCTION .....</b>	<b>1</b>
<b>2.0 SCOPE OF WORK .....</b>	<b>1</b>
<b>3.0 REQUIRED SKILLS AND EXPERIENCE .....</b>	<b>3</b>
<b>4.0 PROPOSAL REQUIREMENTS .....</b>	<b>4</b>
<b>5.0 RESPONDENT EVALUATION PROCESS .....</b>	<b>6</b>
<b>6.0 SUBMITTAL PROCEDURES .....</b>	<b>7</b>
<b>7.0 STANDARD AGREEMENT PROVISIONS .....</b>	<b>8</b>
<b>8.0 LEVINE ACT.....</b>	<b>8</b>
<b>9.0 PROTEST PROCEDURES .....</b>	<b>9</b>

## ATTACHMENTS

Attachment 1:	RFP General Conditions
Attachment 2:	Model Professional Services Agreement
Attachment 3:	Fee Proposal Form
Attachment 4:	Federal Transit Administration Requirements and Certifications <b><i>Required to be Submitted with Proposal</i></b> <ul style="list-style-type: none"><li>• Fly America Certification</li><li>• New Restrictions on Lobbying Certification</li><li>• Certification Regarding Debarment, Suspension, and Other Responsibility Matters</li></ul>
Attachment 5:	Disadvantaged & Small Business Enterprise (DBE/SBE) Program Bidders/Proposers Information Request Form <b><i>Required to be submitted with Proposal</i></b>

## 1.0 INTRODUCTION

The Transbay Joint Powers Authority (TJPA) issues this Request for Proposals (RFP) for **ACTUARIAL VALUATION SERVICES OF OTHER POST-EMPLOYMENT BENEFITS (OPEB)** (Services) for the Transbay Transit Center Program (Program) from firms or individuals (Respondents) qualified to complete an actuarial valuation of the TJPA's retiree health insurance benefit plan. This valuation shall be performed in compliance with the actuarial standards/methods included in the Government Accounting Standards Board (GASB) Statement No. 45 (GASB 45), *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*, and in accordance with actuarial practices as set forth by the American Academy of Actuaries.

Based on its evaluation of the proposals received in response to this RFP (Proposals), the TJPA may select one Respondent to enter into exclusive negotiations for an agreement substantially similar to Attachment 2, Model Professional Services Agreement. The agreement will require the Respondent to perform the Services upon the TJPA's request following delivery of a notice to proceed (NTP).

The selection of any Respondent for exclusive negotiations shall not imply the TJPA's acceptance of all terms of the Respondent's submittal; terms may be subject to further negotiation. The TJPA shall have no obligation unless and until a final agreement is entered into by the parties following approval by the TJPA's Board of Directors (TJPA Board). There is no guarantee that the TJPA will issue any NTPs, and the TJPA may terminate the agreement at any time.

Proposals must be received by the TJPA no later than 3:00 pm Pacific Time on Tuesday, April 7, 2015 at the following address:

Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105

Responses to this RFP that are not received by the time and date specified, do not contain all the required information and completed forms, or do not meet required skills and experience qualifications shall be deemed non-responsive and rejected without consideration.

Respondents may obtain copies of this RFP, including the forms to be submitted in the Proposal package, by downloading the document from the TJPA website: <http://www.transbaycenter.org> > TJPA > Doing Business with the TJPA > Current Contract Opportunities or by contacting the TJPA, 201 Mission Street, Suite 2100, San Francisco, CA 94105, (415) 597-4620, email: [RFP\\_Financial@transbaycenter.org](mailto:RFP_Financial@transbaycenter.org).

## 2.0 SCOPE OF WORK

It is the intent of the TJPA to secure the services of qualified firms or individuals to provide Actuarial Services for Other Post-Employment Benefits (OPEB) to comply with GASB 45 which establishes standards for measurement, display and recognition of OPEB expenses and liabilities associated with the TJPA's retiree health benefit program. As of July 1, 2014, there are 13 full time

## TRANSBAY TRANSIT CENTER PROGRAM

### ACTUARIAL SERVICES

### REQUEST FOR PROPOSALS

employees. There are currently 0 retirees eligible for health benefits. TJPA calculated its Annual Required Contribution in fiscal year 2012 using the alternative measurement method permitted by GASB 45. See TJPA financial statements at <http://www.transbaycenter.org/tjpa/documents/tjpa-financial> for additional information. A summary description of the retiree health insurance benefit is provided below.

The TJPA is considering establishing and funding an OPEB trust to pre-fund OPEB obligations. One trust option under consideration is the CalPERS California Employers' Retiree Benefit Trust Fund (CERBT); Respondents should demonstrate their ability to meet compliance with CERBT requirements for actuarial valuations (see [www.calpers.ca.gov](http://www.calpers.ca.gov) > Employer Information > GASB 45 & California Employers' Retiree Benefit Trust Fund). Currently, TJPA requires a valuation for fiscal year (FY) 2015, finalized in time for the information to be included in the TJPA FY 2015 financial statements prepared in September 2015. Should a trust be established, TJPA may retain the Respondent for bi-annual valuations thereafter.

Services to be provided by the selected Respondent related to GASB 45 shall include, but are not limited to:

1. The issuance of a Public Statement of Actuarial Opinion (PSAO) in accordance with the Qualification Standards of the American Academy of Actuaries.
2. Performing an actuarial valuation to determine the TJPA's liability for its existing retiree health benefit program. This valuation shall be completed in a manner so as to comply with all the actuarial valuation requirements of GASB 45.
3. Preparing any and all reports and/or certifications, including those required by CERBT or other OPEB trust.
4. Preparing an analysis to determine how establishing a trust or equivalent arrangement would affect the interest rate assumption(s). Timing considerations of establishing the trust should also be analyzed.
5. Preparing a sensitivity analysis showing the impact of alternative assumptions for healthcare trend rates and investment earning rates.
6. Meeting(s) with TJPA staff to present valuation results, and potential presentation of valuation to TJPA Board of Directors.

The valuation report and presentation should include, at a minimum:

- A. Actuarial valuation certification
- B. Summary of actuarial methods and assumptions used
- C. Actuarial assets and obligations as of the beginning of the period covered by the valuation report
- D. Annual required contribution for each fiscal year covered by the valuation report as a dollar amount and percentage of payroll
- E. Annual OPEB cost and net OPEB obligation for each fiscal year covered by the valuation report
- F. Projected contributions, benefit payments and annual OPEB cost for the next 10 fiscal years
- G. Summary of plan provisions and the data used for the valuation
- H. Summary of GASB 45 provisions

All services shall be provided in accordance with the Actuarial Standards of Practice, the Actuarial Code of Professional Conduct, and GASB 45. Specific elements to be provided in the GASB 45 analysis shall comply with minimum standards information requirements as described in GASB 45.

The selected Respondent will work closely with the TJPA's staff and other consultants to provide the Services. The Respondent shall provide the Services by personnel listed in its Proposal. Any changes in personnel will be subject to the TJPA's prior review and approval.

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

### **Summary of TJPA Retiree Health Insurance Benefits**

Employees with an original hire date prior to January 1, 2007 are eligible upon retirement from TJPA for a contribution towards the annuitant's medical premium equal to that of TJPA's contribution toward the active "employee only" contribution. Those employees hired on or after January 1, 2007 are eligible for the statutory minimum medical insurance premium contributions as required by the Public Employees' Medical and Hospital Care Act upon retirement from TJPA. Annuitants are also required to enroll in Medicare as soon as eligible and TJPA's contribution will be modified accordingly. These post-retirement health benefits are not vested and may be subject to change. TJPA does not provide any other post-retirement benefits.

### **3.0 REQUIRED SKILLS AND EXPERIENCE**

Only proposals from Respondents demonstrating previous experience in the performance of the services described in Section 2.0 shall be considered. The Respondent must demonstrate the following:

1. Knowledge of and experience in issuing a PSAO in accordance with the Qualification Standards of the American Academy of Actuaries.
2. Experience in providing all services in accordance with the Actuarial Standards of Practice, the Actuarial Code of Professional Conduct, and GASB 45.
3. Extensive working knowledge of the specific elements to be provided in the GASB 45 analysis and demonstrated compliance with minimum standards information requirements as described in GASB 45.
4. Sufficient qualified actuarial personnel on staff to perform the Scope of Work described above.

The Respondent's Lead Analyst/Project Manager should have:

- Demonstrated experience working with GASB 45.
- In depth knowledge and experience with GASB 45 analysis.
- Established credibility with public agencies.

- At least five years' experience in performing actuarial opinions in accordance with the Qualification Standards of the American Academy of Actuaries, as well as providing the requested services in accordance with the Actuarial Standards of Practice, and the Actuarial Code of Professional Conduct.
- Credentials such as a Fellow of the Society of Actuaries or an Associate of the Society of Actuaries or equivalent credential.
- Excellent oral and written communication skills.

Respondents must clearly demonstrate that an individual Lead Analyst/Project Manager meets the requirements described above. A Respondent will be disqualified if it attempts to meet the preceding requirements by combining the experience of more than one individual.

#### **4.0 PROPOSAL REQUIREMENTS**

Proposals shall adhere to the format and page limitations described below in Section 4.1. The Fee Proposal and other documents required by Section 4.2 and Section 4.3, however, are not subject to page limitations. Proposals shall be printed double-sided (each side counts against the page limit) on 8½ x 11-inch recycled paper; typeface shall be readable, and margins shall be no less than 1 inch. Elaborate brochures or other presentation materials are not desired and will not be considered in evaluating Proposals.

Proposals must be responsive to each of the following elements and organized in the following sequence:

##### **4.1 Written Submittal**

###### **4.1.1 Introduction and Executive Summary (2 page limit)**

Submit a letter of introduction and an executive summary of the Proposal. The introductory letter must be signed by a person or persons authorized to obligate the Respondent to honor the commitments set forth in the Proposal and to verify the accuracy of the information included in the Proposal. Submission of the introductory letter will constitute a representation by the Respondent that it is willing and able to successfully perform the Services, and that all information contained in the Proposal is true, correct, and not misleading. It should include the name and number of a contact person for the Proposal. Submission should provide evidence and reporting artifacts to show that the proposed services are compliant with the requirements of GASB Statements Nos. 43, 45 and 57.

###### **4.1.2 Qualifications and Experience (15 page limit)**

The Proposal must include the following:

- Brief description of the Respondent firm or individual.
- Summary of the Respondent's capabilities and experience in similar projects with an emphasis on public agencies.
- Description of the Respondent's approach to providing actuarial valuations, including approach to keeping employee information confidential.

- Description of the proposed methodology to be used in the valuation including how it would be most appropriate for the TJPA; description of how the Respondent would tailor its actuarial valuation to meet the needs of the TJPA.
- List of required data elements and other information to be provided by the TJPA.
- Description of the service implementation schedule, including identification of key project milestones and timelines for deliverables. Identify any assumptions used in developing the service implementation schedule.
- Description of the proposed staff that will be used to provide the Services. Specifically, provide their names, titles, business addresses, phone numbers, and brief resumes describing the relevant qualifications and work experience. (The length of résumés must be shortened if necessary to avoid exceeding the maximum page limit established for the Proposal.)
- Description of the role each staff member would play in providing the Services. Clearly show the extent and nature of the involvement of the key team members who would provide the Services.
- Disclosure of any settlements or legal claims pending against Respondent during the last five (5) years.
- Include Respondent's approach to avoiding conflicts of interest and prioritizing client interests. If there are no conflicts of interest, then include a statement to that effect.

Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies.

#### **4.1.3. References**

Provide references for at least five recent clients (preferably other public agencies) of the Respondent and/or any assigned key staff; include the reference names, addresses, telephone numbers, email addresses and specific projects.

#### **4.2. Fee Proposal**

Provide a schedule of all fees and costs associated with providing an actuarial valuation by fiscal year, and proposed payment terms. Include the cost for each bi-annual fiscal year valuation, and hourly rates or the cost for any services not included with the valuation. Attachment 3 should be used for submission of the Fee Proposal.

#### **4.3 Other Required Documents**

Respondents shall complete the forms described below and submit them as part of the Proposal. Required forms are included in Attachments 4 and 5.

- A. FTA Certifications: Fly America; New Restrictions on Lobbying; Debarment & Suspension (Attachment 4)
- B. Disadvantaged/Small Business Enterprise Program Requirements – Bidders/Proposers Information Request Form (Attachment 5)

Respondents shall also submit a copy of the Respondent's nondiscrimination program or equal employment opportunity policy statement. It is the policy of the TJPA to ensure



nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. Department of Transportation (DOT)-assisted contracts. It is the intention of the TJPA to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the TJPA’s construction, procurement and professional services activities. Pursuant to 49 CFR Section 26.13, the TJPA is required to make the following assurance in every DOT-assisted contract and subcontract:

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

The TJPA encourages responses from Disadvantaged and Small Business Enterprises (DBE/SBEs). Information about the TJPA DBE and SBE Programs, including the certifications accepted by TJPA, is on the TJPA website at [www.transbaycenter.org](http://www.transbaycenter.org) > TJPA > Doing Business with the TJPA. The Bidders/Proposers Information Request Form (Attachment 5) is a required submission, even if no DBE/SBE participation is proposed.

## 5.0 RESPONDENT EVALUATION PROCESS

The TJPA intends to select one Respondent. TJPA will review and evaluate the Proposals. The Proposals will be scored in accordance with the criteria and methodology described in this RFP, which may include the submission of additional information and/or participation in an oral interview. The Respondent that receives the highest score in the selection process will be selected to negotiate an Agreement with the TJPA.

### 5.1 Step One: Proposal Evaluation

#### 5.1.1 Satisfaction of Minimum Requirements

Proposals will be evaluated to ensure that the Respondent satisfies the requirements described in Section 3.0, Required Skills and Experience. Any Proposal that does not meet these requirements will be automatically rejected, and the selection committee will not evaluate the remainder of the Proposal.

#### 5.1.2 Proposal Evaluation and Ranking

Proposals that satisfy the requirements described in Section 3.0 will be scored as follows:

- |   |                   |
|---|-------------------|
| • Qualifications and Experience of Respondent Firm<br>(including References)            | maximum 50 points |
| • Relevant experience and approach in providing actuarial<br>valuation to the TJPA      | maximum 50 points |
| • Qualifications and Experience of Lead Analyst/<br>Project Manager and other key staff | maximum 40 points |
| • Fee Proposal  | maximum 40 points |



The maximum total score possible is 180. The Respondents' Proposals will be ranked according to total score. Finalist Respondents will be invited to participate in the final selection process. The final selection process *may* include the submission of additional information and/or participation in an oral interview.

## **5.2 Step Two: Interview**

The TJPA may invite the Finalist Respondents to participate in oral interviews at a specified time, date, and location. The TJPA shall impose a time limit for each oral interview. During the oral interview, the Finalist Respondents may be required to deliver a brief presentation, and will be required to respond to questions from the selection committee, including questions concerning the Respondent's Proposal and presentation. The proposed key individuals of the Finalist Respondent's team will be expected to actively participate in the interviews and to respond to the selection committee's questions. The selection committee will assign points to each Finalist Respondent based on the oral interview up to a maximum of 180 points.

At the conclusion of the oral interviews, the selection committee will combine the scores for the Proposal and oral interview for each Finalist Respondent. The highest-ranking Finalist Respondent will be selected to negotiate a professional services agreement with the TJPA.

In the event that agreement cannot be reached with the highest-ranking Finalist Respondent as determined by TJPA in its sole discretion, then negotiations may be entered into with other Finalist Respondents in the order of their ranking. There shall be no binding agreement with any Finalist Respondent unless and until approved by the TJPA, at its sole discretion.

## **6.0 SUBMITTAL PROCEDURES**

Five (5) copies of the Proposal and one CD or USB drive with the Proposal in Adobe Portable Document Format (PDF), must be received by the TJPA no later than **3:00 pm Pacific Time on Tuesday, April 7, 2015** at the following address:

Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105

Responses to this RFP that are not received by the time and date specified herein, do not contain all the required information and completed forms, or do not meet the required skills and experience identified in Section 3.0 shall be deemed non-responsive and rejected.

Beginning on the date this RFP is issued and made available to prospective Respondents, there will be no communications concerning this RFP between members of the TJPA Board, TJPA staff, other consultants already engaged by the TJPA or members of the selection committee and prospective Respondents and their employees or agents, except as provided herein. Questions about the RFP may be directed in writing to the TJPA's Executive Director. The Executive Director will consider all questions received by the close of business on the date noted in the RFP schedule as the deadline for submission of questions and, as appropriate, respond in writing. Any violations of the above restrictions will result in the immediate disqualification of the Respondent making said contact from submitting a Proposal.

Questions about the RFP may be directed in writing to:

Transbay Joint Powers Authority  
201 Mission Street Suite 2100  
San Francisco, CA 94105  
(415) 597-4615 fax  
Email: [RFP\\_Financial@transbaycenter.org](mailto:RFP_Financial@transbaycenter.org)

Respondents are to promptly notify the Executive Director, in writing, if the Respondent discovers any ambiguity, discrepancy, omission, or other error in this RFP (see Attachment 1, RFP General Conditions, Item C.) As set forth in Attachment 1, Item D, Respondents may telephone the TJPA at (415) 597-4620 before submitting a Proposal to determine if the Respondent has received all addenda.

## **7.0 STANDARD AGREEMENT PROVISIONS**

Following negotiations, the selected Respondent will be expected to enter into a professional services agreement substantially in the form of the Model Professional Services Agreement, Attachment 2. Failure to timely execute the Agreement, or to furnish any and all insurance certificates and other materials required in the Agreement, shall be deemed an abandonment of the Respondent's contract offer.

Respondents are urged to pay special attention to the requirements of the Minimum Compensation Ordinance and the Health Care Accountability Ordinance. The Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P, requires contractors to provide employees covered by the Ordinance who do work funded under the Contract with hourly gross compensation and paid and unpaid time-off that meet certain minimum requirements. Note that the gross hourly compensation for covered employees for for-profit entities is \$13.02 as of January 1, 2015. The Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q, requires contractors to provide health care coverage to certain employees or pay amounts in lieu thereof. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the MCO and HCAO is available at [http://www.sfgov.org/site/olse\\_index.asp](http://www.sfgov.org/site/olse_index.asp).

TJPA will not negotiate different terms in the Model Professional Services Agreement if exceptions are not noted within the Respondent's Proposal.

## **8.0 LEVINE ACT**

The Levine Act (Government Code § 84308) is part of the Fair Political Practices Act that applies to elected officials and their alternates who serve on appointed boards, such as the TJPA Board. The Levine Act prohibits any TJPA Board member (including a Board member's alternate) or officer who has received \$250 or more from an applicant for a contract with the TJPA within the previous twelve months from participating in or influencing the decision on awarding that contract. The Levine Act also requires a Board member or officer of the TJPA who has received such a contribution to disclose the contribution on the record of the proceeding in which a contract is being considered. In addition, TJPA Board members and officers are

prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the contract is pending before the TJPA and for three months following the date a final decision concerning the contract has been made.

Each Respondent must disclose any contributions of \$250 or more that it has made to a TJPA Board member or officer within the twelve-month period preceding the submission of its Proposal. This requirement applies to the Respondent, as well as to any member firm or individuals on the Respondent’s team, subsidiaries, parent companies, other firms associated with the Respondent and agents of the Respondent. If such a contribution has been made, Respondent must include in its Proposal a written statement setting forth the date and amount of said contribution(s).

**Members of the TJPA Board of Directors are:**

Greg Harper, Chair	H.E. Christian Peeples, Alternate
Mohammed Nuru, Vice Chair	No Alternate
Jane Kim	No Alternate
Marian Lee	No Alternate
Edward Reiskin	No Alternate
Bijan Sartipi, Ex Officio	Tony Anziano, Ex Officio Alternate

**9.0 PROTEST PROCEDURES**

**9.1 Protest Submittal**

A protest describing the nature of the disagreement must be submitted in writing to the TJPA no later than five (5) days following notification of proposed award.

The letter of protest shall contain a description of the protest and shall be signed and dated. Protests shall be addressed to:

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

**9.2 Executive Director’s Decision Final**

The Executive Director shall inform the protester in writing of the decision, stating the reasons for the decision, and responding at least generally to each material issue raised in the protest. The Executive Director’s letter to the protester shall state that the protester may contact the Executive Director to discuss the response, and the protester has the right to address the TJPA Board on the date when the contract is calendared to be awarded if the Executive Director denies the protest.

The decision of the Executive Director is final. Subject to the provisions of Section 9.3, the protester may seek a remedy in state or federal court, as appropriate, from the final action of the TJPA.

**9.3 Protest to Federal Transit Administration (FTA)**

FTA may only entertain a protest that alleges that the TJPA, (1) failed to have written protest procedures, (2) failed to follow its written protest procedures, or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional office or headquarters within five (5) working days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the TJPA before pursuing a protest with FTA.

## **ATTACHMENT 1**

### **RFP GENERAL CONDITIONS**

#### **A. Consultant Offices**

There is no restriction on where the Consultant firm is headquartered. However, assigned staff must be able to reach TJPA offices in a reasonable amount of time when work is needed. The Transbay Joint Powers Authority (TJPA) will not reimburse the Consultant for the costs of business travel.

#### **B. Errors and Omissions in RFP**

Respondents are responsible for reviewing all portions of this RFP. Respondents are to promptly notify the TJPA Executive Director, in writing, if the Respondent discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Executive Director promptly after discovery, but in no event later than five (5) working days prior to the due date for proposals. Any modifications or clarifications of this RFP will be made by addenda as provided below.

#### **C. Objections to RFP Terms**

Should a Respondent object on any ground to any provision or legal requirement set forth in this RFP, the Respondent must, not more than ten (10) working days after the RFP is issued, provide written notice to the Executive Director of the TJPA setting forth with specificity the grounds for the objection. The failure of a Respondent to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

#### **D. Addenda to RFP**

The TJPA may modify the RFP, prior to the proposal due date, by posting addenda on the TJPA's website ([www.TransbayCenter.org](http://www.TransbayCenter.org)). For parties who requested a hard copy of the RFP by regular mail, addenda may be sent to them via regular, first class U.S. mail. For firms registered on the TJPA website as wanting to receive notice of addenda, the TJPA will make reasonable efforts to notify potential Respondents in a timely manner of the posting of addenda on the website. In either case, the last known address of each firm listed with the TJPA will be used.

All parties, regardless of how they obtained the RFP, are solely responsible for ensuring receipt of any and all addenda. All parties are responsible for ensuring that their Proposals reflect any and all addenda issued by the TJPA prior to the proposal due date regardless of when the proposal is submitted and should therefore check the website before submitting their Proposals to ensure receipt of all addenda, and to ensure their qualifications respond to any such addenda. The Respondent can call the TJPA before submitting its Proposal to determine if the Respondent is aware of all addenda.

#### **E. Term of Proposal**

By signing and submitting a proposal, each Respondent certifies that the proposed services and terms are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

#### **F. Revision of Proposal**

A Respondent may revise its Proposal on the Respondent's own initiative at any time before the deadline for submission of proposals. The Respondent must submit any revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Respondent.

#### **G. Errors and Omissions in Proposal**

Failure by the TJPA to object to an error, omission, or deviation in a proposal will in no way modify the RFP or excuse the Respondent from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

#### **H. Financial Responsibility**

The TJPA accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions to the TJPA under this RFP will become the property of the TJPA and may be used by the TJPA in any way deemed appropriate.

#### **I. Public Disclosure**

Contractors' bids, responses to RFPs 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.

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

If a Respondent is a non-profit entity that receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Respondent must comply with Chapter 12L. The Respondent must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Respondent's meetings and records, and (2) a summary of all complaints concerning the Respondent's compliance with Chapter 12L that were filed with the City and County of San Francisco (City) in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Respondent shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Respondent's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

#### **K. New Restrictions on Lobbying Certification**

All Respondents are required to include in their Proposal packages the standard federal certification form regarding lobbying as set forth in the RFP Attachments if the contract is expected to be more than \$100,000.

#### **L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

A contract awarded under this RFP 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.

The contractor is required to comply with federal suspension and debarment laws and must include the requirement to comply with federal suspension and debarment laws in any lower tier covered transaction it enters into, if any.

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

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the Respondent 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 Respondent agrees to comply with the requirements of federal suspension and debarment laws while this offer is valid and throughout the period of any contract that may arise from this offer. The Respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions.

By signing and submitting its Proposal, the Respondent also certifies to the TJPA that the Respondent has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any TJPA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the TJPA. All Respondents are required to include in their Proposal packages the certification form regarding debarment, suspension and other responsibility matters as set forth in the RFP Attachments.

#### **M. Reservations of Rights by the TJPA**

The issuance of this RFP does not constitute an agreement by the TJPA that any contract will actually be entered into by the TJPA. The TJPA expressly reserves the right at any time to:

- waive or correct any defect or informality in any response, proposal, or proposal procedure, as determined by the TJPA in its sole discretion
- reject any or all proposals, without indicating any reason for such rejection
- reissue an RFP
- prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals
- request that one or more Respondents clarify, supplement or modify the information submitted
- extend deadlines for accepting responses; request amendments to responses after the expiration of deadlines; request clarifications, revised proposals or best and final offers; or negotiate or approve final agreements
- during negotiation, expand or limit the scope of the proposed Services, increasing or decreasing contract amounts, including negotiate with and award contracts to more than one qualified Respondent
- if negotiations with a selected Respondent fail to proceed to the reasonable satisfaction of the TJPA, at the TJPA's sole and absolute discretion, negotiate with and enter into a contract with another Respondent, or begin the selection process anew
- consider any information about any Respondent that is not expressly contained in Respondent's response
- procure any materials, equipment or services specified in this RFP by any other means
- determine that no Program will be pursued

#### **N. No Waiver**

No waiver by the TJPA of any provision of this RFP shall be implied from any failure by the TJPA to recognize or take action on account of any failure by a Respondent to observe any provision of this RFP.

#### **O. Applicability of City Contracting Provisions**

Under Section 6509 of the Government Code, the TJPA is subject to the same restrictions on its powers as those which are applicable to an entity designated in the Joint Powers Agreement. The City and County of San Francisco has been designated as the administrator of the TJPA in the Joint Powers



Agreement. Respondents must comply with the San Francisco ordinances applicable to contracts and procurement that are referenced in this RFP and attached documents.

**P. Restrictions on Campaign Contributions to Elected Officials**

Certain members of the TJPA Board are elected officials. Respondents shall declare whether they have made a campaign contribution to any such elected official, or committee controlled by such elected official at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for a contract pursuant to this RFP. This includes contributions to:

- the official's re-election campaign
- a candidate for that officer's office
- a committee controlled by the official or candidate

Respondents shall be disqualified from participation in this RFP on the sole discretion of the TJPA as guided by rule and policies of Section 1.126 of the San Francisco Campaign and Governmental Code (substituting references to the City and County of San Francisco in such section with the TJPA, as applicable).

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Respondent approaches any TJPA officer or employee about this RFP, or a TJPA officer or employee initiates communication with a potential Respondent about a contract. The negotiation period ends when a contract is awarded or not awarded to the Respondent. Inquiries for information, requests for documents relating to this RFP, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- a) Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- b) Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- c) Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

**Q. No Representations or Warranties by TJPA**

The information presented in this RFP and in any report or other information provided by the TJPA to respondents is provided solely for the convenience of the interested parties. It is the sole responsibility of interested parties to assure themselves that the information contained in this RFP or other documents are accurate and complete. No representations, assurances or warranties pertaining to the accuracy of such information are or will be provided by the TJPA or its advisors.

**R. No Conflict of Interest**

The TJPA shall disqualify any respondent to this RFP that has a conflict of interest under Section C8.105 of the San Francisco Charter, Government Code Section 1090, et. seq., the Political Reform Act (Government Code Section 87100 et. seq.), or any other applicable conflict of interest laws. Any false, incomplete, or otherwise unresponsive statements made in connection with a proposal may be cause for its disqualification at the TJPA's sole discretion.

## ATTACHMENT 2

### MODEL PROFESSIONAL SERVICES AGREEMENT

The successful Respondent will be required to enter into an agreement substantially in the form of the Model Professional Services Agreement below. Failure to timely execute the agreement, or to furnish any and all certificates, bonds, or other materials required in the agreement, may be deemed an abandonment of the agreement. The TJPA, in its sole discretion, may select another firm.

Respondents are urged to pay special attention to the requirements of the Insurance (Section 15), Indemnification (Section 16), Minimum Compensation Ordinance (Section 43 in the Agreement), the Health Care Accountability Ordinance (Section 44 in the Agreement), and the First Source Hiring Program (Section 45 in the Agreement) clauses. Any Agreement will also incorporate the provisions in the RFP Attachment, "USDOT Requirements for Agreements with the TJPA".

TJPA will not negotiate different terms in the Model Professional Services Agreement if exceptions are not noted within Respondent's proposal.

### PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and \_\_\_\_\_ ("Contractor").

#### Recitals

A. The TJPA requires Actuarial Valuation Services ("Services") for the Transbay Transit Center Program ("Program").

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

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

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

E. The Executive Director is authorized under TJPA procurement policy to execute this Agreement for said services by Contractor.

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

## **2. Term of the Agreement**

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

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

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

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

## **5. Compensation**

All work under this Agreement shall be compensated on a [fixed fee by deliverable] basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed \_\_\_\_\_, (\$\_\_\_\_\_) The breakdown of the Contractor's fees appears in Appendix \_\_\_\_, "Fees".

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

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

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

## **6. Guaranteed Maximum Costs**

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

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

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

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

## **7. Payment**

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

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

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

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

## **9. Disallowance**

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

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

## **10. Taxes**

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

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

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

#### **12. Qualified Personnel**

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

#### **13. Reserved**

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

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

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

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

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

Should the TJPA, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax

due (and offsetting any credits for amounts already paid by the Contractor which can be applied against this liability). The TJPA shall then forward those amounts to the relevant taxing authority.

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

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

## **15. Insurance**

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

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

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

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

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

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

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

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

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

d. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences

during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

## **16. Indemnification**

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

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

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



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

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

## **18. Liability of TJPA**

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

## **19. Reserved**

## **20. Default; Remedies**

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

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

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

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

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

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

agreement between the TJPA and the Contractor all damages, losses, costs or expenses incurred by the TJPA as a result of such Event of Default and any liquidated damages due from the Contractor pursuant to the terms of this Agreement or any other agreement.

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

## **21. Termination for Convenience**

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

d. In no event shall the TJPA be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the TJPA, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs

include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

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

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

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

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

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

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

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

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

To Contractor:

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

Any notice of default must be sent by registered mail.

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

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

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

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

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

(i) The disclosure is authorized by this Agreement;

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

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

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

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

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

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

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

## **27. Ownership of Results**

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

## **28. Works for Hire**

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

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

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

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

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

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

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

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

### **32. Subcontracting**

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

*[List subcontractor(s)' firm name and address]*

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

### **33. Assignment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **b. Subcontracts**



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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$13.02 as of January 1, 2015.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then the gross hourly compensation as of January 1, 2015, is \$11.05 per hour.

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

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

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

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

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

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

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

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

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

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

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

that they are to be distributed to Covered Employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

business days to respond.

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

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

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

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

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

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

f. Subcontracts

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

**46. Reserved**

**47. MacBride Principles – Northern Ireland**

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

**48. Drug-Free Workplace Policy**

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

**49. Resource Conservation**

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

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

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

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

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

containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

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

## **53. Graffiti Removal**

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

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

## **54. Modification of Agreement**

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

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



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

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

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

#### **57. Construction**

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

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

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

#### **59. Severability**

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

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

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

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

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

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

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

assigns will constitute a material breach of this Agreement.

**63. Authority to Execute Agreement**

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

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

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

\_\_\_\_\_  
Maria Ayerdi-Kaplan, Executive Director

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

#### CONTRACTOR

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Title

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

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

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

**ATTACHMENT 3  
FEE PROPOSAL FORM**

Company:	Contact Person:
Address:	
City, State, Zip Code:	Fax Number:
Phone Number:	Email:

**Fiscal Year 2015 Valuation**

Fixed Lump Sum Fee	\$	
Provide estimated hours and rate per hour by personnel category:		
<i>Title</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>

**Fiscal Year 2017 Valuation**

Fixed Lump Sum Fee	\$	
Provide estimated hours and rate per hour by personnel category:		
<i>Title</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>

**Fiscal Year 2019 Valuation**

Fixed Lump Sum Fee	\$	
Provide estimated hours and rate per hour by personnel category:		
<i>Title</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>

**Rates for Any Additional Services Not Included in Valuation**

Service		
Provide estimated hours and rate per hour by personnel category:		
<i>Title</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>

Service		
Provide estimated hours and rate per hour by personnel category:		
<i>Title</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>

Service		
Provide estimated hours and rate per hour by personnel category:		
<i>Title</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>

- 1) Rates are good through \_\_\_\_\_ (provide date)
- 2) The above hourly rates shall include all incidental expenses of the Contractor, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in - and out-of-house photocopying, charges for sending facsimiles, transportation, travel, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the consultant or subconsultants.

## ATTACHMENT 4

### USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

**The following provisions (1-11) apply to all Agreements (excluding micropurchases—purchases of \$3,000.00 or less).**

#### **1. DEFINITIONS**

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

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

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

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

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

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

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

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

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

Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA or FRA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

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

#### **6. CIVIL RIGHTS REQUIREMENT**

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



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

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21; and U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR parts 27 and 37.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
- (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

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

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

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

☐ A separate Agreement goal of \_\_\_\_\_ percent DBE participation has been established for this Agreement.

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

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

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

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

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

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

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

- (d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.
- (e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

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

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

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

requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

## **9. FLY AMERICA REQUIREMENTS**

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

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

## **10. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

## **11. ENERGY CONSERVATION REQUIREMENTS**

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

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

**The following provision (12) applies to Agreements exceeding \$10,000.**

**12. RECYCLED PRODUCTS**

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

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

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

**The following provision (13) applies to Agreements exceeding \$25,000.**

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

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

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

**The following provisions (14-15) apply to Agreements exceeding \$50,000.**

**14. CLEAN AIR**

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

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

**15. CLEAN WATER REQUIREMENTS**

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

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

**The following provisions (16-19) apply to Agreements exceeding \$100,000.**

**16. BUY AMERICA REQUIREMENTS**

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

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

**17. BREACHES AND DISPUTE RESOLUTION**

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

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

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

## **18. LOBBYING**

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

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

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

## **19. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT**

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

- (a). **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b). **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (c). **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

## FLY AMERICA CERTIFICATION

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

### *Certificate of Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

### *Certificate of Non-Compliance*

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## BUY AMERICA CERTIFICATION

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

#### *Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

#### *Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

## NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

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

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

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

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

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

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

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

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

**RFP ATTACHMENT**  
**DBE/SBE PROGRAM FORMS**

- a) Bidders/Proposers Information Form (must be submitted with proposal)
- b) Instructions for properly completing the Bidders/Proposers Information Form – *please read carefully!*
- c) Good Faith Efforts Form (must be submitted with proposal if there is a contract SBE goal and the goal is not met in the proposal)
- d) Progress Payment Report
- e) Subcontractor Payment Declaration Form
- f) Final Expenditure Report

# TRANSBAY JOINT POWERS AUTHORITY BIDDERS/PROPOSERS INFORMATION REQUEST FORM

*To be completed by Prime Contractor and submitted as part of bid/proposal.*

NAME OF PROJECT/PROPOSAL							PROJECT/PROPOSAL NUMBER				
PROPOSER BUSINESS NAME AND ADDRESS											
NAME OF PERSON SUBMITTING BID				SIGNATURE OF PROPOSER						DATE	
CONTACT PERSON NAME				CONTACT PHONE NUMBER				CONTACT EMAIL			
IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work. 3) Attach a copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed on this form. 4) Attach "Intent to Perform" letter signed by the subcontractor.											
							DBE-SBE Participation				
LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Age of Firm	Item of Work, Service or Materials Supplied	NAICS Code (if known) *	Annual Gross Receipts of Firm	Certified DBE or SBE (Y/N)	Certifying Agency	Type of DBE or SBE **	Award Amount	Percentage of Contract Participation
A. PRIME Contractor											
B. Subcontractor/Vendor/Joint Venture											
TOTAL										\$0	0.00%

\* NAICS Code: North American Industry Classification System Code. Codes can be found at <http://www.census.gov/naics>.

\*\* Type of DBE/SBE: (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated as a Small Business)

- DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/hq/bep/ucp.htm> for a list of participating agencies.

- SBEs must be certified by the San Francisco Human Rights Commission (<http://www.sfgov.org/sfhumanrights>) or the California Department of General Services (<http://www.eprocure.dgs.ca.gov/default.htm>)

- Important: Attach the proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal.

- This information will be used to create and maintain a federally-required Bidders List, regardless of DBE/SBE participation.

- Use additional sheets as necessary.

## How to fill out the Bidders/Proposers Information Request Form

1. Name of Project/Proposal – insert name of the TJPA Request for Proposals (RFP) or Invitation for Bids (IFB)
2. Project/Proposal Number – insert TJPA-assigned number of the relevant RFP or IFB
3. Proposer Business Name and Address – insert company name and address of prime contractor. If proposal or bid is being made by a joint venture, contact the TJPA for an alternate form.
4. Name of Person Submitting Bid – insert contact name for the prime contractor
5. Signature of Proposer – signature of person listed in number 4
6. Date – date proposal or bid is being submitted
7. Note the requirements in small print – “IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work. 3) Attach copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed on this form. 4) Attach “Intent to Perform” letter signed by the subcontractor.”

Certification must be attached. The TJPA accepts DBE participation only from firms currently certified in the California Unified Certification Program (CUCP). For SBE participation, certifications are accepted from the CUCP, the San Francisco Human Rights Commission, and/or the State of California Department of General Services. If a proposal or bid includes subcontractors, a letter stating the subcontractor’s intent to perform work on the project must be attached.

8. Sections A and B must be completed, even if there is no DBE/SBE participation planned for the contract. The information in this section is required for TJPA DBE/SBE Program monitoring purposes and for maintaining a federally-required bidders list. **Do not write “not applicable” or “n/a”.** If a proposal or bid is being submitted by one firm or individual, with no partners or subcontractors, then that firm or individual is the PRIME Contractor and must complete Section A. Even if the name, address and phone number are the same as provided above on the form, the remaining columns must be completed; do not write “same as above”. **All subcontractors, whether DBE/SBE or non-DBE/SBE, must be listed in Section B.** Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

- Age of firm – how many years the firm has been in business
- NAICS Code – North American Industry Classification System Code. Codes can be found at [www.census.gov/naics](http://www.census.gov/naics).
- Annual Gross Receipts of Firm – a range may be provided, e.g., less than \$500,000; \$500,000 - \$1,000,000; \$1,000,000 - \$5,000,000; \$5,000,000 - \$10,000,000; etc.
- Certified DBE/SBE – mark yes or no in this column. If “yes”, list the type of certification: CUCP, HRC, DGS.
- DBE/SBE Certifying Agency – if you marked yes as a Certified DBE/SBE, note which agency your certification letter is from—BART, SFMTA, HRC, etc.
- Type of DBE/SBE – if you marked yes as a Certified DBE/SBE, put the number that corresponds to the type of DBE/SBE as follows—
  1. African-American
  2. Hispanic
  3. Native American
  4. Asian-Pacific
  5. Asian-Indian
  6. Female-Woman
  7. Other
- Award Amount – leave this column blank, unless you are submitting an updated form after contract award
- Percentage of Contract Participation – if only one firm or individual is proposing or bidding, with no partners or subcontractors, this is 100% for the prime contractor. Fill in appropriate percentages for each firm if some of the work is being subcontracted. Note that the total at the bottom of the form must be 100% when all percentages are added.

Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

**TRANSBAY JOINT POWERS AUTHORITY  
SBE PARTICIPATION GOOD FAITH EFFORTS FORM**

This form must be completed and submitted along with compelling documentation detailing the good faith efforts made to meet the SBE participation goal **if the information submitted on the Bidders/Proposers Information Form indicates that the SBE goal has not been met.**

If the SBE participation goal is not met, and if this form, along with compelling documentation detailing the good faith efforts made to meet the goal, is not completed and returned with the bid or **proposal, the bid or proposal shall be deemed non-responsive and rejected.**

Even if the Bidders/Proposers Information Form indicates that the SBE goal has been met, bidders/proposers are still encouraged to submit good faith efforts documentation to protect their eligibility for the contract.

**Contract No.:** \_\_\_\_\_ **Contract Name:** \_\_\_\_\_

**Bidder/Proposer:** \_\_\_\_\_

Please supply the following information:

1. Attended any pre-solicitation, pre-proposal, or pre-bid meetings held to inform all bidders about the contract and SBE requirements

Meeting Date: \_\_\_\_\_  
Attendee(s): \_\_\_\_\_  
\_\_\_\_\_

Meeting Date: \_\_\_\_\_  
Attendee(s): \_\_\_\_\_  
\_\_\_\_\_

Meeting Date: \_\_\_\_\_  
Attendee(s): \_\_\_\_\_  
\_\_\_\_\_

Meeting Date: \_\_\_\_\_  
Attendee(s): \_\_\_\_\_  
\_\_\_\_\_

2. List below and/or on an attached sheet the names and dates of all certified SBEs solicited for this project. List the dates and methods used for initial contact and any follow-up contact. Attach copies of letters, faxes, emails and any other supporting documentation that you would like the Contract Compliance Manager to consider in determining good faith efforts.

3. Summarize below and/or on an attached sheet the items of work for which the Bidder requested subcontractor services of SBEs, the information furnished to interested SBEs regarding work requirements, and any breakdown of tasks into economically feasible units to facilitate SBE participation. Where there are SBEs available for doing portions of the work normally performed by the bidder with its own staff, the bidder will be expected to make portions of such work available for SBEs.



**TRANSBAY JOINT POWERS AUTHORITY  
SBE PARTICIPATION GOOD FAITH EFFORTS FORM**

4. List below and/or on an attached sheet the names of any SBEs solicited for the work above, and a summary of the discussions or negotiations with them.

a. List solicited SBEs not available to participate on the contract, stating the reason.

b. List solicited SBEs chosen to participate, and the reasons for the choice.

c. List solicited SBEs not chosen to participate, reasons for the choice, and any actions taken by the bidder to assist the rejected SBEs in remedying deficiencies in their proposal.

If insurance or bonding is a reason for rejecting any potential SBE, a complete explanation including contact and discussions with insurance and surety firms must be provided.

Print Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, ZIP: \_\_\_\_\_

Date: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

# TRANSBAY JOINT POWERS AUTHORITY

## PROGRESS PAYMENT REPORT

*To be completed by Prime Contractor and submitted to Project Manager with every monthly invoice.*

### **PART 1: PROJECT SUMMARY**

Contract Award Date:	TJPA Contract No.:	Contract Title:	
Prime Contractor:	Contact Person:	Contact Phone No.:	Contact Email:
Prime Contractor Address:		Signature:	
Invoice Date:	Invoice No.:	For the Period:	

1. Award amount of Prime Contract	\$ -
2. Amount of Change Orders, Amendments and Modifications to Date	\$ -
3. Total Contract Amount to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$ -
4. Total Amount for this Invoice	\$ -
5. Total Previously Invoiced Awaiting Payment	\$ -
6. Total Amount Paid to Date (not including Lines 4 and 5)	\$ -
7. Total Invoice Amount Requested to Date (Line 4 + Line 5 + Line 6)	\$ -
8. Percent Complete (Line 7/Line 3)	0%

**TRANSBAY JOINT POWERS AUTHORITY  
PROGRESS PAYMENT REPORT**

**PART 2: CONSULTANT/SUBCONSULTANT PAYMENT DETAIL SUMMARY**

A	B	C	D	E	F	G	H	I	J
Name of Firm (Including Prime, Subs, Vendors, and Joint Ventures)	DBE or SBE (Y/N)	Portion of Work (%)	Contract Amount (\$)	Amount of Change Orders to Date (\$)	Total = Contract Amount + Change Orders (D+E) (\$)	Amount Invoiced This Period (\$)	Previously Invoiced Awaiting Payment (\$)	Amount Paid to Date (\$)	Percent Complete to Date ([G+H+I] / F) (%)
TOTAL		0	0	0	0	0	0	0	0

**TRANSBAY JOINT POWERS AUTHORITY  
SUBCONTRACTOR PAYMENT DECLARATION**

This form must be completed and submitted by the Prime Contractor for all subcontractors, vendors, and joint venture partners for every invoice submitted to TJPA within five (5) working days following actual payment to subconsultant. Payments to subconsultant shall be made no later than ten (10) working days following receipt of progress payment from TJPA. Use additional sheets if necessary. Failure to submit all required information may lead to partial withholding of progress payment.

Date: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Contract Title: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Invoice Date: \_\_\_\_\_ Invoice No.: \_\_\_\_\_

For the Period: \_\_\_\_\_

Total Amount of Invoice: \_\_\_\_\_ TJPA Check No.: \_\_\_\_\_

Subcontractor/ Vendor/JV	DBE/ SBE (Y/N)	Business Address Payment Sent To	Amount Paid	Payment Date	Check Number
Total Amount Paid to Subconsultants (this Pay Period)			\$0.00		

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

\_\_\_\_\_  
Signature of Contact Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone

**TRANSBAY JOINT POWERS AUTHORITY  
FINAL EXPENDITURE REPORT**

*To be completed by Prime Contractor at the end of the contract.*

CONTRACT TITLE/NO.					TOTAL CONTRACT AWARD AMOUNT			DATE OF AWARD			
PRIME CONTRACTOR/CONSULTANT NAME AND ADDRESS					TOTAL EXPENDITURES AT END OF CONTRACT			DATE OF CONTRACT COMPLETION			
PROJECT MANAGER NAME					PROJECT MANAGER SIGNATURE						DATE
CONTACT PERSON NAME RE: FINAL EXP. REPORT					CONTACT PHONE NUMBER			CONTACT EMAIL			
IMPORTANT: 1) Identify all DBE/SBE firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work.											
					DBE Participation						
LIST BUSINESS FIRM(s) List Name, Address, and Contact Person (if not the same as above)	Phone Number	Email Address	Item of Work, Service or Materials Supplied	NAICS Code (if known) *	Certified DBE/SBE (Y/N)	Certifying Agency	Type of DBE or SBE**	Date of Work Completed	Date of Final Payment	Total Amount Paid	% of Total Expenditures
A. PRIME Contractor											
B. Subcontractor/Vendor/Joint Venture											
TOTAL										\$ -	0.00%
Comments/Notes: (Explain cost overruns or discrepancies; DBE firm substitutions, etc...)											

\* NAICS Code: North American Industry Classification System Code. Codes can be found at <http://www.census.gov/naics>.

\*\* Type of DBE/SBE: (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated as a Small Business)

- DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/hq/bep/ucp.htm> for a list of participating agencies.

- SBEs must be certified by the San Francisco Human Rights Commission (<http://www.sfgov.org/sfhumanrights>) or the California Department of General Services (<http://www.eprocure.dgs.ca.gov/default.htm>)

- Important: Attach the proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal.

- This information will be used to create and maintain a federally-required Bidders List, regardless of DBE/SBE participation.

- Use additional sheets as necessary.