

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 7.5
FOR THE MEETING OF: September 20, 2007**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute an Agreement for Federal Advocacy Services between the TJPA and Holland + Knight in the amount of \$505,500 for a period of three (3) years, with the option to extend the term for three years, and to execute an Agreement for Federal Advocacy Services between the TJPA and Chambers, Conlon & Hartwell in the amount of \$256,500 for a period of three (3) years, with the option to extend the term for three years.

EXPLANATION:

The TJPA desires to have effective relationships with Federal authorities and agencies and be proactive in developing funding opportunities. In order to do so, the TJPA recognizes the need for continuous representation of its interests via qualified individuals and/or firms in Washington, D.C., who provide such professional services. The TJPA does not currently have ongoing representation and manages its Federal contacts and relationships on an as-needed basis using current staff.

The specific scope of services the TJPA is seeking from a Federal advocacy firm includes:

- Securing Federal funding, including assistance with securing a TIFIA loan
- Developing and executing Federal legislative strategies to advance the TJPA's interests
- Provision of targeted information and analysis of Federal legislation, regulations and activities
- Developing and maintaining a relationship between the TJPA and the Federal government

The TJPA issued a Request for Proposals (RFP) for a consultant to provide Federal advocacy services on June 29, 2007. On July 19, 2007, the TJPA received sixteen proposals in response to the RFP. A Selection Committee reviewed the proposals for technical merit. Based on the committee's evaluation scores of the written proposals, the TJPA selected the five highest scoring teams and conducted interviews with these teams. Following interviews, the Selection Committee again evaluated strengths and weaknesses and scored the performance of the interviewed teams. At this point it was determined that revised proposals were desired of two firms, and the TJPA made this request of the two teams. Revised proposals were scored by the Selection Committee in the same manner as written proposals and interviews. The Selection Committee Report is attached.

The result of the Selection Committee's evaluations determined that the proposals of Holland + Knight and Chambers, Conlon & Hartwell were most responsive to the RFP and that the proposers were well qualified to perform the scope of services. TJPA staff has negotiated agreements with both Holland + Knight and Chambers, Conlon & Hartwell and both firms are willing and able to work together to coordinate a Federal advocacy strategy for the TJPA.

Staff is recommending two contracts for the provision of federal lobbyist services to help meet the significant near-term need for representation in Washington, D.C. The visibility of the project, the intense federal activity leading up to the transportation bill reauthorization, and the need to expand the search for federal funding into new arenas call for a robust federal advocacy program that is best met by these two firms. Additionally, the firms bring different attributes to the legislative effort. The two firms cover a broad range of expertise and have access to both political and administrative offices in Washington, D.C. The practice of using two representatives is common among Bay Area transportation agencies. Staff recommends that the Board authorize execution of these agreements.

Contract compensation will be paid via monthly retainer, a common practice for advocacy firms that will benefit the TJPA as provision of services will not be limited by high hourly rates. The retainers for each firm are shown below:

Monthly Retainer	Holland + Knight	Chambers, Conlon & Hartwell
Year 1	\$13,000	\$6,500
Year 2	\$14,000	\$7,000
Year 3	\$14,500	\$7,250
Annual Travel Allowance	\$2,500	\$2,500

Budget Impact:

The current amount budgeted for legislative services in the FY2007-08 adopted budget is \$225,000. Approval of the contracts for federal and state advocacy on today’s agenda will increase the budgeted amount by \$45,000 for a total budget of \$270,000. 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 FY2007-08.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute an Agreement for Federal Advocacy Services between the TJPA and Holland + Knight in the amount of \$505,500 for a period of three (3) years, with the option to extend the term for three years, and to execute an Agreement for Federal Advocacy Services between the TJPA and Chambers, Conlon & Hartwell in the amount of \$256,500 for a period of three (3) years, with the option to extend the term for three years.

ATTACHMENTS:

1. Resolution
2. Agreement
3. Selection Committee Report

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On June 29, 2007, the Transbay Joint Powers Authority (TJPA) issued a Request for Proposals (RFP) for a consultant to provide Federal advocacy services; and

WHEREAS, On July 19, 2007, the TJPA received sixteen proposals in response to the RFP, and a Selection Committee evaluated these proposals for technical merit; and

WHEREAS, The Selection Committee conducted interviews with the top five highest-scoring teams following proposal evaluation, and requested revised proposals from the subsequent top two highest-scoring teams; and

WHEREAS, The Selection Committee found the proposals submitted by Holland + Knight and Chambers, Conlon & Hartwell to be the most responsive to the RFP and that the proposers are well qualified to perform the scope of services in a cost-effective manner; and

WHEREAS, TJPA staff has negotiated the agreement with Holland + Knight attached hereto for a term of three years and an amount not to exceed \$505,500, with the option of extending the agreement for three years with Holland + Knight's concurrence, and the agreement with Chambers, Conlon & Hartwell attached hereto for a term of three years and an amount not to exceed \$256,500, with the option of extending the agreement for three years with Chambers, Conlon & Hartwell's concurrence; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Professional Services Agreement for Federal advocacy services with Holland + Knight for a term of three years and an amount not to exceed \$505,500, with the option of extending the agreement for three years with Holland + Knight's concurrence, and the Professional Services Agreement for Federal advocacy services with Chambers, Conlon & Hartwell attached hereto for a term of three years and an amount not to exceed \$256,500, with the option of extending the agreement for three years with Chambers, Conlon & Hartwell's concurrence; and be it

FURTHER RESOLVED, That the TJPA Board approves an amendment to the FY2007-08 budget to increase the legislative services amount by \$45,000, from \$225,000 to \$270,000 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 September 20, 2007.

Secretary, Transbay Joint Powers Authority

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 2007, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Holland + Knight (the "Contractor").

Recitals

A. TJPA requires the services of an individual or firm to provide Federal Advocacy consulting services ("Services") for the Transbay Transit Center Program ("Program").

B. Contractor submitted a written proposal ("Proposal") in response to the TJPA's Request for Proposals ("RFP"). The TJPA's selection committee reviewed and selected the Contractor's Proposal for negotiations. This Agreement is the product of those negotiations.

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

D. TJPA and Contractor intend that this Agreement comply with certain contracting requirements of the City and County of San Francisco (the "City").

E. On _____, 2007, the TJPA Board of Directors adopted Resolution No. _____ authorizing the TJPA's Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

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

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Finance Manager, and the amount of 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 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 term for which funds are appropriated.

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall not exceed three (3) years from the Effective Date of the Agreement, as described in Section 3 below, provided that (i) TJPA shall have the right to extend this Agreement for an additional three (3) years by providing to Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of Contractor and the approval of such extension by resolution adopted by the TJPA's Board of Directors.

3. Effective Date of Agreement

This Agreement shall become effective upon full execution, following approval of this Agreement by TJPA's Board of Directors by resolution, and when the Finance Manager has certified to the availability of funds for the first notice to proceed ("NTP") and Contractor has been notified in writing via an NTP.

4. Services Contractor Agrees to Perform

Following receipt of a written NTP, the Contractor agrees to perform that part of the Services listed in the NTP. The Services are described in detail in Appendix A, "Scope of Services" and incorporated by reference as though fully set forth herein.

Contractor represents and warrants to TJPA that Contractor is qualified to perform the Services as contemplated by this Agreement. Contractor further represents and warrants to 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 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.

a. Key Personnel

The Contractor agrees that the following Key Personnel shall be committed and assigned to work on the Contract:

Principal: Jeff Boothe

Contractor shall advise the TJPA immediately any time one of the Key Personnel deviates from its committed role to the Program. The TJPA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations. If substitutions for any of the Key Personnel who are listed above are required, the Contractor shall propose a replacement in writing to the TJPA Executive Director for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company). If the performance of any person assigned to a Key Personnel position is determined to be unsatisfactory by the TJPA, the TJPA reserves the right to direct the Contractor to replace that person and/or take any other appropriate remedial action without prejudice to any of Authority's obligations under this agreement.

The Contractor shall replace any Key Personnel departing from the Program of departing from his/her assigned role in the Program with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days of the departure. Failure to replace Key Personnel shall be cause for the Authority to suspend invoice payments. Furthermore, the Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job, etc.

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

b. Contractor's Performance

The Contractor shall meet with the TJPA on a quarterly basis to evaluate Contractor's performance under the Contract with respect to the following:

- (1) Contractor's adherence to this Agreement

- (2) Quality of performance of Key Personnel and other staff assigned to the program by the Contractor and any subcontractors
- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including any subcontractors, with members of the TJPA staff and other contractors, including design, grant management, financial, construction management and other professionals
- (4) Management of authorized contract budget
- (5) Performance in accordance with agreed upon scope of work and schedule
- (6) Monitoring, reporting and updating of progress of assigned work
- (7) Timeliness in resolving issues, including issues arising from performance evaluations

Should the TJPA be dissatisfied with any of the above categories of Contractor performance in the same evaluation, the TJPA will render a negative evaluation on the Contractor's performance for that preceding quarter. In such cases, the Contractor shall be required to formulate and deliver to Authority within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to Authority on a monthly basis until the problem areas have been resolved or brought under control.

5. Compensation

All work under this Agreement shall be compensated on a monthly retainer basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed Five Hundred Five Thousand Five Hundred dollars (\$505,500). The payment schedule associated with this agreement appears in "Compensation for Services" attached hereto as Appendix B.

No charges shall be incurred under this Agreement nor shall any payments become due to 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. TJPA may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

6. Guaranteed Maximum Costs

a. The TJPA's obligation hereunder shall not at any time exceed the amount certified by the Finance Manager 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. Officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse Contractor for, commodities or services beyond the price set forth in an NTP and beyond 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 NTP is certified without certification of the additional amount by the Finance Manager.

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

7. Payment

Invoices furnished by Contractor under this Agreement must be in a form reasonably acceptable to the TJPA. Contractor must submit required DBE forms detailed in Section 57 with every invoice. All amounts paid to Contractor shall be subject to audit by TJPA.

TJPA shall make payment to Contractor at the address specified in Section 22 entitled "Notices to the Parties." In no event shall TJPA be liable for interest or late charges for any late payments.

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim. A Contractor, subcontractor or consultant who submits a false claim shall also be liable to the TJPA for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the TJPA for a civil penalty of up to \$10,000 for each false claim. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if 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 TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to TJPA upon TJPA's request. At its option, 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, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. 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 Contractor.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by TJPA, or the receipt thereof by Contractor, shall in no way lessen the liability of 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. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

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. Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. 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 Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and Contractor.

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

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 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 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 Contractor for the TJPA, upon notification of such fact by the TJPA, Contractor shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by 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, Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in the TJPA's financial liability so that TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

13. Insurance

a. Without in any way limiting Contractor's indemnification obligations under this Agreement, 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; 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.

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim and in the aggregate, 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 provide thirty (30) days' advance written notice to the TJPA of cancellation mailed to the following address.

Ms. Maria Ayerdi, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105

d. Should any of the required insurance be provided under a claims-made form, 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, 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 the TJPA's request.

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

14. Indemnification

Contractor shall indemnify, keep and save harmless the TJPA, and its officers, directors, agents and employees (collectively "Indemnitees") against any and all suits, claims or actions arising out of any injury to or death of a person, including employees of Contractor, or loss of or damage to tangible personal property, that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor caused by a negligent act or omission of Contractor or its employees, subconsultants or agents, except where, and to the extent, such injuries, death, losses or damage result from the active negligence or willful misconduct of any Indemnitees. The Contractor further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other incurred costs and expenses. If any judgment is rendered against any Indemnity in any such action, Contractor shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

Contractor shall also indemnify and hold harmless the Indemnities 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, materials or services supplied by Contractor in the performance of this Agreement

15. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the TJPA resulting from Contractor's negligent or willful acts or omissions under this Agreement. 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.

16. Liability of TJPA

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in Section 5 of this Agreement. 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.

17. 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 Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by the TJPA and to minimize the liability of 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 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, Contractor shall submit to the TJPA an invoice, which shall set forth each of the following as a separate line item,

The reasonable cost to Contractor for all services and other work the TJPA directed 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. Contractor may also recover the reasonable cost of preparing the invoice.

d. In no event shall the TJPA be liable for costs incurred by 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 Contractor under this section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by Contractor's final invoice; (2) any claim which the TJPA may have against 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.

18. 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: 8-14, 16, 21, 22, 25, 28, 39, 45-49, 52, 54, 56, and 58.

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. 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.

19. 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: 8, 10, 13, 21, 27, 34, 50, 52 or 56.

(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 the TJPA to Contractor.

(3) 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 Contractor or of any substantial part of 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 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 Contractor.

(5) Any statement, representation or warranty made by Contractor in this Agreement, or in the proposal documents submitted by Contractor in order to obtain this Agreement, are found by the TJPA to have been materially false or misleading when made.

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 Contractor any Event of Default; 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 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 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.

20. Conflict of Interest

Through its execution of this Agreement, 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 Sections 87100 et seq. and Sections 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.

21. Nondisclosure of Private Information

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, Contractor agrees to all of the following:

a. Neither 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 Contracting Department 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 a Contracting Department 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 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 Contractor.

22. 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, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105
(415) 597-4615 fax
MAyerdi@TransbayCenter.org

To Contractor: Jeffrey F. Boothe
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC. 20006
(202) 955-5564 fax
Jeff.boothe@hklaw.com

Any notice of default must be sent by registered mail.

23. Ownership of Results

Any interest of Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by 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, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

24. Works for Hire

If, in connection with services performed under this Agreement, 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 Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, 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, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

25. Audit and Inspection of Records

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. 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. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) 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.

26. Subcontracting

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

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.

27. Assignment

The services to be performed by 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. The persons performing professional services under this Agreement on behalf of Contractor are shown in Appendix A attached hereto, and shall not be changed or substituted without the prior written consent of the TJPA's Executive Director.

28. 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.

29. Earned Income Credit (EIC) Forms

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

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (1) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (2) promptly after any Eligible Employee is hired by Contractor; and (3) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

30. Equal Employment Opportunity

The Contractor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. The Contractor will not discriminate against any employee or applicant for employment 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 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. The Contractor will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. 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.

31. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, 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 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.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from 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. Non-Discrimination in Benefits

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 Section 12B.2(b) of the San Francisco Administrative Code.

d. 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. 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, Contractor understands that pursuant to Section 12B.2(h) 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 Contractor and/or deducted from any payments due Contractor.

32. MacBride Principles--Northern Ireland

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

33. Tropical Hardwood/Virgin Redwood Ban

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

34. Drug-Free Workplace Policy

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

35. Resource Conservation

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

36. Compliance with Americans with Disabilities Act

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. 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. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

37. San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), 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.

38. Public Access to Meetings and Records

If Contractor 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 S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, 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. 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. Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. 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.

39. Notification of Limitations on Contributions

Through execution of this Agreement, 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 or for the furnishing of any material, supplies or equipment to the TJPA, whenever such transaction would require approval by a TJPA elective officer or the board on which that TJPA elective officers serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three months after the date the contract is approved by the TJPA elective officer or the board on which that TJPA elective officer serves.

40. Requiring Minimum Compensation for Covered Employees

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/site/olse_index.asp?id=27459. 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, 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 for For-Profit entities is \$10.77 as of January 2006. If Contractor is a non-profit corporation or a public entity, it shall be required to pay the increased amount only if the TJPA makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.77 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three (3) years.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to 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. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The TJPA, acting through the Contracting Department, 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA, acting through the Contracting Department, 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 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 Contractor under this Agreement;

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

(4) In the event of a breach by 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 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. 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. 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. 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 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 (2) 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 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. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services 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 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 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 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. 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 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 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. Contractor also understands that the MCO provides that if Contractor prevails in any such action, 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 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 non-profits), but Contractor later enters into an agreement or agreements that cause Contractor to exceed that amount in a fiscal year, 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 this department to exceed \$25,000 (\$50,000 for non-profits) in the fiscal year.

41. Requiring Health Benefits for Covered Employees

Unless exempt, 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/site/olse_index.asp?id=27461. 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, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If 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. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. TJPA shall notify Contractor if such a breach has occurred. If, within thirty (30) days after receiving TJPA's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 TJPA.

d. Any Subcontract entered into by 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. Contractor shall notify TJPA when it enters into such a subcontract and shall certify to 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. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying 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. 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. Contractor shall keep itself informed of the current requirements of the HCAO.

h. 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.

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

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

k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for non-profits), but Contractor later enters into an agreement or agreements that cause 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 Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

42. 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. 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) 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) 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) 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

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 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.

43. Prohibition on Political Activity with TJPA Funds

In accordance with San Francisco Administrative Code Chapter 12.G, 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. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Finance Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the TJPA may, in addition to any other rights or remedies available hereunder, (a) terminate this Agreement, and (b) prohibit Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years.

44. Preservative-treated Wood Containing Arsenic

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 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.

45. 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.

46. 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 Contractor waiving any legal rights or remedies to which it is entitled.

47. 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.

48. Construction

All section captions are for reference only and shall not be considered in construing this

Agreement.

49. Entire Agreement

This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 45.

50. Compliance With Laws

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, 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.

51. Services Provided by Attorneys

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

52. 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.

53. 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.

54. Reserved

55. TJPA 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 shall not bind the TJPA unless and until the TJPA Board of Directors approves the Agreement or authorizes the TJPA's Executive Director to enter into this Agreement.

56. Reserved

57. 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 "Summary of Payment Form" and "Subcontractor Payment Declaration" with every invoice request and a "Final Expenditure Report" with the completion of the contract.

58. Prompt Payment to Subcontractors

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

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

59. Representation Regarding Previous Expert Services

Contractor hereby represents, warrants, and covenants that by performing the services required by this Agreement it will not be participating or assisting in an audit or investigation of any issue, matter, or question as to which Contractor has previously rendered compensated advice or services to any individual, corporation, department of the TJPA other than the Controller of the City, or any other entity. All representations, warranties and covenants made in this section are deemed to be material. If the TJPA determines at any time that any such representation or warranty is not true (a) upon written notice from the TJPA, this Agreement shall be deemed void, and Contractor shall immediately return to the TJPA any and all compensation received from the TJPA under this Agreement; (b) the TJPA may immediately terminate this Agreement by written notice to Contractor without any additional cost or obligations on the part of the TJPA; (c) the TJPA may commence debarment proceedings against Contractor; or (d) the TJPA may exercise any other legal or equitable remedies available to the TJPA. The remedies provided herein may be exercised individually or in combination. The exercise of any remedy shall not be deemed to preclude or waive the exercise of any other remedy. The provisions of Section F1.112(b) of the City Charter are incorporated in this section by reference and made a part of this Agreement as though fully set forth herein. This section shall survive the expiration or any termination of this Agreement.

60. Miscellaneous

(a) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (b) Time is of the essence in all matters under this Agreement. (c) 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:

Maria Ayerdi
Executive Director

By _____
TJPA Legal Counsel

HOLLAND + KNIGHT

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

I have read and understood Section 32, the TJPA's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone Number

Company Name

Federal Employer ID Number

PROFESSIONAL SERVICES AGREEMENT

APPENDIX A

SCOPE OF FEDERAL ADVOCACY SERVICES

A. Scope of Services

The scope of work provided by the successful candidate will include but is not limited to the following areas:

1. Overall advocacy coordination for the TJPA at the federal level, which may include, but is not limited to:
 - a. Develop and implement appropriate federal legislative and post-legislative strategies for the Transbay Transit Center Program;
 - b. Preparing legislation, testimony, and report language as needed;
 - c. Identify potential sources of funds and strategize and formulate funding requests;
 - d. Supporting the Program in the Reauthorization of SAFETEA-LU;
 - e. Assist in coordinating activities during staff and Board visits to Washington;
 - f. Prioritize, prepare and submit formal requests in a timely manner, and do appropriate follow-up;
 - g. Regular written and oral communication with congressional delegation and key staff, members of relevant committees in both chambers and federal agency staff to further the Program; and
2. Regular written and oral communication to TJPA staff regarding specific and timely federal issues germane to the Program, including:
 - a. Timely reports on activities or actions of the federal government that could directly impact the Transbay Program
 - b. Provide recommendations to TJPA for action on critical issues, activities or bills for or against which TJPA should lobby; assist TJPA in developing policy positions regarding legislative or executive branch actions; and develop strategies for effectively communicating TJPA position and affecting outcome
 - c. Summarizing the firm's most recent efforts on behalf of the Transbay Program including
 - i. Testimony at Committee Hearings
 - ii. Meetings with legislators and staff
 - iii. Written correspondence on behalf of TJPA
3. Reauthorization of SAFETEA-LU:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to be knowledgeable of developments in discussions regarding the reauthorization throughout the process and will be expected to have access to key discussions and decision-makers and be able to report back to the TJPA and provide insight and advice with respect to the Program and specifically work in support of funding for Transbay.
4. TIFIA:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to have a strong understanding of, and experience with, the TIFIA loan program, and will be expected to monitor and analyze related legislation, regulations, and annual appropriations;
5. Provide formal reports (written or in person), upon request, to TJPA Board and staff on developments in Washington pertinent to the Transbay Program;

6. Work with the press staff to maximize coverage in the media for TJPA's interests;
7. Comply with all federal lobbying disclosure requirements and maintain the highest ethical standards both publicly and privately, including the avoidance of conflicts of interest, while representing the TJPA; and
8. Other services within the individual's and/or firm's ability as requested.

B. Persons Providing Services

The following employees of Contractor will provide the Services:

Name	Title	Services
Jeffrey Boothe	Partner	Co-Team Leader
Richard Gold	Partner	Co-Team Leader
David Whitestone	Partner	Federal Advocacy Services
Lynn Cutler	Sr. Policy Advisor	Federal Advocacy Services
Gerry Sikorski	Sr. Policy Advisor	Federal Advocacy Services
Kathryn Lehman	Partner	Federal Advocacy Services
John Buscher	Sr. Policy Advisor	Federal Advocacy Services
Julie Adair	Sr. Public Affairs Advisor	Federal Advocacy Services
Ann-Therese Schmid	Associate	Federal Advocacy Services

PROFESSIONAL SERVICES AGREEMENT

APPENDIX B

COMPENSATION FOR SERVICES

Holland + Knight LLP		
2099 Pennsylvania Avenue, NW, Suite 1000		
Washington	DC	20006
Contact: Jeffrey Boothe	Phone: (202) 828-1896	
Contract Year	Monthly Retainer	Year Retainer Total
1	\$13,000	\$156,000
2	\$14,000	\$168,000
3	\$14,500	\$174,000
Contract Year	Travel Allowance	Year Total
1	\$2,500	\$158,500
2	\$2,500	\$170,500
3	\$2,500	\$176,500
Contract Total		\$505,500

The above amount 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, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Contractor or the Contractor's subcontractors. A travel allowance for travel pre-authorized by the TJPA Executive Director will be \$2,500 per year.

PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

PARCEL LIST

The parcels listed below are planned to be acquired as part of the Transbay Transit Center Program. This list is subject to change and requires verification by the TJPA.

Private parcels are planned to be acquired in fee simple. The State parcels will be transferred to either the TJPA or the City and County of San Francisco.

Private Parcels			
	Address/Street	Block	Lot
1	580 Howard St.	3721	92-106
2	77 Natoma St.	3721	29
3	83 Natoma St.	3721	108
4	85 Natoma St.	3721	109-118
5	546 Howard St.	3721	16
6	564 Howard St.	3721	19
7	568-576 Howard St.	3721	20
8	191 Second St.	3721	22
9	181 Second St.	3721	23
10	171 Second St.	3721	25
11	Natoma St.	3721	31
12	90 Natoma St.	3721	47
13	57 Tehama St.	3736	74
14	60 Tehama St.	3736	88
15	217 Second St.	3736	95
16	205-215 Second St.	3736	96
17	201 Second St.	3736	97
18	200 Main St.	3739	2
19	200 Folsom St.	3739	4
20	200 Folsom St. (vacant)	3739	7
21	272 Main St.	3739	6
22	301 Brannan St.	3788	37
23	35 Stanford St. / 634 Second St.	3788	38
24	640 Second St.	3788	02
25	650 Second St.	3788	49-73
26	670 Second St.	3788	43
27	678-680 Second St.	3788	44
28	130 Townsend St.	3788	8
29	136 Townsend St.	3788	9
30	144-146 Townsend St.	3788	9A
31	148-154 Townsend St.	3788	10
32	164 Townsend St.	3788	74-85
33	166-178 Townsend St.	3788	12

Public Parcels				
	Street	Block	Lot	Parcel
1	Folsom St.	3749	64	B
2	Folsom St.	3737	5, 12, 27	C, C"
3	Howard St.	3719	3	D
4	First St.	3721	6	E
5	Howard St.	3721	15A	F
6	Bryant St.	3762	4	J
7	Bryant St.	3763	112	K
8	Main St.	3718	27	M
9	Beale St.	3718	25	N
10	Beale St.	3739	8	O, O', O"
11	Harrison St.	3764	68	Q
12	Mission St.	3720	1	T
13	Harrison St.	3749	52	A', A"
14	Howard St.	3736	89	G
15	Clementina St.	3736	7	H'
16	Folsom St.	3736	18	I, I"
17	Howard St.	3738	4	P, P', P"
18	Folsom St.	3736	120	S
19	Harrison St.	3749	61	R

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 2007, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Chambers, Conlon & Hartwell (the "Contractor").

Recitals

A. TJPA requires the services of an individual or firm to provide Federal Advocacy consulting services ("Services") for the Transbay Transit Center Program ("Program").

B. Contractor submitted a written proposal ("Proposal") in response to the TJPA's Request for Proposals ("RFP"). The TJPA's selection committee reviewed and selected the Contractor's Proposal for negotiations. This Agreement is the product of those negotiations.

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

D. TJPA and Contractor intend that this Agreement comply with certain contracting requirements of the City and County of San Francisco (the "City").

E. On _____, 2007, the TJPA Board of Directors adopted Resolution No. _____ authorizing the TJPA's Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

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

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Finance Manager, and the amount of 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 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 term for which funds are appropriated.

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall not exceed three (3) years from the Effective Date of the Agreement, as described in Section 3 below, provided that (i) TJPA shall have the right to extend this Agreement for an additional three (3) years by providing to Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of Contractor and the approval of such extension by resolution adopted by the TJPA's Board of Directors.

3. Effective Date of Agreement

This Agreement shall become effective upon full execution, following approval of this Agreement by TJPA's Board of Directors by resolution, and when the Finance Manager has certified to the availability of funds for the first notice to proceed ("NTP") and Contractor has been notified in writing via an NTP.

4. Services Contractor Agrees to Perform

Following receipt of a written NTP, the Contractor agrees to perform that part of the Services listed in the NTP. The Services are described in detail in Appendix A, "Scope of Services" and incorporated by reference as though fully set forth herein.

Contractor represents and warrants to TJPA that Contractor is qualified to perform the Services as contemplated by this Agreement. Contractor further represents and warrants to 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 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.

a. Contractor's Performance

The Contractor shall meet with the TJPA on a quarterly basis to evaluate Contractor's performance under the Contract with respect to the following:

- (1) Contractor's adherence to this Agreement
- (2) Quality of performance of key personnel and other staff assigned to the program by the Contractor and any subcontractors
- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including any subcontractors, with members of the TJPA staff and other contractors, including design, grant management, financial, construction management and other professionals
- (4) Management of authorized contract budget
- (5) Performance in accordance with agreed upon scope of work and schedule
- (6) Monitoring, reporting and updating of progress of assigned work
- (7) Timeliness in resolving issues, including issues arising from performance evaluations

Should the TJPA be dissatisfied with any of the above categories of Contractor performance in the same evaluation, the TJPA will render a negative evaluation on the Contractor's performance for that preceding quarter. In such cases, the Contractor shall be required to formulate and deliver to Authority within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to Authority on a monthly basis until the problem areas have been resolved or brought under control.

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

5. Compensation

All work under this Agreement shall be compensated on a monthly retainer basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed Two Hundred Fifty-Six Thousand Five Hundred dollars (\$256,500). The payment

schedule associated with this agreement appears in "Compensation for Services" attached hereto as Appendix B.

No charges shall be incurred under this Agreement nor shall any payments become due to 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. TJPA may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

6. Guaranteed Maximum Costs

a. The TJPA's obligation hereunder shall not at any time exceed the amount certified by the Finance Manager 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. Officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse Contractor for, commodities or services beyond the price set forth in an NTP and beyond 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 NTP is certified without certification of the additional amount by the Finance Manager.

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

7. Payment

Invoices furnished by Contractor under this Agreement must be in a form reasonably acceptable to the TJPA. Contractor must submit required DBE forms detailed in Section 57 with every invoice. All amounts paid to Contractor shall be subject to audit by TJPA.

TJPA shall make payment to Contractor at the address specified in Section 22 entitled "Notices to the Parties." In no event shall TJPA be liable for interest or late charges for any late payments.

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim. A Contractor, subcontractor or consultant who submits a false claim shall also be liable to the TJPA for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the TJPA for a civil penalty of up to \$10,000 for each false claim. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if 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 TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to TJPA upon TJPA's request. At its option, 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, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. 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 Contractor.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by TJPA, or the receipt thereof by Contractor, shall in no way lessen the liability of 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. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

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. Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. 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 Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and Contractor.

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

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 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 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 Contractor for the TJPA, upon notification of such fact by the TJPA, Contractor shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by 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, Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in the TJPA's financial liability so that TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

13. Insurance

a. Without in any way limiting Contractor's indemnification obligations under this Agreement, 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; 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.

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim and in the aggregate, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$25,000 each claim.

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 provide thirty (30) days' advance written notice to the TJPA of cancellation mailed to the following address.

Ms. Maria Ayerdi, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105

d. Should any of the required insurance be provided under a claims-made form, 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, 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 the TJPA's request.

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

14. Indemnification

Contractor shall indemnify and save harmless the TJPA, and its officers, directors, agents, and employees from and against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor, or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's 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 Contractor's obligation to indemnify the TJPA, 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 Contractor by the TJPA and continues at all times thereafter. 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 Contractor and its attorneys, at no cost to the TJPA.

Contractor shall also 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, materials or services supplied by Contractor in the performance of this Agreement.

15. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the TJPA resulting from Contractor's negligent or willful acts or omissions under this Agreement. 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.

16. Liability of TJPA

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in Section 5 of this Agreement. 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.

17. 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 Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by the TJPA and to minimize the liability of 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 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, Contractor shall submit to the TJPA an invoice, which shall set forth each of the following as a separate line item,

The reasonable cost to Contractor for all services and other work the TJPA directed 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. Contractor may also recover the reasonable cost of preparing the invoice.

d. In no event shall the TJPA be liable for costs incurred by 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 Contractor under this section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by Contractor's final invoice; (2) any claim which the TJPA may have against 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.

18. 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: 8-14, 16, 21, 22, 25, 28, 39, 45-49, 52, 54, 56, and 58.

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. 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.

19. 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: 8, 10, 13, 21, 27, 34, 50, 52 or 56.

(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 the TJPA to Contractor.

(3) 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 Contractor or of any substantial part of 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 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 Contractor.

(5) Any statement, representation or warranty made by Contractor in this Agreement, or in the proposal documents submitted by Contractor in order to obtain this Agreement, are found by the TJPA to have been materially false or misleading when made.

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 Contractor any Event of Default; 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 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 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.

20. Conflict of Interest

Through its execution of this Agreement, 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 Sections 87100 et seq. and Sections 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.

21. Nondisclosure of Private Information

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, Contractor agrees to all of the following:

a. Neither 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 Contracting Department 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 a Contracting Department 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 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 Contractor.

22. 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, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105
(415) 597-4615 fax
MAyerdi@TransbayCenter.org

To Contractor: Keith Hartwell, President
Chambers, Conlon & Hartwell, Inc.
500 New Jersey Avenue, NW, Ste. 400
Washington, DC. 20001
(202) 638-1045 fax
keith.hartwell@cch-llc.com

Any notice of default must be sent by registered mail.

23. Ownership of Results

Any interest of Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by 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, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

24. Works for Hire

If, in connection with services performed under this Agreement, 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 Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, 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, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

25. Audit and Inspection of Records

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. 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. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) 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.

26. Subcontracting

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

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.

27. Assignment

The services to be performed by 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. The persons performing professional services under this Agreement on behalf of Contractor are shown in Appendix A attached hereto, and shall not be changed or substituted without the prior written consent of the TJPA's Executive Director.

28. 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.

29. Earned Income Credit (EIC) Forms

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

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (1) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (2) promptly after any Eligible Employee is hired by Contractor; and (3) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach

cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

30. Equal Employment Opportunity

The Contractor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. The Contractor will not discriminate against any employee or applicant for employment 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 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. The Contractor will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. 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.

31. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, 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 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.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from 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. Non-Discrimination in Benefits

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 Section 12B.2(b) of the San Francisco Administrative Code.

d. **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. 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, Contractor understands that pursuant to Section 12B.2(h) 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 Contractor and/or deducted from any payments due Contractor.

32. MacBride Principles--Northern Ireland

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

33. Tropical Hardwood/Virgin Redwood Ban

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

34. Drug-Free Workplace Policy

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

35. Resource Conservation

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

36. Compliance with Americans with Disabilities Act

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. 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. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

37. San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), 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.

38. Public Access to Meetings and Records

If Contractor 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 S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, 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. 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. Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. 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.

39. Notification of Limitations on Contributions

Through execution of this Agreement, 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 or for the furnishing of any material, supplies or equipment to the TJPA, whenever such transaction would require approval by a TJPA elective officer or the board on which that TJPA elective officers serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three months after the date the contract is approved by the TJPA elective officer or the board on which that TJPA elective officer serves.

40. Requiring Minimum Compensation for Covered Employees

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/site/olse_index.asp?id=27459. 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, 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 for For-Profit entities is \$10.77 as of January 2006. If Contractor is a non-profit corporation or a public entity, it shall be required to pay the increased amount only if the TJPA makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.77 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three (3) years.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to 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. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The TJPA, acting through the Contracting Department, 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA, acting through the Contracting Department, 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 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 Contractor under this Agreement;

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

(4) In the event of a breach by 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 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. 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. 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. 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 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 (2) 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 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. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services 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 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 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 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. 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 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 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. Contractor also understands that the MCO provides that if Contractor prevails in any such action, 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 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 non-profits), but Contractor later enters into an agreement or agreements that cause Contractor to exceed that amount in a fiscal year, 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 this department to exceed \$25,000 (\$50,000 for non-profits) in the fiscal year.

41. Requiring Health Benefits for Covered Employees

Unless exempt, 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/site/olse_index.asp?id=27461. 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, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If 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. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. TJPA shall notify Contractor if such a breach has occurred. If, within thirty (30) days after receiving TJPA's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 TJPA.

d. Any Subcontract entered into by 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. Contractor shall notify TJPA when it enters into such a subcontract and shall certify to 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. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying 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. 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. Contractor shall keep itself informed of the current requirements of the HCAO.

h. 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.

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

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

k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for non-profits), but Contractor later enters into an agreement or agreements that cause 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 Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

42. 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. 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) 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) 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) 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

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 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.

43. Prohibition on Political Activity with TJPA Funds

In accordance with San Francisco Administrative Code Chapter 12.G, 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. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Finance Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the TJPA may, in addition to any other rights or remedies available hereunder,

(a) terminate this Agreement, and (b) prohibit Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years.

44. Preservative-treated Wood Containing Arsenic

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 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.

45. 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.

46. 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 Contractor waiving any legal rights or remedies to which it is entitled.

47. 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.

48. Construction

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

49. Entire Agreement

This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 45.

50. Compliance With Laws

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, 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.

51. Services Provided by Attorneys

Any legal services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the TJPA's counsel. No invoices for such services provided by law firms or

attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the TJPA's counsel.

52. 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.

53. 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.

54. Reserved

55. TJPA 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 shall not bind the TJPA unless and until the TJPA Board of Directors approves the Agreement or authorizes the TJPA's Executive Director to enter into this Agreement.

56. Reserved

57. 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 "Summary of Payment Form" and "Subcontractor Payment Declaration" with every invoice request and a "Final Expenditure Report" with the completion of the contract.

58. Prompt Payment to Subcontractors

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

deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

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

59. Representation Regarding Previous Expert Services

Contractor hereby represents, warrants, and covenants that by performing the services required by this Agreement it will not be participating or assisting in an audit or investigation of any issue, matter, or question as to which Contractor has previously rendered compensated advice or services to any individual, corporation, department of the TJPA other than the Controller of the City, or any other entity. All representations, warranties and covenants made in this section are deemed to be material. If the TJPA determines at any time that any such representation or warranty is not true (a) upon written notice from the TJPA, this Agreement shall be deemed void, and Contractor shall immediately return to the TJPA any and all compensation received from the TJPA under this Agreement; (b) the TJPA may immediately terminate this Agreement by written notice to Contractor without any additional cost or obligations on the part of the TJPA; (c) the TJPA may commence debarment proceedings against Contractor; or (d) the TJPA may exercise any other legal or equitable remedies available to the TJPA. The remedies provided herein may be exercised individually or in combination. The exercise of any remedy shall not be deemed to preclude or waive the exercise of any other remedy. The provisions of Section F1.112(b) of the City Charter are incorporated in this section by reference and made a part of this Agreement as though fully set forth herein. This section shall survive the expiration or any termination of this Agreement.

60. Miscellaneous

(a) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (b) Time is of the essence in all matters under this Agreement. (c) 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:

Maria Ayerdi
Executive Director

By _____
TJPA Legal Counsel

CHAMBERS, CONLON & HARTWELL

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

I have read and understood Section 32, the TJPA's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone Number

Company Name

Federal Employer ID Number

PROFESSIONAL SERVICES AGREEMENT

APPENDIX A

SCOPE OF FEDERAL ADVOCACY SERVICES

A. Scope of Services

The scope of work provided will include but is not limited to the following areas:

1. Overall advocacy coordination for the TJPA at the federal level, which may include, but is not limited to:
 - a. Develop and implement appropriate federal legislative and post-legislative strategies for the Transbay Transit Center Program;
 - b. Preparing legislation, testimony, and report language as needed;
 - c. Identify potential sources of funds and strategize and formulate funding requests;
 - d. Supporting the Program in the Reauthorization of SAFETEA-LU;
 - e. Assist in coordinating activities during staff and Board visits to Washington;
 - f. Prioritize, prepare and submit formal requests in a timely manner, and do appropriate follow-up;
 - g. Regular written and oral communication with congressional delegation and key staff, members of relevant committees in both chambers and federal agency staff to further the Program; and
2. Regular written and oral communication to TJPA staff regarding specific and timely federal issues germane to the Program, including:
 - a. Timely reports on activities or actions of the federal government that could directly impact the Transbay Program
 - b. Provide recommendations to TJPA for action on critical issues, activities or bills for or against which TJPA should lobby; assist TJPA in developing policy positions regarding legislative or executive branch actions; and develop strategies for effectively communicating TJPA position and affecting outcome
 - c. Summarizing the firm's most recent efforts on behalf of the Transbay Program including
 - i. Testimony at Committee Hearings
 - ii. Meetings with legislators and staff
 - iii. Written correspondence on behalf of TJPA
3. Reauthorization of SAFETEA-LU:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to be knowledgeable of developments in discussions regarding the reauthorization throughout the process and will be expected to have access to key discussions and decision-makers and be able to report back to the TJPA and provide insight and advice with respect to the Program and specifically work in support of funding for Transbay.
4. TIFIA:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to have a strong understanding of, and experience with, the TIFIA loan program, and will be expected to monitor and analyze related legislation, regulations, and annual appropriations;
5. Provide formal reports (written or in person), upon request, to TJPA Board and staff on developments in Washington pertinent to the Transbay Program;

6. Work with the press staff to maximize coverage in the media for TJPA's interests;
7. Comply with all federal lobbying disclosure requirements and maintain the highest ethical standards both publicly and privately, including the avoidance of conflicts of interest, while representing the TJPA; and
8. Other services within the individual's and/or firm's ability as requested.

B. Persons Providing Services

The following employees of Contractor will provide the Services:

<u>Name</u>	<u>Title</u>
Keith Hartwell	President/Senior Partner
Donald Norden	Partner & Counsel
Adam Nordstrom	Partner
Ray Chambers	Chairman
Katie Manly	Associate

PROFESSIONAL SERVICES AGREEMENT

APPENDIX B

COMPENSATION FOR SERVICES

Chambers, Conlon & Hartwell LLC		
500 New Jersey Ave NW, Suite 400		
Washington	DC	20001
Contact: Keith Hartwell	Phone: (202) 638-7790	
Contract Year	Monthly Retainer	Year Retainer Total
1	\$6,500	\$78,000
2	\$7,000	\$84,000
3	\$7,500	\$87,000
Contract Year	Other Direct Costs Allowance	Year Total
1	\$2,500	\$80,500
2	\$2,500	\$86,500
3	\$2,500	\$89,500
Contract Total		\$256,500

The above amount shall include incidental expenses of the Contractor, including costs of toll telephone calls, charges for sending facsimiles, secretarial services, computer, internet, in-house photocopying, overhead, and administration. The costs of document binding, filing fees, express mail, delivery charges, courier service, out-of-house photocopying, transportation, automobile rental, taxicab fares, parking, meals, printing, photographs, renderings, maps, and travel may be billed as Other Direct Costs for an amount not to exceed \$2,500 per year. All travel must be pre-authorized by the TJPA Executive Director.

PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

PARCEL LIST

The parcels listed below are planned to be acquired as part of the Transbay Transit Center Program. This list is subject to change and requires verification by the TJPA.

Private parcels are planned to be acquired in fee simple. The State parcels will be transferred to either the TJPA or the City and County of San Francisco.

Private Parcels			
	Address/Street	Block	Lot
1	580 Howard St.	3721	92-106
2	77 Natoma St.	3721	29
3	83 Natoma St.	3721	108
4	85 Natoma St.	3721	109-118
5	546 Howard St.	3721	16
6	564 Howard St.	3721	19
7	568-576 Howard St.	3721	20
8	191 Second St.	3721	22
9	181 Second St.	3721	23
10	171 Second St.	3721	25
11	Natoma St.	3721	31
12	90 Natoma St.	3721	47
13	57 Tehama St.	3736	74
14	60 Tehama St.	3736	88
15	217 Second St.	3736	95
16	205-215 Second St.	3736	96
17	201 Second St.	3736	97
18	200 Main St.	3739	2
19	200 Folsom St.	3739	4
20	200 Folsom St. (vacant)	3739	7
21	272 Main St.	3739	6
22	301 Brannan St.	3788	37
23	35 Stanford St. / 634 Second St.	3788	38
24	640 Second St.	3788	02
25	650 Second St.	3788	49-73
26	670 Second St.	3788	43
27	678-680 Second St.	3788	44
28	130 Townsend St.	3788	8
29	136 Townsend St.	3788	9
30	144-146 Townsend St.	3788	9A
31	148-154 Townsend St.	3788	10
32	164 Townsend St.	3788	74-85
33	166-178 Townsend St.	3788	12

Public Parcels				
	Street	Block	Lot	Parcel
1	Folsom St.	3749	64	B
2	Folsom St.	3737	5, 12, 27	C, C"
3	Howard St.	3719	3	D
4	First St.	3721	6	E
5	Howard St.	3721	15A	F
6	Bryant St.	3762	4	J
7	Bryant St.	3763	112	K
8	Main St.	3718	27	M
9	Beale St.	3718	25	N
10	Beale St.	3739	8	O, O', O"
11	Harrison St.	3764	68	Q
12	Mission St.	3720	1	T
13	Harrison St.	3749	52	A', A"
14	Howard St.	3736	89	G
15	Clementina St.	3736	7	H'
16	Folsom St.	3736	18	I, I"
17	Howard St.	3738	4	P, P', P"
18	Folsom St.	3736	120	S
19	Harrison St.	3749	61	R



Federal Advocacy Services Selection Committee Report August 2007

Executive Summary and Recommendation

In response to Request for Proposals No. 07-07 for a Federal Advocacy Services Consultant, issued on June 29, 2007, sixteen proposals from firms meeting all minimum qualifications were received on July 19, 2007. A selection committee convened on July 24, 2007 to evaluate the proposals. Interviews with the five top-ranked respondents were conducted on July 30, 2007. After requesting and receiving revised proposals from the top two firms following interview scoring, the selection committee finalized its scoring process on August 9, 2007.

Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA negotiate contracts for services with **Holland + Knight LLP** and **Chambers, Conlon & Hartwell, LLC**.

Background

The TJPA desires to have effective relationships with Federal authorities and agencies and be proactive in developing funding opportunities. In order to do so, the TJPA recognizes the need for continuous representation of its interests via qualified individuals and/or firms in Washington, D.C., who provide such professional services.

Schedule

1)	RFP advertised/posted	June 29, 2007
2)	Receipt of proposals	July 19, 2007
3)	Selection committee evaluation meeting	July 24, 2007
4)	Interviews of shortlisted firms	July 30, 2007
5)	Revised proposals requested	July 31, 2007
6)	Revisions received	August 6, 2007
7)	Finalization of scoring	August 9, 2007

Selection Committee Members

Maria Ayerdi, TJPA Executive Director
Emilio Cruz, TJPA Program Management Consultant
Tony Bruzzone, AC Transit Service & Operations Planning Manager

RFP Outreach

An announcement of the RFP appeared in the *San Francisco Examiner*, the *Washington Post*, and *Roll Call*, a Capitol Hill newspaper. It was also posted on the City Purchaser's Bids and Contracts website; a copy of the announcement is Attachment A. On the same day, the TJPA posted the RFP on its website for the public to view and print and sent announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. In total, the announcement was sent to 440 firms or individuals.

The TJPA received sixteen proposals on or before the RFP submission date, from:

- VanNess Feldman
- Holland + Knight LLP

- Chambers, Conlon & Hartwell (with Ian Pfeiffer Government Relations)
- Podesta Group
- Bartlett, Bendall & Kadesh LLC (with MARC Associates)
- Carmen Group, Inc.
- Xenophon Strategies (with Baker, Donelson, Bearman, Caldwell & Berkowitz PC)
- Van Scoyoc Associates, Inc.
- CHG & Associates (with Marcus Faust PC)
- Akerman Senterfitt
- Alcalde & Fay (with Federal Advocates Services)
- Patton Boggs LLP
- Denny Miller Associates
- Kirkpatrick & Lockhart Preston Gates Ellis LLP
- Lindsay, Hart, Neil & Weigler LLP (with Veronica Sanchez Consulting)
- Platinum Advisors (with Hill & Knowlton)

Selection Committee Evaluation

The selection committee met on July 24, 2007 to review the proposals and evaluate strengths and weaknesses using the criteria listed on the score sheet (Attachment B). Following the discussion, each committee member individually filled out scoring sheets. Scores were tabulated and verified by the TJPA Contracts Compliance Manager. The following five firms were invited to participate in interviews based on the scoring results:

- Holland + Knight LLP
- Chambers, Conlon & Hartwell (with Ian Pfeiffer Government Relations)
- CHG & Associates (with Marcus Faust PC)
- Patton Boggs LLP
- Lindsay, Hart, Neil & Weigler LLP (with Veronica Sanchez Consulting)

References were checked for these top scoring firms. Interviews were conducted on July 30, 2007. Following each interview, the committee discussed the strengths and weaknesses of each firm. After both interviews had concluded, each committee member individually completed and signed scoring sheets and submitted them to the Contracts Compliance Manager for tabulation.

At the conclusion of interviews two firms, Holland + Knight and Chambers, Conlon & Hartwell, were virtually tied and the selection committee felt that revised proposals were desirable. The TJPA Contracts Compliance Manager sent a Request for Revised Proposals to both firms on July 31, 2007 (Attachment C). Information on proposed team members' specific experience with funding for large capital projects and transit was requested and provided by both firms on August 6, 2007.

On August 9, 2007 the selection committee evaluated the revised proposals, discussing strengths and weaknesses of each firm. At the conclusion of the discussion, each committee member individually completed and signed scoring sheets and submitted them to the Contracts Compliance Manager for final tabulation. The two firms are still too close to differentiate a clear highest-ranked firm, thus the recommendation of the committee to award contracts with both firms and coordinate service provision between them. Scores are shown in Attachment D. The committee's consensus on strengths and weaknesses is Attachment E.

All proposals submitted in response to this RFP are available for review at 201 Mission Street, Suite 1960 upon contacting the TJPA's Office Manager. Proposals will be kept for two years prior to discarding, except for the selected consultant's proposal which will be maintained on permanent record.

Attachments

Attachment A, RFP Announcement
 Attachment B, Scoring Sheets
 Attachment C, Request for Revised Proposals

Attachment D, Scores
Attachment E, Strengths and Weaknesses

Reference

Request for Proposals No. 07-07 for Federal Advocacy Services issued by the Transbay Joint Powers Authority on June 29, 2007.

Attachment A

ANNOUNCEMENT

REQUEST FOR PROPOSALS NO. 07-07 FEDERAL ADVOCACY SERVICES

The Transbay Joint Powers Authority (TJPA) is issuing a Request for Proposals (RFP) for FEDERAL ADVOCACY SERVICES for the Transbay Transit Center Program from firms or individuals with expertise in the federal legislative process and federal advocacy, and comprehensive knowledge and experience of the federal government's operations and procedures.

The TJPA will select a firm to perform services for a contract value not expected to exceed \$175,000 per year. The consultant will work closely with the TJPA's staff and other consultants. The contract will be established for a period up to three (3) years, unless extended by mutual agreement of the parties.

Proposal packages must be received by the TJPA no later than **5:00 p.m. on Thursday, July 19, 2007**, at the address below. Late proposal packages will not be considered.

Ms. Maria Ayerdi, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, CA 94105

Prospective Respondents may obtain copies of this RFP, including required forms, by visiting the TJPA's website at www.TransbayCenter.org (> Documents > RFPs/RFQs) or by contacting Sara Gigliotti, Contracts Compliance Manager, Transbay Joint Powers Authority, 201 Mission Street, Suite 1960, San Francisco, CA 94105 at (415) 597-4620 or by email at FederalAdvocacy@TransbayCenter.org.

This announcement shall not create any legal rights or responsibilities. All terms of this offering shall be as set forth in the RFP and related materials. Without limiting the foregoing, any and all contracts will be contingent upon prior TJPA Board approval.

Attachment B

FIRM NAME: _____

PANELIST: _____

DATE: _____

TRANSBAY JOINT POWERS AUTHORITY EVALUATION SCORE SHEET FEDERAL ADVOCACY SERVICES

Evaluate and score written proposals based on the following criteria:

	<i>Description</i>	<i>Score</i>	<i>Notes</i>
1.	Letter of Introduction and Executive Summary <i>(maximum 5 points)</i>		
2.	Qualifications and Experience of Firm <i>(maximum 80 points)</i> <ul style="list-style-type: none"> • Capabilities and experience in federal advocacy for public and private entities; emphasis on public projects • Qualifications and experience of proposed staff <ul style="list-style-type: none"> Required Experience • At least 10 years experience advocating for public entities before Congress/ Executive Branch • Direct experience/knowledge regarding Federal Highway & Transit Reauthorization process • Direct experience advising entities regarding TIFIA • Direct experience in Congressional Appropriations process Additional Experience • Proven legislative and/or executive branch success on behalf of public agency clients • Success securing Federal funding for large public projects • Established relationships with key federal decision-makers in legislative/executive branch • Knowledge of alternative federal funding sources for major public infrastructure projects Project Understanding & Approach • Approach to providing services, avoiding conflicts of interest, prioritizing clients • How firm would tailor services for TJPA 		
3.	References <i>(maximum 15 points)</i>		

TOTAL SCORE: _____

SCORE CHECKED BY: _____

FIRM NAME:

PANELIST:

DATE:

**TRANSBAY JOINT POWERS AUTHORITY
 INTERVIEW SCORE SHEET
 FEDERAL ADVOCACY SERVICES**

Evaluate and score presentations and interview responses based on the following criteria:

	<i>Description</i>	<i>Score</i>	<i>Notes</i>
1.	Presentation (10 minutes maximum) (maximum 25 points)		
2.	Active participation of all proposed key staff (maximum 25 points)		
3.	Responses to questions (maximum 150 points; 15 points/question)		
	1. Project knowledge		
	2. Initial workplan/raising awareness in DC		
	3. Approach, staffing, availability		
	4. Conflicts & prioritization		
	5. Identify/address biggest challenges		
	6. Identify/address regional challenges		
	7. How to address funding gap/previous experience		
	8. Reporting, project-specific analysis		
	9. Approach to earmarks/ SAFETEA-LU reauth.		
	10. Bipartisan		

TOTAL SCORE: _____

SCORE CHECKED BY: _____

FIRM NAME:

PANELIST:

DATE:

**TRANSBAY JOINT POWERS AUTHORITY
REVISED PROPOSALS SCORE SHEET
FEDERAL ADVOCACY SERVICES**

Evaluate and score presentations and interview responses based on the following criteria:

	<i>Description</i>	<i>Score</i>	<i>Notes</i>
1.	Case Study (maximum 25 points) <ul style="list-style-type: none">• Previous experience addressing funding gap• Approach to earmarks/reauthorization		
2.	Client List (maximum 25 points) <ul style="list-style-type: none">• Conflicts & prioritization		

TOTAL SCORE: _____

SCORE CHECKED BY: _____

Attachment C



July 31, 2007

Re: **Federal Advocacy Services (RFP 07-07)**

Dear

Your firm is one of two firms shortlisted following interviews in the above referenced procurement. We are requesting revised proposals from the two shortlisted firms at this time that address the following:

1. Detailed case study of experience on a transit-specific project valued at \$200 million or more since year 2000. What was your strategy? Who did you talk to and work with? What is the status of that project now? Please be specific about dollars obtained and from what source.
2. List all your public transportation agency clients for 2007, noting how much funding was received by project and fund source.

Please limit your responses to four (4) pages and submit to me via email at sgigliotti@transbaycenter.org by 5:00 p.m. on Monday, August 6, 2007.

Thank you for your continued interest in this project.

Sincerely,

A handwritten signature in black ink that reads 'Sara D. Gigliotti'.

Sara Gigliotti
Contracts Compliance Manager

Attachment D

Evaluation Scores (75 points max without references)

Firm	Panelist A	Panelist B	Panelist C	Total Score
Holland + Knight	83	75	75	233
Chambers, Conlon & Hartwell	79	75	79	233
Patton Boggs	82	73	75	230
CHG & Associates	76	73	80	229
Lindsay Hart Neil & Weigler	75	73	80	228
Bartlett Bendall & Kadesh	74	65	64	203
Akerman Senterfitt	69	63	68	200
Platinum Advisors	64	64	68	196
K & L Gates	60	60	70	190
Van Scoyoc	55	65	68	188
Carmen Group	63	58	65	186
Podesta Group	48	65	70	183
Denny Miller Associates	48	63	58	169
Van Ness Feldman	58	54	57	169
Xenophon Strategies	52	60	55	167
Alcalde & Fay	48	58	58	164

Evaluation Scores (100 points max with references)

Firm	Panelist A	Panelist B	Panelist C	Total Score
Holland + Knight	98	90	90	278
Chambers, Conlon & Hartwell	94	90	94	278
Patton Boggs	97	88	90	275
CHG & Associates	91	88	95	274
Lindsay Hart Neil & Weigler	90	88	95	273

Interview Scores (200 points max)

Firm	Panelist A	Panelist B	Panelist C	Total Score
Holland + Knight	167	160	170	497
Chambers, Conlon & Hartwell	168	162	165	495
Lindsay Hart Neil & Weigler	143	151	145	439
CHG & Associates	137	148	130	415
Patton Boggs	120	118	110	348

Revised Proposal Scores (50 points max)

Firm	Panelist A	Panelist B	Panelist C	Total Score
Holland + Knight	45	48	50	143
Chambers, Conlon & Hartwell	45	48	45	138

Totals (Mean Score)

Firm	Evaluation	Interview	Revisions	Total Score
Holland + Knight	278	497	143	918
Chambers, Conlon & Hartwell	278	495	138	911

Totals (Average Score)

Firm	Evaluation	Interview	Revisions	Total Score
Holland + Knight	93	166	48	306
Chambers, Conlon & Hartwell	93	165	46	304

Attachment E

FEDERAL ADVOCACY SERVICES EVALUATION DISCUSSION July 24, 2007

CHG & Associates with Marcus Faust

Strengths

- Commuter rail, other good experience
- Strong dollar figures in proven success section
- No conflicts

Weaknesses

- Approach to providing TJPA services not strong or detailed

Chambers Conlon & Hartwell

Strengths

- Experience with RRIF financing (potential alternate funding source)
- Experience with TIFIA
- Reasonable fees

Weaknesses

- Staff assignments
- Multiple clients in transportation (possible conflicts in seeking funding?)
- Much of their experience is in Alaska (strong Member connection)

Holland + Knight

Strengths

- Tailored presentation
- Combination of legal, lobbying and pr firm
- Addressed project challenges
- Intermodal facility work in NY
- Experience with public/private financing

Weaknesses

- Lack of specific dollar numbers in examples
- TIFIA experience not demonstrated

Lindsay Hart Neil & Weigler with Veronica Sanchez

Strengths

- Demonstrate knowledge of the project; identified funding gap
- Principals are hands-on
- No other transit clients to conflict with

Weaknesses

- Do they have strong access to key players?

Patton Boggs

Strengths

- Good proposal, very detailed, met all qualifications & experience criteria
- Well established
- Transportation component
- Diverse approach

Weaknesses

- High fees
- No statement addressing possible conflicts
- No specific addressing of TIFIA, although Rodney Slater is a team member and can be assumed to have TIFIA experience

Platinum Advisors with Hill & Knowlton

Weaknesses

- Didn't sign cover letter—no binding offer
- Primarily locally based
- Proposal not well outlined/formatted
- No specific addressing of TIFIA, although Norman Mineta can be assumed to have experience
- No specific detailed examples of funding secured for public projects (amounts, sources, strategies)

Denny Miller Associates

Weaknesses

- Lack of specifics
- Experience is mainly with Washington State
- Proposal weak overall

Alcalde & Fay with Federal Advocates

Strengths

- Good proposal in general
- Federal Advocates lead is potentially strong (Sante Esposito)

Weaknesses

- Dollar numbers for transportation clients are low
- Not clear on TIFIA experience
- Lack of discussion on alternate funding

Carmen Group

Strengths

- TIFIA experience

Weaknesses

- High fees
- Lack of detail; weak description of approach

Xenophon with Baker Donelson

Weaknesses

- No substance in proposal
- High fees
- Weak experience

Van Scoyoc & Associates

Strengths

- Large firm
- Jennifer LaTourette on team = good access

Weaknesses

- High fees
- Statement addressing possible conflicts is weak

Van Ness Feldman

Weaknesses

- Weak proposal
- Experience is mainly in Washington State
- Lack of experience with FTA and transportation
- Statement addressing possible conflicts is weak

The Podesta Group

Weaknesses

- High fees
- No big dollar numbers in the list of projects
- No detailed approach specific to the TJPA

K & L | Gates

Weaknesses

- Potential conflict with a property owner in the project area
- Weak approach, examples of experience lacking

FEDERAL ADVOCACY SERVICES
INTERVIEW DISCUSSION
July 30, 2007

Holland + Knight

Strengths

- Good high level access – big firm with PAC
- Strategies – big picture on reauthorization
- Enthusiasm for Transbay project
- Big dollar experience -- \$2.6B for clients in seven years
- Identified upcoming deficit in Highway Trust Fund
- Strong transit and public policy knowledge
- Team approach

Weaknesses

- Where is the \$2.6B? Not detailed.
- How many transit clients are there? (potential conflicts)
- Good on high-level/big picture, but what is the day-to-day strategy/how does the work get done?

Chambers Conlon & Hartwell / Ian Pfeiffer

Strengths

- TIFIA/RRIF experience
- Good details on day-to-day strategy
- Relationships with staffers
- Specific examples
- Identified potential strategy of creating mega-project category in reauthorization

Weaknesses

- Subcontractor doesn't add value
- Lack of Transbay project knowledge on part of prime
- No team lead identified (will evolve over time)
- Other transit clients (potential conflicts)

Patton Boggs

Strengths

- Found funding where program didn't previously exist

Weaknesses

- Prioritization of multiple clients/potential conflicts
- Lack of project knowledge
- Assignments to junior staff
- Didn't address regional challenges
- Didn't specifically answer questions

CHG & Associates / Marcus Faust

Strengths

- No other California clients
- Strong project knowledge; clearly researched Transbay
- Identified potential strategy of creating intermodal category in reauthorization
- Identified local competing projects
- \$75M in funding for Maryland bus facility
- Have a funding game plan

Weaknesses

- Didn't identify Highway Trust Fund shortfall in game plan
- Didn't appear in person for interview/no timely travel arrangements
- Lack of access to California delegation
- Appear to not be that bi-partisan
- Expect client to resolve local/state funding conflicts before firm brings to delegation

Lindsay Hart Neil & Weigler with Veronica Sanchez

Strengths

- Connection to Congressman DeFazio (House Transportation & Infrastructure Committee)
- Suggested finding support outside California delegation
- Transbay project knowledge
- No transit client conflicts
- Subconsultant laid out strong strategy

Weaknesses

- No previous transit experience
- Ability to execute strategy
- Identified problems but not solutions
- Team time management skills (interview ran over time)

REVISED PROPOSAL DISCUSSION

August 9, 2007

Holland + Knight

Strengths

- Strong project manager
- Impressive case studies , one similar to Transbay, another a project with a lot of negatives that had a good outcome nonetheless

Chambers Conlon & Hartwell / Ian Pfeiffer

Strengths

- Impressive Port of Anchorage case study
- Good staff relationships

Weaknesses

- Other projects are relatively small (although firm found a high percentage of the funding)