

THIS PRINT COVERS CALENDAR ITEM NO.: 7.3
FOR THE MEETING OF: October 27, 2006

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approval of the agreement between Transbay Joint Powers Authority (TJPA) and the Municipal Transportation Agency (MTA) for services to perform contract compliance and oversight in the amount of \$64,800.

SUMMARY:

- Since its creation in 2001, TJPA has received Federal financial assistance from the Federal Transit Administration (FTA) through grants administered by MTA. This arrangement changed in January 2006, when the TJPA became an official FTA grantee, authorizing TJPA to file applications for federal assistance, file annual certifications and assurances, and execute grant agreements directly with the FTA.
- In FY 2006-07, MTA staff continues to provide grants administration support for the TJPA's initial Federal grant administered by MTA.
- MTA is qualified to provide information and input to the Authority on DBE and contract compliance for the Authority's Requests for Proposals (RFPs) and Requests for Qualifications (RFQs).

EXPLANATION:

Within this current fiscal year, the Transbay Joint Powers Authority (TJPA) will issue one Request for Proposal (RFP) for Financial Consulting Services, one RFP for the Bus Storage Facility, and one Request for Qualifications (RFQ) and one RFP for the Design and Development Competition for the Transit Center and Transit Tower. These RFQ/RFPs comply with the TJPA's Policy No. 001, Procurement Policy.

To support TJPA in complying with the Procurement Policy, the TJPA will coordinate with MTA staff to provide general oversight and comments throughout the proposal and selection process with regards to DBE contract compliance and the RFQ/RFPs selection process.

Budget Impact:

The FY 2006-07 adopted budget includes funding for MTA to complete grants administration work for TJPA's initial Federal grant. The grant close-out is expected this fiscal year. The current amount budgeted for MTA's grant administration activities is \$50,000, excluding contract compliance assistance. With the additional work for contract compliance, the budgeted amount will be increased by \$64,800 for a total budget of \$114,800. The increase in the line item will be offset by budgetary savings in other line items and will not increase the total budget amount for FY 2006-07.

RECOMMENDATION:

1. Approve the agreement between TJPA and MTA to perform services in contract compliance and oversight for \$64,800.
2. Approve an amendment to the FY 2006-07 budget to increase the MTA grants administration amount by \$64,800, from \$50,000 to \$114,800. This will be a line item transfer and will not increase the total budget for FY 2006-07.

ENCLOSURES:

1. Agreement between TJPA and MTA
2. Resolution

**TRANSBAY JOINT POWER AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

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

WHEREAS, The Municipal Transportation Agency (MTA), as part of the City and County of San Francisco, is a member of the Authority under the Joint Powers Agreement dated April 4, 2001; and

WHEREAS, TJPA receives Federal financial assistance from the Federal Transit Administration (FTA) through grants administered by MTA; and

WHEREAS, TJPA became an official and legitimate FTA grantee, authorizing TJPA to file applications for federal assistance, file annual certifications and assurances, and execute grant agreements directly with the FTA; and

WHEREAS, MTA is qualified to provide information and input to the Authority on DBE and contract compliance for the Authority's Requests for Proposals (RFPs) and Requests for Qualifications (RFQs); and

WHEREAS, An amount of \$50,000 is programmed in the FY 2006-07 budget for MTA to perform grants administration activities for TJPA's initial federal grant administered by MTA; now, therefore, be it

RESOLVED, That the TJPA Board approves the agreement between TJPA and the Municipal Transportation Agency to perform services in contract compliance and oversight for \$64,800; and be it

FURTHER RESOLVED, That the TJPA Board approves an amendment to the FY 2006-07 budget to increase the MTA grants administration amount by \$64,800, from \$50,000 to \$114,800 and to decrease another budget line item for the same amount.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of October 27, 2006.

Secretary, Transbay Joint Powers Authority

AGREEMENT FOR OVERSIGHT ON PROPOSAL AND SELECTION PROCESS

This Agreement is made this 27th day of October, 2006, in the City and County of San Francisco, State of California, by and between the Transbay Joint Powers Authority ("TJPA" or "Authority") and the City and County of San Francisco, a municipal corporation ("City") acting by and through its Municipal Transportation Agency ("MTA").

I. Agreement Purpose: TJPA will issue one Request for Proposal ("RFP") for Financial Consulting Services, one RFP for Design of the Bus Storage, and one Request for Qualifications ("RFQ") and one RFP for the Design and Development Competition for the Transit Center and Tower. These RFQ/RFPs are intended to comply with the Authority Board's Policy No. 001 (Procurement Policy). Based on its evaluation of the qualifications statements and proposals received in response to the RFQ/RFPs, the TJPA will select professional service firms to perform the required services.

In preparation for the release of the RFQ/RFPs and the selection of the consulting firms/teams, the Authority will coordinate its activities related to the RFQ/RFP selection process with MTA staff. The TJPA requires the services of the MTA during the term of this Agreement to provide general oversight and comments throughout the proposal and selection process.

II. Scope of Work: The MTA Construction and Contract Compliance staff involvement in the RFQ/RFPs will include, but not be limited to, the following activities:

A. Review and Comment on Draft RFQ/RFPs – Review the draft RFQ/RFPs for (1) Financial Consulting Services, (2) Bus Storage Design, and (3) Design and Development Competition, and provide comments on the evaluation process contained in the RFQ/RFPs prior to the release of the RFQ/RFPs.

B. Participate in Selection Process

1. For all RFPs/RFQ:

- a. Attend Pre-Proposal Conferences (one half day for each RFQ/RFP);
- b. Assist with answering pre-submittal questions from proposers as necessary;
- c. Respond to questions posed by TJPA and selection committee members (two days combined).
- d. Participate in activities following the selection of consulting firms/teams, including, but not limited to, assistance with protests as necessary;
- e. Attend TJPA Board meetings for award of contracts (one morning for each)
- f. Attend debriefings with consultants after the selection process, as requested (one day for each RFQ/RFP)

2. For the Design and Development Competition :

- a. Attend jury briefings (one day for RFQ, one day for RFP);
- b. Attend jury evaluation of written proposals (two days) and oral interviews (two days)

3. For Financial Consulting Services RFP:

- a. Attend Selection Committee evaluation of written submittals (one day) and oral presentations (one day)

4. For the Bus Storage Design RFP:

a. Attend Selection Committee evaluation of written submittals (one day) and oral presentations (one day)

C. Assist with DBE Compliance: MTA Construction and Contract Compliance staff will provide general oversight to and counsel TJPA regarding the requirements of the Federal Transit Administration (“FTA”) Disadvantaged Business Enterprise (“DBE”) regulations.

D. Schedule for Completion: The scope of work is currently scheduled to be completed by the end of calendar year 2007. If the parties project that the work will extend beyond calendar year 2007, and the TJPA requires MTA services in addition to the services outlined in Section II.B, the parties agree to negotiate additional payment through an amendment to this Agreement.

III. Contract Amount and Terms of Payment:

A. Contract Amount. For the performance of all work specified in Section III above, TJPA agrees to pay and MTA agrees to receive a fixed price not to exceed Sixty-Four Thousand, Eight Hundred Dollars (\$64,800). The payments for the MTA’s assistance are broken down as follows:

1.	RFP for Financial Consulting Services	\$16,200
2.	RFP for Bus Storage Design	\$16,200
3.	Design and Development Competition	
a.	RFQ	\$16,200
b.	RFP	\$16,200

B. Terms of Payment. MTA will submit invoices to the TJPA's Executive Director or her designee for payment upon the completion of the following milestones; provided, however, that all payments shall be subject to the certification of available funds by the Authority: (1) regarding the Financial Consulting Services and Bus Storage Design RFPs, half the total fee upon issuance of the RFP to the public, and the remainder of the fee upon completion of the selection process and briefings; and (2) regarding the Design and Development Competition, half the total fee upon issuance of the RFP, and the remainder of the fee upon completion of the selection process and briefings. The TJPA agrees to use its best efforts to pay the invoiced amount within forty-five (45) days following receipt. In no event will TJPA be liable for interest or late charges for any late payments. All payments due to MTA shall be paid to: Municipal Transportation Agency, Attention: Chief Financial Officer, One South Van Ness, 7th floor, San Francisco, CA 94103.

C. Rebidding of RFPs/RFQ. If any RFP/RFQ requires rebidding, the parties agree to negotiate an amendment to this Agreement to provide further payment to MTA for any additional services that TJPA may require in the rebid process.

IV. FTA Requirements: The FTA Requirements for Personal Services Agreements are attached as Exhibit A and incorporated herein. The provisions of this Agreement are to be interpreted in the broadest possible manner to avoid any conflicts with such requirements. If an unavoidable conflict arises, the FTA terms and conditions will take precedence over the provisions of this Agreement.

V. Term; Termination

A. Term. This Agreement will commence on October 27, 2006 and terminate on December 31, 2007, unless extended by the parties.

B. Termination. Either party has the option, in its sole discretion, to terminate this Agreement, at any time during the term, for convenience and without cause. The terminating party will exercise this option by giving the other party written notice of termination. The notice will specify the date on which termination will become effective. In the event of such a termination, the TJPA will pay the MTA its costs incurred on work performed up to the time of termination. MTA will promptly submit its termination claim to the TJPA after termination.

VI. Limitation on Liability; Incidental or Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall City/MTA be liable to the TJPA to indemnify, defend and hold harmless the TJPA for any claim, damage or injury arising from this contract, 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.

VII. Miscellaneous Provisions.

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

To MTA: Municipal Transportation Agency
One South Van Ness Ave. 7th Floor
San Francisco, CA 94103
Attn: Nabil Tarazi, Contracting Officer
Tel.: 415-701-4294
Fax: 415-701-4300
Email: nabil.tarazi@sfmta.com

To TJPA: Transbay Joint Powers Authority
201 Mission St. Suite 1960
San Francisco, CA 94105
Attn: Maria Ayerdi, Executive Director
Tel.: 415-597-4620
Fax: 415-5974615
Email: nila.gonzales@transbaycenter.org

B. Tropical Hardwood and Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

C. 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 in the same manner as this Agreement

D. 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.

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

F. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section VII.C.

G. 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.

In Witness Whereof, the parties execute this Agreement in San Francisco as of the date first mentioned above.

**TRANSBAY JOINT POWERS
AUTHORITY**

**CITY AND COUNTY OF SAN
FRANCISCO, MUNICIPAL
TRANSPORTATION AGENCY**

Maria Ayerdi
Executive Director

Nathaniel P. Ford, Sr.
Executive Director/CEO

APPROVED AS TO FORM:

Shute, Mihaly & Weinberger LLP

Dennis J. Herrera, City Attorney

By _____
Andrew W. Schwartz

By _____
Robin M. Reitzes
Deputy City Attorney

EXHIBIT A

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

VIII. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

IX. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

X. ACCESS TO RECORDS

A. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. 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.

C. The Contractor agrees to maintain all books, records, accounts and reports 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 Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

XI. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

XII. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIII. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (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. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

XIV. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the Authority and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

XV. RIGHTS IN DATA AND COPYRIGHTS (*Applicable to contracts for planning, research, or development financed by FTA*)

A. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

B. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

1. Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by Authority or Contractor using Federal assistance in whole or in part provided by FTA.

3. FTA Intention. When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing

equipment or programs for the Authority's use the costs of which are financed with Federal transportation funds for capital projects.

4. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

5. Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

6. Application to Data Incorporated into Work. The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the Authority or Contractor and incorporated into the work carried out under this Agreement, provided that the Authority or Contractor identifies the data in writing at the time of delivery of the work.

7. Application to Subcontractors. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

C. Provision of Rights to Government. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Authority and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

D. Flow Down. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

XVI. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract 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 A of this section.

C. Withholding for unpaid wages and liquidated damages - The Authority and County of San Francisco 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 contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime 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 (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XVII. ENERGY CONSERVATION REQUIREMENTS

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.

XVIII. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XIX. CLEAN AIR *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any yea.)*

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XX. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XXI. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XXII. TERMINATION FOR CONVENIENCE OF AUTHORITY *(required for all contracts in excess of \$10,000; except: in excess of \$100,000 for contracts with non-profits)*

See Agreement Terms and Conditions.

XXIII. TERMINATION FOR DEFAULT *(required for all contracts in excess of \$10,000; except: in excess of \$100,000 for contracts with non-profits)*

Not required.

XXIV. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying 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 underlying contract or the FTA-assisted project for which this contract 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 a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXV. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 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. 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 and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXVI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XXVII. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS *(applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)*

A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms

and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.