

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 11  
FOR THE MEETING OF: September 20, 2007**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Approving an agreement with Metcalf & Eddy/AECOM in the amount of \$5,198,015 to provide professional design and engineering services of utilities for the Transbay Transit Center building through the end of utility construction and warranty period. The utility construction will be separately procured.

**SUMMARY:**

Existing utilities will need to be relocated in order to clear the site footprint of the new Transit Center building. This work is planned to occur as part of one design package. Following a competitive bid process, staff requests that the Board enter into an agreement with Metcalf & Eddy/AECOM for professional design and engineering services of utilities for the New Transit Center building. The agreement would be for a maximum compensation amount of \$5,198,015 through the end of utility construction and warranty period.

**REPORT:**

The new Transbay Transit Center is expected to affect existing utilities within the area bounded by Mission, Howard, Main and Second streets. The utilities affected include sanitary, storm and combined sewers; domestic water lines and hydrants; auxiliary water supply system lines and hydrants; PG&E electric and gas lines; and telecommunication lines; traffic signal lines; Muni overhead electric power systems; street lights; steam lines; and other miscellaneous utility appurtenances.

Existing utilities within the affected area will need to be relocated in order to clear the site footprint of the new Transit Center building. This work is planned to occur as part of one bid package, constructed in multiple phases. It is assumed that the utility location, design and construction support services for the relocation project will be performed by one engineering team. A public solicitation process was required to secure the services of an engineering team, consistent with the Federal Transit Administration requirements and TJPA policy. On February 9, 2007, the TJPA issued a Request for Proposals for Design Services for Early Relocation of Utilities (RFP).

The RFP established the highest standards for experience, skill and integrity in awarding a contract for engineering design services. The RFP required that, among other criteria, each eligible respondent have a State of California Professional Engineering License, prior experience with design and construction of at least one public utilities design project within the City and County of San Francisco requiring coordination with City and local utility agencies and demonstrating the establishment, implementation and maintenance of an acceptable quality control program.

The TJPA sent notice of the RFP to engineering firms who are known to the San Francisco Redevelopment Agency, professional engineer organizations, transportation organizations, Municipal Transportation Agency DBE outreach resource organizations, Department of Public Works plan rooms, the TJPA Technical Advisory Committee, and parties registered on the TJPA website interested in contract opportunities.

The TJPA received two responses to the RFP. Both of these firms met the minimum qualifications:

1. Metcalf & Eddy/AECOM
2. Winzler & Kelly Consulting Engineers

The selection committee evaluated the written responses using a numerical scoring system and invited both firms for an interview. Based on written responses and the interview, the selection committee recommended Metcalf & Eddy/AECOM. The Selection Committee Report is Attachment 1.

The evaluation criteria in the RFP included quality of introduction and executive summary; experience with utility projects, minimum professional requirements; additional qualifications; representative design projects; staffing plan; additional professional qualifications and experience; and references. Metcalf & Eddy/AECOM demonstrated thorough knowledge and experience with utility relocation and design of utilities in the City and County of San Francisco. The Metcalf & Eddy/AECOM team identified major stakeholders and agencies involved with utility relocation and conveyed knowledge of processes, approvals, and management of resources involved for the design of utilities in urban environments. Metcalf & Eddy/AECOM met or exceeded each RFP evaluation criteria.

Based on the selection committee's recommendation, staff negotiated an agreement with Metcalf & Eddy/AECOM, and the firm has signed the agreement. The agreement would be for a maximum compensation amount of \$5,198,015 through the end of utility construction and warranty period. The proposed agreement is Attachment 2.

### **RECOMMENDATION:**

The Staff recommends that the Board authorize the Executive Director to execute the agreement in the form attached to this report.

### **ATTACHMENTS:**

1. Selection Committee Report
2. Agreement with Metcalf & Eddy/AECOM
3. Resolution

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, Existing site utilities will need to be relocated in order to clear the footprint of the new Transbay Transit Center building; and

WHEREAS, A public solicitation process is required to secure the professional design services of an engineering team with expertise in utility relocation, consistent with the Federal Transit Administration requirements and TJPA policy; and

WHEREAS, On February 9, 2007, the TJPA issued a Request for Proposals for Design Services for Early Relocation of Utilities (“RFP”); and

WHEREAS, The RFP provided that the selected engineering firm must have, at a minimum, a State of California Professional Engineering License, prior experience with design of utilities within the City and County of San Francisco requiring coordination with City and local utility agencies; and

WHEREAS, The TJPA received two responses to the RFP that met all minimum requirements; and

WHEREAS, A selection committee comprised of experts in utility relocation design and engineering awarded the firm Metcalf & Eddy/AECOM the highest score and recommended the firm for contract negotiations; and

WHEREAS, Staff has negotiated an agreement with Metcalf & Eddy/AECOM, and the firm has signed the agreement; and

WHEREAS, Staff recommends that the Board approve the agreement; now, therefore, be it

RESOLVED, That the Board authorizes the Executive Director to execute an agreement for professional design and engineering services of utilities for the New Transit Center building with Metcalf & Eddy/AECOM for a maximum compensation of \$5,198,015 through the end of utility construction and warranty period.

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.

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Secretary, Transbay Joint Powers Authority

**AGREEMENT BETWEEN**  
**TRANSBAY JOINT POWERS AUTHORITY**  
**AND**  
**METCALF & EDDY, INC.**  
**TO FURNISH**  
**PROFESSIONAL**  
**DESIGN AND ENGINEERING**  
**SERVICES**  
**FOR**  
**THE TRANSBAY TRANSIT CENTER PROGRAM**  
**RELOCATION OF UTILITIES PROJECT**  
**(Agreement No. 07-03-ENG-000)**



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## **ATTACHMENTS**

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2. Schedule of Services
3. Not Used
4. TJPA Disadvantaged Business Enterprise Requirements and Forms
5. Not Used
6. Directory of Key Employees and Subconsultants

## **APPENDICES**

- A. Not Used
- B. Not Used
- C. FTA Requirements for Professional Services Contracts with the TJPA
- D. Not Used

**AGREEMENT BETWEEN**  
**THE TRANSBAY JOINT POWERS AUTHORITY**  
**AND**

**Metcalf & Eddy, Inc.**

THIS AGREEMENT is made and entered into by and between the Transbay Joint Powers Authority (the "TJPA"), a public entity, and **Metcalf & Eddy, Inc.** (the "Consultant").

WHEREAS, the TJPA desires that the Consultant render professional services in connection with the design of **the Transbay Transit Center Program RELOCATION OF UTILITIES PROJECT**; and

WHEREAS, the Consultant represents that it possesses the requisite professional expertise, experience and resources to render said services in accordance with the terms of this Agreement; and

WHEREAS, the TJPA and Consultant intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA"); and

WHEREAS, on \_\_\_\_\_, the TJPA Board of Directors (the "Board") adopted Resolution No. \_\_\_\_\_, which authorized the Executive Director to execute this Agreement;

NOW, THEREFORE, the TJPA and the Consultant agree as follows:

## **1 THE PROJECT**

### **1.1 DESCRIPTION**

The TJPA does hereby engage the Consultant to perform, under the terms and conditions in this Agreement, professional services for the complete design of the Transbay Transit Center Program Relocation of Utilities Project (the "Project"). The Project elements and requirements are set forth in Attachment 1, Scope of Services, attached hereto and made a part hereof. The Project would be located on San Francisco Assessor's Block Number 3719, bounded by Minna Street, Natoma Street, Second Street, and Beale Street, in the City and County of San Francisco (City). Utility improvements may also be located in public street rights-of-way and on nearby parcels.

The Project will be designed as one coordinated project, and the construction of the Project may be implemented in multiple phases. The Consultant shall prepare one set of contract documents, clearly segregating the construction work to be implemented in each phase of the Project.

## **1.2 FIXED BUDGET LIMIT OF PROJECT COST**

**1.2.1** The fixed budget limit (the "Fixed Budget Limit") for the construction of the Project that will be procured separately is \$50,000,000 in July 2007 dollars. For purposes of this Agreement, the Consultant shall provide professional design and engineering services for utility relocation through the end of utility construction and warranty period.

**1.2.2** The Fixed Budget Limit includes the cost of basic construction, excluding construction contingencies and alternates, either additive or deductive, the cost of furniture, equipment, telephones and business network. The Consultant is responsible for designing a comprehensive and complete Project that conforms to the Fixed Budget Limit, where the lowest responsive bid submitted by a responsible bidder is within five percent (5%) of the Fixed Budget Limit. The Consultant shall cooperate with the TJPA to monitor the design and estimate the construction cost for the Project as the design is developed, according to the TJPA Cost Change Control Procedure described in Article 4.6, and shall modify the design as necessary to conform the design and estimated construction cost to the Fixed Budget Limit. In the event that cost estimates prior to bidding or actual bids indicate that the construction cost will exceed the Fixed Budget Limit, the Consultant, at the request of the TJPA, shall revise the design and construction documents, plans and specifications and assist the TJPA with re-bidding of the Project, at no cost to the TJPA, until the construction cost is within the Fixed Budget Limit, subject to the following sections 1.2.3, 1.2.4, 1.2.5, and 1.2.6.

**1.2.3** The TJPA, at its sole discretion, may modify the Fixed Budget Limit, or may apply additive or deductive alternates to the lowest responsive bid to meet the Fixed Budget Limit. The Consultant and the TJPA will confer at all phases and decide on all alternates. The Consultant shall design

additive alternates with an estimated value of not less than five percent (5%) and deductive alternates with an estimated value of not less than five percent (5%) of the Fixed Budget Limit, with final determination by the TJPA as to the scope of such alternates, which alternates shall be a part of the bid package, and the order in which the TJPA would accept such alternates.

**1.2.4** In the event that redesign services are necessary after the TJPA has received bids for construction of the Project, the TJPA shall cooperate with the Consultant in allowing design changes, including, if necessary, changes which reasonably affect the size and quality of the Project. The Consultant must complete any redesign within two (2) months of notification by the TJPA of its intent to redesign.

**1.2.5** In the event that redesign services are performed after the Consultant has received notification by the TJPA to redesign and modify the Contract Documents, preparation of modified Construction Documents and preparation of a Final Engineer's Estimate of Construction Cost, and obtaining TJPA approval of the final Construction Documents, shall be the limit of the Consultant's strict responsibility arising out of the establishment of the Fixed Budget Limit. This, however, shall in no way limit the Consultant's responsibility or the TJPA's remedies in the event that the reason that the Fixed Budget Limit was exceeded was the result of the Consultant's negligent acts, errors or omissions.

**1.2.6** Should the TJPA accept a bid which exceeds the Fixed Budget Limit, there shall be no additional compensation (i.e., no correlative proportional increase in fee) to the Consultant.

### **1.3 SCHEDULE OF SERVICES**

**1.3.1** Time is of the essence with this Agreement with respect to the performance of all provisions of this Agreement and with respect to all Project schedules in which a definite time for performance by the Consultant and the Consultant's subconsultants is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace period provided for in this Agreement.

The parties acknowledge that delay is one of the greatest causes of waste and increased expense in any construction project. The Consultant shall act diligently in anticipating and performing its required tasks in a manner so as to not unreasonably delay the prosecution of any services or work with respect to the Project. TJPA and its Program Manager shall provide the Consultant with timely input including but not limited to existing information, authorization for entry, reviews, and pre-scheduled meetings and workshops, so as not to delay the work of the Consultant.

**1.3.2** Attached to this Agreement as Attachment 2 is a preliminary schedule of services indicating the times and sequences assumed for the completion of all services required under this Agreement. Within fifteen (15) days of the Consultant's receipt of a Notice to Proceed (NTP) from the TJPA, the Consultant shall submit for TJPA approval a progress schedule of services. The progress schedule of services shall be in the form of a progress Gantt (schedule bar) chart indicating phases, tasks, durations and times, and sequences of key activities, and TJPA, City and other required reviews and approvals as related to the services in this Agreement, but excluding detailed construction schedules. Upon approval of the progress schedule of services by the TJPA, the Consultant shall adopt the schedule as a baseline schedule, and on a monthly basis submit a progress schedule indicating actual progress compared to the baseline schedule.

**1.3.3** It is anticipated that the construction for the Project may be phased in order to coordinate construction with adjacent work of the Program. The construction administration phase duration for the Project is estimated to be fifteen (15) months. Should the Consultant be required to perform construction administration phase services for a period beyond a total duration of fifteen (15) months, due to no fault of the Consultant, the Consultant is entitled to additional compensation and is obligated to provide complete and accurate documentation of all actual increased cost of performance of its services. In the event that the construction is delayed beyond the scheduled completion date due to the fault of the Consultant, as determined by the TJPA in its sole discretion, then the Consultant shall

continue to provide construction administration phase services in accordance with this Agreement through the actual completion of construction at no additional charge to the TJPA; Consultant may submit any disputed amounts as a claim.

- 1.3.4** The Consultant shall receive written authorization from the TJPA prior to proceeding with each phase described under Articles 4, 5 and 6.

## **1.4 PROGRAM**

- 1.4.1** The Transbay Transit Center Program will provide expanded bus and rail service in a new transportation Transit Center building on the site of the existing Transbay Transit Terminal at First and Mission Streets. The Project shall result in the relocation of utilities in order to clear the footprint of the new Transit Center building.

- 1.4.2** The Relocation of Utilities Project is part of the Transbay Transit Center Program. The Transbay Transit Center Program is comprised of two larger projects: (1) the Transit Center Project is comprised of the Transbay Transit Center building, Temporary Terminal, Bus Storage facilities, Bus Ramps, and auxiliary features, (2) the Caltrain Downtown Extension (DTX) Project comprises the extension of Caltrain through a tunnel from the existing station at Fourth and King streets to the Transbay Transit Center. The Transbay Transit Center Program is generally described and set forth in the Transbay Terminal/Downtown Caltrain Extension/Redevelopment Project Final Environmental Impact Statement/ Environmental Impact Report dated March 2004, which is incorporated here by reference as if fully set forth. The Transbay Transit Center Program is accurately described in a series of documents prepared by the TJPA. It is the responsibility of the Consultant to request, review and incorporate requirements for the Project that may be established in such referenced documents.

## **2 DEFINITIONS**

For all purposes of this Agreement, the following definitions shall apply:

## **2.1 ADDITIONAL SERVICES**

shall mean the services that the TJPA, in writing, authorizes the Consultant to perform which are in addition to the services included within Basic Services as set forth in Attachment 1.

## **2.2 ADVISE**

shall mean "make recommendations to."

## **2.3 APPROPRIATE AUTHORITIES**

shall mean any private, local, municipal, county, state, regional or federal authority or agency having jurisdiction of any kind over the Project. This term is intended to include those agencies and authorities that may require information or the filing of plans, specifications, etc., in connection with the Project on either a voluntary or non-voluntary basis. This term includes, but is not limited to, the State Fire Marshal, the San Francisco Planning Department, the San Francisco Department of Public Works, the San Francisco Municipal Transportation Agency, the San Francisco Department of Building Inspection, any of the transit agencies operating at the Terminal facilities, and other entities as the TJPA may direct.

## **2.4 CONSULTANT**

shall mean [Metcalf & Eddy, Inc.](#) serving as the Prime Consultant under contract with the TJPA for the Project, whether providing engineering or other professional design services.

## **2.5 AUTHORIZATION**

shall be the direction of the TJPA properly executed by the Executive Director or designee of the TJPA and certified by the Chief Financial Officer of the TJPA for the specific funding of this Agreement or any modification thereof and other written approvals by the TJPA.

## **2.6 BASIC SERVICES**

shall mean the services described in Articles 4, 5 and 6 that the Consultant is required to provide for the Fee and Reimbursable Expense Allowance set forth in Article 8.



**2.7 CHIEF FINANCIAL OFFICER**

shall mean the Financial Manager of the TJPA.

**2.8 CITY**

shall mean the City and County of San Francisco, a municipal corporation, within whose jurisdiction the Project resides.

**2.9 CONSULTANT PROJECT PRINCIPAL-IN-CHARGE**

shall mean one prime individual, empowered by the Consultant to represent and make decisions and commit the resources of the entire consultant team, whose responsibility is to direct, coordinate and control the entire team in its efforts to successfully prepare and complete the Basic Services described herein, regardless of any other key persons provided.

**2.10 CONTRACT DOCUMENTS**

shall include the TJPA-Consultant construction contract and all documents designated in the construction contract as part of the construction contract, including working drawings (plans), specifications, addenda, general conditions and special and/or supplementary general conditions of the contract.

**2.11 CONSTRUCTION DOCUMENTS**

shall include working drawings, specifications, general conditions and special and/or supplementary general conditions, information for bidders, accepted bid proposals and addenda developed to set forth in detail all aspects of the design, function and construction of the Project.

**2.12 CONSTRUCTION MANAGER**

shall mean the construction contractor retained directly by the TJPA for the purpose of assisting the TJPA in the areas of oversight and management of the Construction Contractor, estimating value engineering and negotiation of changes to the contract, bidding of contracts, field inspection, and the like, or TJPA forces designated to provide these services.

## **2.13 DRAWING SETS AND DOCUMENTS**

shall mean the required submissions of design or Construction Documents by the Consultant to the TJPA. Required Drawing Sets and Documents shall be provided in the formats noted below, for each phase of work.

**2.13.1 Utility Designation and Location Phase:** twenty (20) half size plotted or printed sets of drawings, and one (1) reproducible set of drawings. CADD files, reports, schedules and other written documents: ten (10) hard copies and original documents on compact disc.

**2.13.2 Agency Interaction and Data Management Phase:** ten (10) half size sets of drawings, and one (1) reproducible set of drawings. CADD files outline specifications, reports, schedules and other written documents: ten (10) hard copies and original documents on compact disc.

**2.13.3 Design Analysis and Recommendations Phase:** ten (10) half size sets of drawings, and one (1) reproducible set of drawings. CADD files outline specifications, reports, schedules and other written documents: ten (10) hard copies and original documents on compact disc.

**2.13.4 Construction Documents Phase:** 50%, 90% and final construction submittals: one (1) full size and ten (10) half size sets of drawings, and one reproducible set of full size drawings. CADD files, outline specifications, reports, schedules and other written documents: one (1) hard copy and original documents on compact disc.

**2.13.5 Construction Bid Phase:** all documents on compact disc.

**2.13.6** CADD drawings shall be provided in AutoCAD R2004 or more recent version, and corresponding pen files and image files, or other computer drawing and drafting software approved by the TJPA.

**2.13.7** Written documents, spreadsheets and cost estimates shall be in Microsoft Office (Word and Excel).

**2.13.8** Schedules shall be in Microsoft Project.

**2.13.9** Audiovisual presentations shall be in Microsoft PowerPoint.

- 2.13.10** Image files shall be in JPG, GIF, PIC, TIF or BMP formats. These images shall be made available on any storage format selected by the TJPA.
- 2.13.11** Renderings shall be in Adobe Photoshop 7.0 and 3D Studio VIZ, or other software approved by the TJPA.
- 2.13.12** Presentation boards shall be mounted on 3/8-inch or 1/4-inch Gatorboard.

**2.14 FIXED BUDGET LIMIT**

as defined in Article 1.2, the Fixed Budget Limit represents the TJPA's budget for bid and award of a construction contract for the complete construction of the Project. The Fixed Budget Limit shall be final and may not be changed except by written amendment to this Agreement specifically referring to a change in the sum specified in Article 1.2.

**2.15 PROJECT MANAGER**

shall mean the TJPA personnel or consultant project manager designated by the TJPA Executive Director to represent the TJPA in all matters pertaining to the Project.

**2.16 REQUEST FOR PROPOSALS**

shall mean the TJPA's request for proposals (RFP) for professional design services for this Project and the Consultant's proposal to provide such services. All requirements of the RFP and the representations made in the Consultant's proposal that are not in conflict with provisions of this Agreement are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the proposal, this Agreement shall control except where the RFP or the proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or proposal shall control.

**2.17 TJPA**

shall mean the Transbay Joint Powers Authority.

## **2.18 TJPA CONSULTANTS**

are consultants under direct contract with the TJPA such as program managers, contractors, and financial, legal, community relations, and other consultants. Communication by the Consultant with TJPA Consultants shall be through the Project Manager only, unless Consultant is authorized by the TJPA to do otherwise. When authorized by the TJPA to make such direct communication, the TJPA Project Manager shall be copied promptly on all such communication. If such authorized communication is oral, then the Consultant shall provide the TJPA with written confirmation of the same.

## **2.19 CONSTRUCTION CONTRACTOR**

Shall mean the entity awarded the construction contract to build the project.

## **2.20 CONSTRUCTION MANAGER**

shall mean the construction consultant retained directly by the TJPA for the purpose of assisting the TJPA in the areas of oversight and management of the Construction Contractor, estimating value engineering and negotiation of changes to the contract, bidding of contracts, field inspection, and the like, or TJPA forces designated to provide these services.

## **3 STANDARD OF PERFORMANCE**

The Consultant's obligation is to perform all of its services in accordance with generally accepted standards of professional practice in the design and construction administration of projects of similar size and complexity in the San Francisco Bay Area and with the TJPA's established Quality Management System (Article 61).

## **4 CONSULTANT'S BASIC SERVICES / GENERAL PROVISIONS**

The Consultant shall provide as its Basic Services all customary and necessary engineering and other consulting services during the design phases (Article 5) and during the construction phases (Article 6) of the Project as required to design a complete and comprehensive Project, except for services designated herein as Additional Services, as described in Article 7. Documents prepared by the Consultant as part of

Additional Services shall not become part of the Contract Documents until authorized by the TJPA as described more fully in Article 7.

Basic Services shall include, without limitation, the following:

#### **4.1 CONSULTING SERVICES**

The Consultant shall provide the following consulting services as part its Basic Services under this Agreement:

- 4.1.1** Consult with authorized employees, agents and/or representatives and consultants of the TJPA relative to the programming, design, bidding, award and construction of the project.
- 4.1.2** Provide consultation and advice to the TJPA as to the necessity and manner of providing or obtaining services related to the site, such as utility surveys and locations.
- 4.1.3** Review program requirements and site data of the proposed Project furnished to the Consultant and advise the TJPA whether such data is sufficient for purposes of design and whether additional data is necessary before the Consultant can proceed.
- 4.1.4** Contract for or employ, at Consultant's expense within the Basic Services fee, Consultant's employees and Consultant's subconsultants as may be necessary or required including, but not limited to, mechanical, civil, electrical, structural, environmental engineers; cost estimator; landscape contractor; and other special designers and services as may be necessary for utilities relocation for the construction of the Transit Center building. All parties shall be licensed by the State of California if so required. The Consultant shall submit for approval by the TJPA any changes in the subconsultants listed in Attachment 6.
- 4.1.5** Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, scheduling, sequences or procedures; for safety precautions and programs in connection with construction of the Project; for the acts or omissions of the Construction Contractor, its subcontractors or any other persons performing any of the Work on the Project (unless directly employed or retained by the

Consultant); or for the failure of any of them to carry out the Work on the Project in accordance with the Contract Documents. The Consultant shall not have the authority to stop the work unless specific authorization has been granted in writing by the TJPA. The TJPA understands and acknowledges that the Consultant must evaluate and verify the accuracy or completeness of information which will be furnished to the Construction Contractor by other parties and required to be incorporated into the Construction Documents and record drawings. The Consultant shall be responsible for any inaccuracies, errors, omissions, ambiguities, or conflicts that may be introduced into the Construction Documents and record drawings to the extent solely due to the fault of the Consultant.

- 4.1.6** The Consultant shall have no responsibility for hazardous substances or archeological resources discovery, presence, handling, or removal, except regarding the incorporation of identified mitigation measures into the Contract Documents. The TJPA will not hold the Consultant liable for delays to the performance of services in Agreement when such delays are due to no fault of the Consultant.

## **4.2 DESIGNATION OF KEY EMPLOYEES**

The Consultant shall submit for TJPA approval a list of designated key employees including Principal-in-Charge, Project Manager, Engineer and Lead Project Engineer, whose roles shall be as defined in the proposal submitted by the Consultant. The key employees of the Consultant who shall, so long as their respective performances continue to be acceptable to the TJPA, remain in charge of the Consultant engineering services for the Project. Any changes in assignment or replacement of the Consultant's key employees or of any other of the Consultant's subconsultants listed in Attachment 6, whether or not as a result of death, disability, termination of employment or otherwise, may be done only with the prior written consent of the TJPA, which consent may be given or withheld in the sole, subjective (but not arbitrary) discretion of the TJPA.

## **4.3 COORDINATION OF DESIGN TEAM**

The Consultant shall coordinate its work with the work of all of its consultants to produce comprehensive, complete, coordinated and accurate drawings and specifications for all portions of the Project.

#### **4.4 COORDINATION WITH PUBLIC AGENCIES AND PUBLIC UTILITIES**

The Consultant shall coordinate with the City, the State Department of Transportation (Caltrans), and other necessary public agencies and public utility providers to identify design requirements as they affect the Project, review designs, and obtain agency and utility provider approvals. Where engineering designs would be prepared by such agencies and utility providers, the Consultant shall coordinate their designs with the Project, and incorporate their designs into the Construction Documents or Contract Documents.

**4.4.1** San Francisco Departments: The Consultant shall coordinate with and work with departments of the City necessary to determine relevant City requirements, develop designs, review and obtain required City approvals of the designs. Such departments include, but are not limited to, the Department of Planning, the Department of Public Works, the Department of Building Inspection, the Municipal Transportation Agency, and the Redevelopment Agency and the San Francisco Public Utilities Commission.

**4.4.2** Not Used.

#### **4.5 COORDINATION WITH TJPA**

**4.5.1** The Consultant and key members of its design team shall meet regularly with the Project Manager, TJPA staff and consultants, Construction Manager, and others as directed and determined by the Project Manager at reasonable frequencies to keep the design on the desired track and schedule. The design team includes the Consultant's key employees and consultants assigned to work on this Project as described in Article 4.2 of this agreement.

**4.5.2** The Consultant shall assist in establishing a means of electronic communication using the Constructware software program employed by the TJPA, and fully participate in the TJPA's effort to develop electronic files for this Project of all correspondence with related attachments. The TJPA will provide the software license and train the Consultant in use of the software program.

**4.5.3** The Consultant shall assist the TJPA Project Manager in developing RFPs and requests for qualifications (RFQs) for professional services from specialized consultants that may need to be retained by the Consultant or TJPA during the course of the Project.

**4.5.4** The Consultant shall cooperate and coordinate its work with the Construction Manager. The TJPA's retention of the Construction Manager is solely for the TJPA's benefit and shall not operate to reduce the Consultant's responsibilities hereunder. Communication by the Consultant with the Construction Manager may be direct. However, with respect to any written communication, the TJPA shall promptly be copied; with respect to any oral communication, the TJPA shall promptly receive confirmation in writing. In no event shall the Consultant issue any communication directing changes that impact time, cost or quality (including, but not limited to, substitutions) for the Project without express written authorization from the TJPA.

#### **4.6 TJPA COST CHANGE CONTROL PROCEDURE**

**4.6.1** The Consultant shall cooperate with the TJPA to control design or scope changes that would affect the cost of the Project during the design phases or the construction phase of the Project. The Consultant shall comply with a cost change control procedure as may be established by the TJPA for the Project. The purposes of the procedure are:

- (a) To assure that the TJPA requirements for the Project are met,
- (b) To assure that estimated construction costs are understood as the design is developed, and remain within the TJPA Fixed Budget Limit,
- (c) To assure that all proposed changes to the design properly analyze cost effects,
- (d) To avoid unnecessary re-design work by the Consultant, and
- (e) To avoid unnecessary additional costs to the TJPA.

**4.6.2** The Consultant shall fully inform the TJPA of any proposed changes to the design recommended by the Construction Contractor, or to the scope of the Project requested by the TJPA or other stakeholders, that would affect



the estimated (added or decreased) construction cost for the Project. The Consultant shall review with the TJPA the benefits as well as costs of the proposed changes, including the potential effect to TJPA operating costs for the Project. The Consultant shall complete a Change Request Form provided by the TJPA providing a summary of the proposed change, and attach such other analyses as may be appropriate for TJPA consideration. Should the recommended change increase the estimated cost of the Project, the Consultant shall cooperate with the TJPA to identify other changes to the Project that could reduce cost and offset the recommended increased cost, for approval by the TJPA.

- 4.6.3** No change shall be incorporated into the design documents unless it has been first approved by the TJPA by written approval of the Change Request Form.
- 4.6.4** The Consultant shall maintain a Change Log of all recommended, pending, approved and incorporated changes, and submit the Change Log to the TJPA monthly throughout the design phases.
- 4.6.5** TJPA approval of any change shall not entitle the Consultant to a change in Consultant's compensation, unless approved in writing by the TJPA.

## **4.7 COST ESTIMATING**

- 4.7.1** As part of the preliminary design documents, the Consultant shall review the TJPA program and concept for the Project and prepare an independent Probable Opinion of Construction Cost (cost estimate) for TJPA approval. The cost estimate shall be prepared following ASTM UNIFORMAT II standards, broken down to UNIFORMAT Level III, and shall reflect the estimated cost of each element of the Project. It shall contain a quantity take-off and unit pricing, consistent with the level of design completion, together with a statement of assumptions regarding design contingencies and exclusions.
- 4.7.2** During each subsequent design phase (Preliminary Engineering Report, 50% Construction Documents, 90% Construction Documents, final Construction Documents), the Consultant shall update the cost estimate,

changing the format to the CSI/MASTERFORMAT 2004, and according to the CSI 50 Division classifications.

**4.7.3** With each cost estimate prepared by the Consultant, all changes to estimated cost shall be considered a cost trend, shall be analyzed by the Consultant to determine the cause of the cost change, and shall be presented to the TJPA for approval according to the TJPA cost change control procedure.

**4.7.4** The Consultant shall prepare a new final Engineer's Estimate of Construction Cost based on the final Construction Documents issued for bidding, and considering the Fixed Budget Limit for the Project.

#### **4.8 CODE COMPLIANCE**

The Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's services. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultant and which result in a substantive change to the construction documents, the Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. The Consultant shall be responsible, however, to identify, analyze and report to the TJPA pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code to adopt provisions of the International Building Code and other amendments.

#### **4.9 MEETINGS WITH TJPA AND OTHERS**

The Consultant shall attend meetings concerning the Project with the TJPA Board and staff, and others as necessary, including the following:

**4.9.1** TJPA Board and staff of the TJPA: The purpose of these meetings will be to assist the Project Manager to present design concepts, solicit comments and answer questions, and report on the progress of the Project.

- 4.9.2** Attend meetings with the TJPA or designated entity for the purposes of selecting artists to participate in the TJPA art program, and for coordination with the artists.
- 4.9.3** Utility Providers, Department of Public Works, and Department of Building Inspection: Attend meetings to coordinate and obtain comments and approvals.
- 4.9.4** Partnering: If implemented at the discretion of the TJPA, meet as reasonably required by the partnering program developed by the TJPA through the design and construction phases.
- 4.9.5** Community Groups and Public Meetings: Attend meetings as requested by the TJPA to provide information regarding project design issues and solicit community comment.
- 4.9.6** State Authorities including, but not limited to, the State Fire Marshal: Attend meetings to review design issues, receive and respond to comments; obtain approvals as required.

## **5 CONSULTANT'S BASIC SERVICES/DESIGN PHASE**

Upon execution of the Agreement, the TJPA will issue a separate NTP authorizing the Consultant to perform design services for each design phase of the Project as set forth in Article 5 and Attachment 1. The parties understand and agree that those services delineated below as design development phase services in Article 5.2 and construction document phase services in Article 5.3 are optional services and are to be performed only upon the written NTP of the TJPA. While the TJPA intends to authorize the Consultant to provide the Design Services in Articles 5.2 and 5.3, the TJPA shall do so only when (a) sufficient funds for such services have been appropriated in accordance with the budget and fiscal provisions of the TJPA and (b) the TJPA, in its sole discretion, without waiving any rights, has found that prior services of the Consultant to date have been adequately performed.

### **5.1 UTILITY DESIGNATION AND LOCATION**

Upon NTP for the utility designation and location phase, the Consultant shall:

- 5.1.1** Obtain all necessary permits necessary for working on existing streets, alleys, and private property and any permits necessary for the purpose of

marking, measuring, and recording the location of existing underground utilities;

- 5.1.2** Coordinate with utility companies and the appropriate governmental jurisdictions in researching the location(s) of existing utilities. The TJPA has completed this work; however, it is the Consultant's role to verify the information collected and recorded to date;
- 5.1.3** Designate (indicate the presence and horizontal location of underground utilities using geophysical prospecting techniques, including electromagnetic or magnetic, to coordinate successful completion of this work), record, and mark the horizontal location of existing underground utilities and their major laterals to existing buildings;
- 5.1.4** Provide all necessary equipment and support personnel, including surveying capability, to secure the data outlined in this section;
- 5.1.5** Excavate and backfill test holes in such a manner as to prevent any damage to wrappings, coatings, or other protective coverings, such as vacuum excavation, hand digging, etc. Provide a permanent restoration of the pavement within the limits of the original cut at the time of backfill;
- 5.1.6** Tie all horizontal and vertical elevations to a minimum of two checked benchmarks or available datum. Obtain the following test hole information:
  - 5.1.6.1 elevation of top and/or bottom of utility tied to datum of the furnished plan;
  - 5.1.6.2 horizontal location referenced to project coordinate datum;
  - 5.1.6.2 outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems.
- 5.1.7** Provide the following Deliverables:
  - 5.1.7.1 Meeting minutes with TJPA, PMPC, authorities and/or utility providers;
  - 5.1.7.2 Work plan for potholing;
  - 5.1.7.3 Field notes from all field activities associated with surveying and potholing;
  - 5.1.7.4 Utility designation maps and site survey maps.

## **5.2 AGENCY INTERACTION AND DATA MANAGEMENT**

The Consultant shall assemble all designating and locating utility information in a spreadsheet database and on separate utility drawings in a format to be approved by the TJPA. This work should leverage and confirm the extrapolated utility information contained in the composite base mapping prepared to date, which have been provided to the Consultant. The Consultant will be required to facilitate interaction with the utility agencies and providers to review and update utility information accurately reflect existing conditions:

### **5.2.1 Deliverables:**

- 5.2.1.1 Utility plan and section drawings of individual utilities and composites for utility agency reviews and verification and for use by Consultant;
- 5.2.1.2 Periodic reports and presentations to utility agencies, providers, CULCOP (Committee for Utility Liaison on Construction and Other Projects) and others;
- 5.2.1.3 Meeting minutes with TJPA, PMPC, authorities and/or utility providers.

## **5.3 DESIGN ANALYSIS AND RECOMMENDATIONS**

Once the Consultant has performed all necessary project initiation, utility designating, locating, and data management services, the Consultant shall determine to what extent the proposed Transit Center building will impact the existing utility systems.

The Consultant shall prepare a Preliminary Engineering Report (PER) summarizing existing utility system location, operation, sufficiency, need for improvements, opportunities and constraints. The PER should identify and outline key success factors to guide development of avoidance and relocation alternatives, required adjustments/relocations, and development of cost estimates to perform utility relocations for each alternative. The expected Transit Center building utility demand loads for each utility system shall be estimated and included in the evaluation of the sufficiency of the existing utilities and relocation alternatives. Depending on the alternatives identified and evaluated, and extent of change proposed to the domestic water and AWSS (auxiliary water supply system) utilities, significant coordination with the utility agencies and modeling of these existing systems may be required.

A primary project objective is to relocate the utilities once (if possible) and out of the way of future construction, but provide for the permanent point(s) of connection to the Transit Center building for each utility. The PER should provide an “apples to apples” comparison of the identified relocation alternatives pros and cons and include existing and future cross sections and plan views and cost estimates of the relocated utility systems.

Phasing of specific utility relocation should be outlined and related to a critical path schedule illustrating key assumptions and contingency strategies to ensure the utility relocation work is completed within the stated schedule and budget. Description of separately issued construction packages shall be included for each alternative. It is required that the Consultant consider a minimum of three construction packages for:

- East-west utilities in Minna and Natoma streets adjacent to the expanded Transit Center building perimeter wall.
- North-south utilities crossing the Transit Center building in First, Fremont, and Beale streets, including the redirection of any gravity lines to avoid crossing the Transit Center building footprint.
- The dry utilities and the rest of the wet utilities (pressure and any remaining gravity).

The design analysis for each alternative shall consider the proposed construction schedule of the Transit Center building (and its ancillary projects such as the Bus Ramps, Bus Storage Project and Temporary Terminal Project) and its impact on the phasing of the utility relocations. If advantageous, the utility systems that are currently located in less restricted areas could be relocated as a separate phase, if doing so is advantageous. In general, it is recommended that utility relocations avoid creating future design and construction hindrances to the extent practical.

Work under this task shall also include assisting in the execution of required legal documents to authorize scope of work and memorialize process by which utilities will be relocated and/or connected.

### **5.3.1 Deliverables:**

- 5.3.1.1 Preliminary Engineering Report: Provide Draft PER for TJPA and utility agencies’ review and comment, as well as Final PER.

This report is to include relocation cost estimates, critical path schedule, and recommended approach to relocation(s);

5.3.1.2 Review comments on legal documents that authorize scope of work and memorialize process by which utilities will be relocated and/or connected.

5.3.1.3 Identify permit requirements for project construction.

## **5.4 UTILITY DESIGN SERVICES**

Once the Final PER has been approved by the TJPA, the Consultant will issue authorization to begin work on the utility relocation design phase. The Consultant will be responsible to design or coordinate design for utility relocation(s) as necessary for each utility agency. It is anticipated that there will be one construction package with multiple phases for the construction.

### **5.4.1 Deliverables:**

5.4.1.1 Meeting minutes for all meetings with utility agencies and providers;

5.4.1.2 Construction Documents: Provide 50%, 90% and final construction packages including utility plans, technical specifications, details and traffic control plans (10 half-sized hard copy sets, plus CADD files). The TJPA will separately authorize each phase following its review and comment period;

5.4.1.3 Cost Estimates: Provide utility relocation cost estimates and quantities at 50%, 90% and final phases. These documents are to be submitted within one week of completing construction documents noted above.

## **5.5 PERMITTING SERVICES**

The Consultant will be required to prepare and coordinate submission of permit applications to authorities having jurisdiction, including pre-application meetings, arrangements of payment, contract language within contractor bid documents, etc.

### **5.5.1 Deliverables:**

5.5.1.1 Updated reports on program for permit applications to authorities having jurisdiction.

## **6 CONSULTANT'S BASIC SERVICES/CONSTRUCTION PHASES**

The parties understand and agree that those services delineated below as construction phase services are optional services and are to be performed only upon the written direction of the TJPA. While the TJPA intends to authorize the Consultant to provide the

construction phase services, the TJPA shall do so only when (a) sufficient funds for such services have been appropriated in accordance with the budget and fiscal provisions of the TJPA, and (b) the TJPA, in its sole discretion, without waiving any rights, has found that prior services of the Consultant to date have been adequately performed. Upon authorization by the TJPA, the construction phase services become part of Basic Services. Construction phase services shall consist of the following phases of work:

## **6.1 CONSTRUCTION BID PHASE**

Upon solicitation of bids by the TJPA, the Consultant shall:

- 6.1.1** Not Used.
- 6.1.2** Prepare responses to bidders' questions, interpret Construction Documents, evaluate requests for substitutions and prepare addenda for approved substitutions and clarifications, and assist the TJPA as required in responding to bidders' questions.
- 6.1.3** Provide the TJPA with originals of all addenda to be issued.
- 6.1.4** Not Used.
- 6.1.5** Perform necessary redesign services as may be required under Article 1.2.
- 6.1.6** Not Used.

## **6.2 CONSTRUCTION ADMINISTRATION PHASE**

Upon award of construction contract to a Construction Contractor by the TJPA, and upon written NTP from the TJPA to the Consultant to proceed with construction administration phase services, the Consultant shall provide administration of the contract for construction as set forth below:

- 6.2.1** Not Used.
- 6.2.2** Not Used.
- 6.2.3** Interpret the Contract Documents and furnish original and one copy of all documents prepared by the Consultant for issue by the TJPA.
- 6.2.4** Review requests for information (RFIs), submittals, mock-ups, substitutions, and change requests properly prepared by and received



from the Contractor within the time specified in the Contract Documents, and make appropriate recommendations with supporting documentation and data to the TJPA. Any proposed substitutions or revisions shall consider priority of need to keep the construction work on schedule and minimize construction work progress delay. The construction specifications will be prepared to require the Construction Contractor to prepare all necessary design documentation to support its substitutions or value engineering proposals.

- 6.2.5** If deemed appropriate by the TJPA, the Consultant shall on the TJPA's behalf prepare, reproduce and distribute supplementary drawings and specifications in response to RFIs, or as otherwise required to clarify the design intent of the Construction Documents, or to document construction change directives by the TJPA.
- 6.2.6** The Consultant will assist the Construction Manager with preparation of drawings, specifications and other documents that may be necessary for the Construction Manager to prepare change orders and construction change directives for TJPA approval and execution in accordance with the Contract Documents. The TJPA will prepare and effect any required contract modifications and change orders.
- 6.2.7** The Construction Manager will categorize all RFIs and change orders by cause, as follows, of the RFI or change order, and so advise the Consultant. This will assist the TJPA in tracking the amount and percentage of additional costs incurred attributable to, for example, Owner requests, Consultant errors, Consultant omissions, hidden obstructions, unforeseen conditions, Contractor errors, other Contractor-generated conditions, and new regulatory mandates.
- 6.2.8** Make all revisions and changes to the Contract Documents and prepare additional appropriate documents as directed by the TJPA to correct the Consultant's errors, conflicts or omissions at no additional cost to the TJPA.
- 6.2.9** The Consultant and its subconsultants shall make visits to the project site as appropriate to the stage of construction or as otherwise agreed by the

TJPA and the Consultant to (a) become generally familiar with and to keep the TJPA informed about the progress and quality of the portion of the Work completed; (b) to endeavor to guard the TJPA against defects and deficiencies in the Work; and, (c) to determine in general if the Work is being performed in a manner indicating that the Work when fully completed will be in accordance with the Contract Documents. These visits are not to be construed to require supervision or inspection, and the Consultant shall not be required to make exhaustive or continuous on-site observations of the Work. The Consultant shall prepare a written report of each and every site visit, and shall advise and report to the TJPA in writing of any deviations from the Contract Documents, non-conforming items or issues of concern observed during such visits.

**6.2.10** The Consultant shall attend project meetings throughout the construction phase as requested by the TJPA, the Project Manager or Construction Manager. The Consultant shall require that its subconsultants make such visits and attend project meetings when appropriate to observe the progress of work designed or specified by them. It is understood that the TJPA Construction Manager will be responsible for providing day-to-day field inspection services and shall cooperate and coordinate with the Consultant in matters pertaining to the Consultant's work. The Consultant and its subconsultants shall coordinate and cooperate with the Construction Manager to time its visits jointly to observe and discuss the Consultant's field work and installation to reduce duplication of work by both the Construction Manager and Consultant.

**6.2.11** Additionally, the Consultant, as part of Basic Services, will assign at least one senior responsible member of its design team to be available to visit the site within two (2) hours of receiving notice, for the duration of construction until substantial completion, unless otherwise authorized or directed by the TJPA. This staff member shall be authorized to represent and render decisions on behalf of the Consultant in all design and construction coordination matters, and shall be charged with representing the design team in responding to questions and clarifications needed on site to minimize disruption to construction. Other consultants, as defined in

Article 4.1.4, representing specialty services are required to perform similar on-site services for periods agreed-to between the Consultant and the TJPA, and it is the Consultant's responsibility to coordinate the availability of other consultants and schedule such on-site services as necessary for the timely progress of the Work.

- 6.2.12** The Consultant shall interpret the Contract Documents and advise the TJPA of all decisions rendered. Interpretations by the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.
- 6.2.13** The Consultant acknowledges that the construction contract will be awarded based on the lowest responsive bid by a responsible bidder; that there is no certainty that the successful bidder will cooperate willingly with the Contract Documents; and that the level of administrative difficulties faced by the Consultant during the construction administration phase may vary substantially. Accordingly, the Consultant agrees that it shall not seek additional compensation for administrative difficulties the Consultant may encounter with the Construction Contractor on the Project; unless the TJPA in its sole discretion determines that the Construction Contractor's performance constitutes a substantial/cardinal breach of the construction contract that would legally permit the TJPA to terminate the construction contract for default should the TJPA so desire.
- 6.2.14** The Consultant shall review and advise the TJPA when requested on claims, disputes and other matters in question between Consultant and the TJPA relating to the interpretation of the Contract Documents or proposed changes to the same.
- 6.2.15** Except as may otherwise be provided in the Contract Documents or when direct communications have been specifically authorized, the Consultant shall only communicate with the Contractor through the TJPA including the Construction Manager or Project Manager. In no event shall the Consultant make any directive or communication to the Contractor that will affect the means or methods, time, cost or quality of construction.

Communications by and with the Consultant's subconsultants shall be through the Consultant.

- 6.2.16** The Consultant shall review with the Construction Manager a baseline schedule of values prepared by the Contractor to seek sufficient detail, such as by specification section, floor and space segmentation, to evaluate effectively progress payment requests from the Construction Contractor and provide recommendations to the TJPA.
- 6.2.17** Not Used.
- 6.2.18** The Consultant shall advise the TJPA to reject work that the Consultant believes in good faith does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable to implement the intent of the Contract Documents, the Consultant will advise the TJPA to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed.
- 6.2.19** The Consultant shall review proposed procedures and results of testing and special inspection procedures that are required by the construction Contract Documents, and report comments to the TJPA. Review and advise the TJPA on special testing and/or inspection that may arise due to field conditions or as requested by appropriate authorities. It is understood that separate contracts for testing and special inspection consultants, laboratories or agencies will be arranged by the Construction Manager for approval by the TJPA. Attend inspections with appropriate consultants when requested to do so by the TJPA.
- 6.2.20** The Consultant shall review and advise the TJPA as to the approval of substitutions proposed by the Construction Contractor, including advice as to whether or not acceptance of the substitutions will require substantial revision to the Contract Documents. Additional costs incurred by the Consultant for substantial revision, as determined by the TJPA, of documents to accommodate the substitutions or equals shall be compensated under Additional Services, if not due to Consultant errors or omissions.

- 6.2.21** The Consultant shall review and advise the TJPA as to the approval of shop drawings, laboratory reports, samples, wiring and control diagrams, schedules and lists of materials and equipment, and other descriptive data pertaining to specified materials, equipment and storage thereof.
- 6.2.22** The Consultant shall review documents and materials that are required by the Contract Documents to be submitted for conformance with the design intent of the Work and with the information given in or inferable from the Contract Documents. Such review shall be made by the Consultant upon receipt of submittals that have been dated, signed and approved by the Construction Contractor, except where otherwise directed by the TJPA. The Consultant may note the exceptions taken or not taken, the corrections necessary, and the resubmittals required, and will return the documents or materials with such notations to the Construction Contractor as directed by the TJPA. Review and action on an item that is a component of an assembly or system shall not necessarily apply to the entire assembly or system. In its agreement with the Construction Contractor, the TJPA will include a provision (such as clause 4.2.7 for AIA Document A201, 1987 edition) specifying that the Consultant's review of the Construction Contractor's submittals does not alter the Construction Contractor's responsibility for errors and omissions in such submittals; it is the Consultant's responsibility to check the Contract Documents prior to advertisement for bids to ensure that said provision is included.
- 6.2.23** After compilation of the final punch list by the Construction Contractor, the Consultant, in conjunction with the Construction Manager, will verify the final punch list, recommend changes, participate in site visits to determine and track the status of the acceptability of all punch list items, participate in the final review of the Project and advise the TJPA as to the approval of work performed by Consultant.
- 6.2.24** Not Used.
- 6.2.25** Conduct observations and review completed work to determine the date or dates of substantial completion and the date of final completion and advise the TJPA in writing as to the same. The Consultant shall advise the TJPA

as to the appropriateness of the issuance of a final Certificate for Payment.

- 6.2.26** The Consultant shall at all times have access to the Work.
- 6.2.27** Not Used.
- 6.2.28** Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, scheduling, sequences or procedures, for safety precautions and programs in connection with construction of the Project; for the acts or omissions of the Consultant, its subconsultants or any other persons performing any of the Work on the Project (unless directly employed or retained by the Consultant); or for the failure of any of them to carry out the Work on the Project in accordance with the Contract Documents.
- 6.2.29** The Consultant shall not have the authority to stop the work unless specific authorization has been granted in writing by the TJPA.
- 6.2.30** All design-build systems recommended by the Consultant and submitted by the Construction Contractor shall be reviewed and stamped by the Consultant in a timely manner for conformance with the intent of the design drawings and specifications.
- 6.2.31** The Consultant shall prepare record drawings showing changes and relations in the Work made during construction based on marked-up prints, drawings and other data furnished by the Construction Contractor to the Consultant. The TJPA understands and acknowledges that the Consultant must evaluate and verify the accuracy or completeness of information which will be furnished to the Consultant by other parties and required to be incorporated into the record drawings. The Consultant shall be responsible for any inaccuracies, errors, omissions, ambiguities, or conflicts which may be introduced into the record drawings to the extent due to the fault of the Consultant.

### **6.3 WARRANTY PHASE**

The Consultant shall assist the TJPA's maintenance and operation personnel in conducting warranty inspections during the warranty period following Final Completion as set forth below.

**6.3.1** Consultant shall observe and review the condition of completed work, and provide assistance to the TJPA to develop a list of Corrective Warranty Work and a schedule for completion for systems, components, equipment, and finishes that have failed to meet the specified performance criteria or the terms of specific product warranties during the warranty period following Final Completion.

**6.3.2** The Final Warranty Inspection shall take place no earlier than the eleventh (11<sup>th</sup>) month following Final Completion and no later than the twelfth (12<sup>th</sup>) month following Final Completion.

**6.3.3** Not Used

## **7 ADDITIONAL SERVICES**

As defined in Article 2.1, Additional Services are services in addition to the Basic Services of this Agreement. The Consultant shall not proceed with any Additional Services without the written authorization of the TJPA. The written authorization to perform Additional Services must include a statement describing the services as Additional Services. In the event the TJPA believes certain services to be part of Basic Services which the Consultant contends are Additional Services, the Consultant shall not perform such services until (a) the Consultant provides the TJPA with written notice of the contention with factual support and (b) the TJPA then instructs the Consultant in writing to proceed, in which case the issue with respect to whether the services are Additional Services shall be determined pursuant to the terms of this Agreement.

Additional Services include the following:

**7.1** Financial feasibility studies.

**7.2** Services for future utility relocation beyond that required for the construction of the Transit Center building.

- 7.3** Services relative to detailed investigation, surveys, valuations, inventories, or appraisals of existing conditions, facilities, equipment or furnishings, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by others.
- 7.4** Detailed quantity surveys or inventories of material, equipment, furnishings, and labor.
- 7.5** Services required in connection with design and construction performed by the TJPA that is not part of the Work, except as indicated in the Agreement.
- 7.6** Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.
- 7.7** Providing services made necessary by the default of the Consultant, or by major defects or deficiencies in the Work of the Contractor, or otherwise caused by the Consultant or others during construction, excluding the Consultant's consultants or employees.
- 7.8** Not Used.
- 7.9** Not Used.
- 7.10** Providing services more than one year after Final Completion, unless such services are required as a result of the Consultant's negligent error or omissions.
- 7.11** Providing services, consultants, or scope of work not stipulated as included in this Agreement as specified in Attachment 1, and not customarily provided as part of an Consultant's Basic Services, which include but are not limited to:
  - 7.11.1** Environmental consultants.
  - 7.11.2** Archaeological or historic resources consultants.
  - 7.11.3** Hazardous materials consultants.
  - 7.11.4** Other specialized consultants requested by the TJPA that were not included on the Consultant's team upon execution of this agreement.
  - 7.11.5** Structural engineering: time history analysis and/or design of shoring, excavation, bracing and underpinning systems; however, Consultant shall



review as part of Basic Services such design elements submitted by the Construction Contractor.

- 7.12** Additional Services made necessary by reversals of authorizations, approvals or instructions previously given by the TJPA but only such services as are in excess of what would have been required if there had not been such reversals.
- 7.13** Additional Services to incorporate substantial structural changes or other like work to integrate the artwork administered by the TJPA after the completion and acceptance of the design development phase drawings.
- 7.14** Services in connection with change in scope of the Project directed by the TJPA, but not including changes proposed and recommended by the Consultant.
- 7.15** Geotechnical engineering.
- 7.16** Coordination of utility service providers and permitting agencies beyond the level of effort specified in Attachment 1.
- 7.17** On-site representation beyond those services defined as Basic Services.

## **8 COMPENSATION**

No charge shall be incurred under this Agreement nor shall any payments become due to the Consultant until final reports, documents, or services as required under this Agreement have been completed and are received from the Consultant and approved by the TJPA as being in accordance with this Agreement, or until the TJPA agrees that services covered under the payment request have been satisfactorily performed.

The TJPA shall compensate the Consultant as follows:

### **8.1 BASIC SERVICES**

For all of the Consultant's Basic Services, the Consultant shall be paid a Fee not to exceed \$4,328,327, which shall include all subconsultant fees and normal costs to the Project including all telephone calls, faxes, emails and computer based communications including all appurtenant hardware and software, in-house and subconsultant coordination, presentation, printing, reproductions as required by this Agreement and the like, and those specific costs defined in Article 8.4.5, excluding only those costs for Additional Services and amounts for Reimbursable Expenses associated with Additional

Services. Payment for Basic Services shall be made in accordance with the Fee Schedule set forth in accordance with the following Fee Schedule:

Project Tasks	Percentage of Total Contract Amount	Fee Estimates
<b>Basic Services – Design Phase</b>		
1. Project Initiation	1.9%	\$80,368
2. Utility Designation and Location	13.8%	\$600,982
3. Agency Interaction and Data Management	5.0%	\$217,301
4. Design Analysis and Recommendation	12.5%	\$541,942
5. Design Phase	45.7%	\$1,975,418
6. Permitting Support	1.3%	\$52,475
<b>Basic Services – Construction Phase</b>		
7. Bidding Services	0.9%	\$36,806
8. Services During Construction	17.4%	\$754,061
9. Mitigation Monitoring and Reporting	1.5%	\$68,974
Subtotal (Basic Services)	100%	\$4,328,327
10. Additional Services		\$869,688
Total		\$5,198,015

## 8.2 ADDITIONAL SERVICES

As defined in Article 2.1, Additional Services are services not specified or required in the Agreement as Basic Services. The TJPA shall not compensate the Consultant for Additional Services unless such services are authorized in writing prior to performance by the Consultant. The Consultant shall monitor TJPA-approved Additional Services, and aggregate billings for Additional Services shall not exceed \$869,688. Payment for Additional Services shall be made in accordance with the Fee Schedule set forth in Article 8.1 and the scope of services set forth in Attachment 1.

## 8.3 NOT USED

## 8.4 REIMBURSABLE EXPENSES

Reimbursable Expenses for Additional Services shall be invoiced by the Consultant's accounting categories and shall be subject to the audit provisions of this Agreement.

**8.4.1** Only the actual costs incurred by the Consultant shall be allowed and invoiced as Reimbursable Expenses. The Consultant shall not submit reimbursable expenses without prior written authorization from the TJPA. There shall be no mark-ups of any kind allowed on costs reimbursed under Article 8.4.

- 8.4.2** If requested by the TJPA, the Consultant will obtain and submit to the TJPA a quote from its insurance carrier for the cost of premiums for project-specific professional liability insurance as specified in Article 12.1.5. If approved by the TJPA, the actual cost for the insurance coverage will be included in this contract as a part of the Basic Services Fee and not as a Reimbursable Expense for Additional Services. There will be no mark-ups allowed on costs reimbursed.
- 8.4.3** Reimbursable Expenses shall include reproduction costs beyond those required under Articles 4, 5 and 6 of this Agreement.
- 8.4.4** Renderings, computer-animated presentations and presentation models requested and approved in writing in advance by the TJPA required under Articles 4, 5 and 6 of this Agreement are considered a part of the Basic Services Fee. Such documents prepared by the Consultant without written advance approval by the TJPA shall be considered not reimbursable.
- 8.4.5** The following items are considered normal project costs, a part of the Basic Services Fee, and are **not** considered Reimbursable Expenses: (a) phone calls, faxes, mail, express mail, courier delivery or overnight delivery service charges, or other communications charges between members of the Consultant's design team, regardless of location; regional phone calls and faxes for all area codes having any geographical land area within 100 miles of San Francisco even though its outlying boundary exceeds the 100 mile limitation; (b) Internet gateways, FTP sites or data file transfer or research services; (c) travel within a 100 mile radius of San Francisco; travel outside a 100 mile radius of San Francisco unless approved in writing in advance by the TJPA; (d) in-house coordination materials among the Consultant's team and subconsultants, including photocopy and drawing materials, messenger services; (e) presentation material, reproductions, as required by Articles 4, 5 and 6 of this Agreement; all CADD and other computer-related time and expenses in support of those items specifically listed in Articles 4, 5 and 6 of this Agreement; and (f) food and beverage and entertainment charges of any kind unless approved in writing in advance by the TJPA.

## **8.5 PAYMENT SCHEDULE AND INVOICES**

- 8.5.1** The Consultant will submit invoices for work in progress no more than once each month for Basic Services, including construction administration phase services. Fees are to be charged on a percentage completed basis within the course of each phase. Fees paid will be based on the actual percentage of work completed subject to the specified maximum per phase as noted in the Fee Schedule described in Article 8.1. If the Consultant earns fees less than the maximum allowed for any phase set forth below, the remaining amount that could have been earned on that phase may be earned during a subsequent phase.
- 8.5.2** All invoices submitted to the TJPA for services performed under this Agreement shall identify the percentage of completion and the amount of payment for each task as specified in Article 8.1, and shall be in accordance with the TJPA-approved Form of Invoice.
- 8.5.3** For both lump sum and hourly work, the Consultant shall furnish copies of invoices submitted by subconsultants to substantiate reimbursement, and the invoices shall provide the same type of information requested above, together with the percentage and cost of work completed by Disadvantaged Business Enterprise (DBE) subconsultants. For hourly work, copies of certified timesheet records shall be submitted for all employees indicating the number of hours worked by period, and the approved billing rate.
- 8.5.4** The Consultant shall receive compensation only for those Additional Services authorized in writing by the TJPA in advance of the Consultant's performance of the work, and in accordance with a rate schedule submitted to and approved by the TJPA, which includes subconsultant fee schedules.
- 8.5.5** The hourly rates shall be the best discount given to any client of the Consultant under similar circumstances.-
- 8.5.6** There shall be no mark-ups by the Consultant for the cost of professional consultants retained by the Consultant in the performance of its Basic Services. Allowable mark-ups for professional consultants retained for

approved Additional Services shall be 1.02 times the subconsultants' bills to the Consultant. No mark-ups of any kind shall be allowed for reimbursable expenses as defined in this Agreement invoiced by or to the Consultant that were incurred for either Basic Services or Additional Services.

**8.5.7** Alternatively, a lump sum or guaranteed maximum fee for Additional Services may be authorized by the TJPA prior to commencement of work on these services.

**8.5.8** If during the course of construction, the TJPA determines at its sole discretion that modifications to Construction Documents or Contract Documents are required due to errors or omissions on the part of the Consultant or its subconsultants in the final Construction Documents working drawings and specifications, the Consultant shall not be entitled to additional compensation for the cost of developing, preparing or reproducing the necessary revised drawings and specifications to correct said errors or omissions, nor shall the Consultant be compensated in its fee for the cost of extra design work made necessary by errors or omissions of the Consultant or its subconsultants.

**8.5.9** No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Consultant or on account of the cost of changes in the work other than those for which the Consultant is responsible.

**8.5.10** Payment to the Consultant during the construction phase will be made monthly in relation to the percentage of completion of the work by the Consultant in the following manner:

- 25% construction work complete, up to 35% of construction phase fee as described in Article 8.1.
- 50% construction work complete, up to 65% of construction phase fee as described in Article 8.1.
- 75% construction work complete, up to 80% of construction phase fee as described in Article 8.1.

- Substantial completion of construction, up to 95% of construction phase fee as described in Article 8.1.
- Final acceptance, up to 100% of construction phase fee as described in Article 8.1.

**8.5.11** The TJPA shall retain five percent (5%) of the amount on each invoice submitted by the Consultant for Basic Services, pending satisfactory completion by the Consultant of all work in the task, and approval by the TJPA; upon approval, the amount retained will be released to the Consultant. The retention can be substituted by a letter of credit (LOC) issued by the Consultant's bank (Bank) subject to the following conditions: the LOC must be in the name of and for the sole benefit of the TJPA; the entire 5% must be available at all times during the contract period; TJPA is not responsible for any administrative costs and has no liability whatsoever to the Bank or the Consultant arising out the LOC. There shall be no retention on Reimbursable Expenses or Additional Services.

**8.5.12** Payments of Reimbursable Expenses shall be made monthly upon presentation by the Consultant of an itemized statement of actual expenses incurred with a detailed cost breakout and supporting invoices and copies of original receipts.

**8.5.13** The Reimbursable Expenses allowances set forth in Article 8.4 provide only for costs which are defined as part of Basic Services or Additional Services Fees and are subject to the DBE participation requirements of the TJPA policy.

**8.5.14** A maximum of eighty percent (80%) of the Reimbursable Expense allowance (see Article 8.4.) shall be allowed through completion of the construction documents phase. The Consultant shall not exceed this allowance or the total allowance without the prior written authorization of the TJPA.

**8.5.15** Subject to the provisions of Article 11.3.1, if the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the Consultant shall be compensated for services satisfactorily performed prior to receipt of written notice from the TJPA of such

suspension or abandonment. If the Project is resumed after being suspended for more than one hundred eighty (180) days, the Consultant's compensation for the remainder of the services to be provided for the Project shall be subject to renegotiation.

**8.5.16** The TJPA shall make payment to the Consultant at the following address: Metcalf & Eddy, Inc., 1390 Market Street, Suite 1100, San Francisco, CA 94102. The TJPA shall make a good faith effort to pay undisputed amounts within 45 days of receiving a proper invoice from the Consultant. However, in no event shall the TJPA be liable for interest or late charges for any late payments.

## **8.6 WITHHOLDING OF PAYMENT**

The TJPA may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the TJPA in connection with the Consultant's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed. The TJPA shall endeavor to issue payments of undisputed amounts to the Consultant within sixty (60) days following the receipt of complete and accurate invoices.

## **8.7 DISALLOWANCE**

In the event the Consultant claims or receives payment from the TJPA for a service, including progress payment, reimbursement for which is later disallowed by the TJPA, the Consultant shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to the Consultant.

## **8.8 PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK**

The issuance of any progress payment by the TJPA, or the receipt thereof by the Consultant, shall in no way lessen the liability of the Consultant to correct unsatisfactory work, although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made.

## **9 TJPA'S RESPONSIBILITIES**

The TJPA shall:

### **9.1 APPROVALS**

Obtain approvals from Appropriate Authorities, as defined herein, and the work plan to be developed in Attachment 1, with the assistance of the Consultant, and promptly render decisions, when within its power to do so, pertaining thereto to avoid unreasonable delays in the progress of the Project.

### **9.2 BIDS**

Advertise and receive bids for the construction of the Project.

### **9.3 BUILDING INSPECTORS**

Provide building inspectors for the construction phase.

### **9.4 DEFICIENCIES**

Promptly notify the Consultant in writing of apparent deficiencies in materials or workmanship discovered within eleven (11) months from submission of the final punchlist.

### **9.5 FEES**

Pay all fees required to secure building permits and all other permit fees necessary to complete the scope of work for this Agreement.

### **9.6 HAZARDOUS SUBSTANCES**

Acknowledge that the discovery, presence, handling or removal of asbestos, asbestos products, polychlorinated biphenyl (PCB), hydrocarbons or other hazardous substances, which may presently exist at the job site, is outside of the Consultant's expertise and is not included in the scope of work the Consultant is to perform nor included in the Consultant's insurance. The TJPA therefore agrees to hire one or more expert consultants in this field to deal with these problems if the Project involves such materials. Even though the Contract Documents may incorporate the work of such other consultants, the Consultant shall not



be responsible for the discovery, presence, handling or removal of such materials.

## **9.7 NOT USED**

## **9.8 PROJECT DATA**

Furnish the following project data to the Consultant:

- (a) Civil Engineering Data: Furnish an existing Site Utilities Plan including water, gas, drainage, sewer, power, telecommunications and site drainage. Data shall be provided in hard copy and electronic (CADD) file formats.
- (b) Mapping and Surveying Data: Furnish reproducible drawings including a site plan of the Project site that are clear and legible, and accurate within accepted industry standards. Furnish relevant and necessary survey information, including the following: topographic map, utility locations (surface features), utility tunnel alignment locations (including height and width), building location, and site boundaries to be shown based on available legal description. Data shall be provided in hard copy and electronic (CADD) file formats.
- (c) Geotechnical Data: Furnish soil and geological reports and data, including test logs' allowable soil bearing pressures under dead, live and short-term lateral loading; retaining wall design criteria; soil profile type; near source factors in accordance with the applicable building codes; and other data reasonably necessary to define subsoil conditions. Furnish special testing and inspection services as required for the aforementioned items.
- (d) Electrical Engineering Data: Furnish data regarding capacity, location and routing of existing building systems: electrical power and distribution, fire-life safety, communications, and security.
- (e) Mechanical Engineering Data: Furnish data regarding water supply, drainage, central steam, sewage collection and disposal.

- (f) The services, information, surveys, and reports required by Article 9.8 shall be furnished at the TJPA's expense, and Consultant shall be entitled to rely upon their accuracy and completeness, except that Consultant may not rely upon and must question in writing to the TJPA any information that appears incorrect based upon Consultant's experience or knowledge of the Project.

## **9.9 PROJECT MANAGER**

Designate a Project Manager who shall coordinate his or her duties with the Consultant as provided herein.

## **9.10 RESPOND TO SUBMITTALS**

Review and respond in writing within ten (10) working days of submittal by the Consultant to all aspects of the documents as described in Attachment 1.

## **9.11 TESTS AND INSPECTIONS**

Furnish tests and inspections as required during the construction phase for structural, mechanical, chemical and other laboratory tests, inspections, special inspections and reports specified by the Consultant in the Construction Documents.

## **9.12 ARCHEOLOGICAL RESOURCES**

Acknowledge that the discovery, presence, recordation, evaluation, preservation, and removal of artifacts or archeological resources that may exist at the job site is outside of the Consultant's expertise, and the Consultant shall not be responsible for the discovery, presence, handling, preservation, or removal of such materials

## **10 DOCUMENTS AND OWNERSHIP OF DOCUMENTS**

- (a) All documents, electronic, written or graphic, including Drawing Sets, CADD files and other computer files prepared by the Consultant shall be made and remain the property of the TJPA, including all intellectual property rights to all documents; provided, however, that the Consultant shall be entitled to one reproducible copy thereof and CADD files, made at the Consultant's expense. As part of Basic Services, Consultant

shall provide the TJPA with one licensed copy of software that will allow the TJPA to view the electronic CADD files prepared by the Consultant or its subconsultants. Additionally, the Consultant shall provide technical specifications for any computer hardware required to use the provided software and files.

(b) All presentation drawings, models, films and videos, simulations or other presentation materials shall be and remain the property of the TJPA.

(c) Should the TJPA or any other person, firm or legal entity under the authority and control of the TJPA, without the Consultant's participation, use, reuse, or modify the Consultant's drawings, specifications or other documents prepared under this Agreement, the TJPA agrees to notify the Consultant of said intended use. The Consultant shall not be responsible for any loss, costs or expenses incurred by any party arising out of such use, reuse or modification of the Consultant's drawings, specifications, and other documents.

(d) The TJPA acknowledges that in using magnetic media data may be lost in translation from one format to another, or that electronic data may be altered, whether inadvertently or otherwise, and that there is a risk that errors or omissions may appear in any subsequent output as a result of software/hardware failure.

## **11 TERMINATION OF AGREEMENT AND DELAYS**

### **11.1 BY EITHER PARTY FOR FAULT**

Either party may terminate this Agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (a) not fewer than ten (10) calendar days written notice (delivery by certified mail) of its intent to terminate; and (b) an opportunity for consultation and to rectify failures of obligations within thirty (30) days of consultation with the terminating party before termination becomes effective.

### **11.2 BY TJPA FOR CONVENIENCE**

The TJPA may terminate this Agreement, in whole or in part, in writing, for its convenience (such as for legal or financial reasons, major changes in the work or program requirements). In such event, TJPA shall provide the Consultant with (a) thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of

the TJPA's intent to terminate; and (b) an opportunity for consultation with the TJPA before termination becomes effective.

### **11.3 PROCEDURE UPON TERMINATION**

**11.3.1** If after completion of the construction documents phase, the TJPA either terminates for convenience or suspends the Project in excess of one hundred eighty (180) days, and the TJPA in its sole discretion could have otherwise proceeded with the Project but for circumstances outside the control of the Consultant, then the TJPA will acknowledge that the Consultant will have expended time and effort in excess of that reflected in actual compensation, and, accordingly, the TJPA shall pay the Consultant two and one-half percent (2.5%) of the total fee, reducing the construction bid phase fee to zero (\$0). If the Project is recommenced, the Consultant will perform the construction bid phase services at no additional charge.

**11.3.2** If the TJPA terminates this Agreement for convenience prior to the completion of contract documents or during the construction administration phase, the TJPA shall acknowledge additional costs the Consultant has incurred in the performance of the Agreement, the termination of which was due to no fault of the Consultant, and may authorize an equitable adjustment to the Agreement price. The equitable adjustment in price shall include a reasonable profit for services or other work performed prior to the effective date of termination. The equitable adjustment shall provide for payment to the Consultant for services rendered and expenses incurred before the termination in addition to termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination. Consultant shall submit a final invoice for services actually performed and/or reimbursable expenses incurred, plus any markup as allowed under the Agreement; no amount shall be allowed for anticipated profit on unperformed or unauthorized services or charges.

**11.3.3** In the event that the TJPA terminates the Agreement for fault, the TJPA may reduce any amount earned or otherwise due the Consultant by the

sum of any additional costs the TJPA has or will incur as a result of the Consultant's default.

- 11.3.4** Upon receipt of any notice for termination, the Consultant shall (a) promptly discontinue all services affected (unless the notice directs otherwise); and (b) deliver or otherwise make available to the TJPA all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the Consultant and its consultants may have accumulated in performing this Agreement, whether completed or in progress.
- 11.3.5** Upon termination of this Agreement, the TJPA may take over the work and prosecute the same to completion by agreement with another party, with TJPA forces or otherwise. The TJPA may be free to engage another Consultant or to utilize such plans, drawings, specifications and other work prepared by the Consultant for the Project. Such other Consultant shall expressly assume the responsibility of "Consultant of Record," and shall be responsible for negligent errors and omissions on such plans, drawings, specifications and other work.

#### **11.4 DELAYS AND WORK STOPPAGES**

The TJPA will not hold the Consultant liable for delays to the performance of the services under this Agreement when such delays are due to no fault of the Consultant. Consultant acknowledges and agrees that any delays caused by the Consultant and/or its sub consultants shall constitute a breach of this Agreement and may result in liability of the Consultant to the TJPA for any resulting damages.

#### **11.5 TERM OF AGREEMENT**

Subject to Article 59, the term of this Agreement shall be through the end of utility construction and warranty period. Utility construction will be separately procured.

## **12 INSURANCE**

### **12.1 COVERAGES**

The Consultant will maintain in force, during the full term of the Agreement, and for as long as the TJPA and City face exposure from the activities pursuant to this Agreement, insurance by an insurance company or companies admitted in the State of California with a rating of A-:VI or better or companies otherwise acceptable to the TJPA.

Coverage shall be as follows:

**12.1.1** Workers' compensation with employers' liability not less than \$1,000,000 each accident.

**12.1.2** Commercial general liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate, including contractual liability, and completed operations coverages.

**12.1.3** Commercial automobile liability insurance with limits not less than \$1,000,000 per accident combined single limit bodily injury and property damage, including owned, non-owned and hired auto coverages, as applicable.

**12.1.4** General liability and automotive liability insurance policies shall provide or be endorsed to provide the following:

- (a) Policies shall include as Additional Insureds the TJPA and City and County of San Francisco, its officers, employees, and members of commissions.
- (b) Such policies shall be primary insurance to and shall not require contribution with any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement.
- (c) Such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not increase the insurer's limits of liability.

**12.1.5** Consultant's professional liability insurance, as follows:

- (a) From the effective date of this Agreement, the Consultant shall maintain practice insurance covering its negligent acts, errors or

omissions, with limits not less than \$10,000,000 per claim and in the aggregate, and any deductible not to exceed \$25,000 each claim.

- (b) If requested by the TJPA, within sixty-one (61) days from the effective date of this Agreement, the Consultant shall obtain, retroactive to the effective date of this Agreement, a project professional liability insurance policy dedicated solely to the Project (the "Project Policy"). The Project Policy shall protect against any negligent act, error or omission arising out of the design or engineering activities with respect to the Project, including coverage for acts by subconsultants for whose work is the responsibility of the Consultant under this Agreement. The Project Policy shall be endorsed to provide the following:
  - (i) That the TJPA is the sole agent for notice and premiums;
  - (ii) That there will be a joint defense coverage against third party claims; and
  - (iii) That the TJPA, as the named Additional Insured-Owner, may assert claims against other Additional Insureds.

## **12.2 ENDORSEMENTS**

All policies shall be endorsed to provide thirty (30) days advance written notice to the TJPA of cancellation, non-renewal or reduction in coverage, mailed to the following address:

Transbay Joint Powers Authority  
Attention: Maria Ayerdi, Executive Director  
201 Mission St., Suite 1960  
San Francisco, CA 94105

## **12.3 CERTIFICATES OF INSURANCE**

Certificates of insurance, in form and with insurers satisfactory to the TJPA, evidencing all coverages specified above, shall be furnished to the TJPA prior to award and before commencing any operations under this Agreement. Upon the written request of the TJPA, Consultant shall promptly provide to TJPA copies of those portions of the policies containing information necessary for TJPA to make a claim. In the event such proof of insurance is not delivered as required or in the event such insurance is canceled at any

time and no replacement coverage is provided, TJPA has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this Agreement and to pay the premium. Any premium so paid by the TJPA shall be charged to and promptly paid by Consultant or deducted from sums due Consultant at TJPA option. Consultant and TJPA agree that any actual or alleged failure of TJPA to inform Consultant of noncompliance with any insurance requirement in no way imposes any additional obligations on TJPA, nor does it waive any rights of TJPA in this or any other regard.

## **12.4 OTHER COVERAGES**

Any coverages for which the Consultant proposes to self-insure any portion of the risk, or any intention to operate vehicles other than automobiles (e.g., boats, aircraft) shall require prior TJPA approval of the appropriate insurance to be agreed upon.

## **13 INDEMNIFICATION**

### **13.1 GENERALLY**

To the fullest extent permitted by law, Consultant shall assume the defense of (with legal counsel subject to approval of the TJPA), indemnify and save harmless the TJPA, its Board, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claim, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Consultant or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

### **13.2 LIMITATIONS**

**13.2.1** No insurance policy covering the Consultant's performance under this Agreement shall operate to limit the Consultant's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.



**13.2.2** The Consultant assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

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

### **13.3 COPYRIGHT INFRINGEMENT**

Consultant shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its Boards, commissions, officers, or employees of articles or services to be supplied in then performance of Consultant's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, shall be considered a material breach of contract, if not the basis for indemnification under the law.

## **14 MODIFICATIONS**

The Consultant shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and bearing the Chief Financial Officer's certification that funds are available for additional work.

## **15 INDEPENDENT CONTRACTOR**

The Consultant shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the service required of it by the terms of this Agreement. The Consultant shall be liable for any act or acts of its own, of its agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between the TJPA and the Consultant or its agents and employees.

## **16 AUDIT AND INSPECTION OF RECORDS**

The Consultant agrees to maintain and make available to the TJPA accurate books and accounting records relative to its activities under this Agreement. The Consultant will permit the TJPA to audit, examine and make excerpts and transcripts from such books and records and to make audits of all invoices, materials, payrolls, records or personnel and other data related to Reimbursable Expenses and Additional Services provided on an hourly basis, whether funded in whole or in part under this Agreement.

The Consultant 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.

A clause similar to this shall be included in all subagreements between the Consultant and subconsultants giving the TJPA the same rights against the subconsultants. Canceled checks of payments to subconsultants must be maintained by the Consultant and made available to the TJPA upon request.

The TJPA may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.

## **17 SUBCONSULTANTS**

The Consultant is permitted to subcontract portions of the services to be performed under this Agreement only after the prior written approval by the TJPA. The Consultant shall be responsible for its subconsultants or subcontractors throughout the course of the work to be performed under this Agreement. Execution of this Agreement shall constitute approval of the firms and individuals listed on Attachment 6 as subconsultants and/or subcontractors on this Project.

Substitutions may be made for any subconsultants listed on Attachment 6 for (a) failure to perform to a reasonable level of professional competence, (b) inability to provide sufficient staff to meet the Project requirements and schedules, or (c) unwillingness to negotiate reasonable contract terms or compensation.

The TJPA will reserve the right to request specific consultants with specific expertise to be added to the team to provide Basic Services or Additional Services if the TJPA determines that specific expertise is lacking in the project team or if the TJPA believes it is in the TJPA's best interest to assign a particular subconsultant to the Consultant.

Substitutions of DBE firms shall be made on equal basis upon written request and recommendation by the Consultant and written approval by the TJPA. The Consultant shall hold harmless, indemnify and defend the TJPA from any claim that may arise out of any approval of substitutions.

## **18 TAXES**

All taxes levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be borne by the Consultant. The Consultant is to provide a Business Tax Registration Certification in order to certify this Agreement.

## **19 PROPRIETARY INFORMATION OF THE TJPA**

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

## **20 ADMINISTRATIVE REMEDY FOR DISPUTES**

The parties shall attempt in good faith to resolve by negotiating any disagreements between them concerning the interpretation of this Agreement.

For any dispute arising out of this Agreement, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days after the determination of the dispute. The party receiving a notice of dispute shall submit a written response within fourteen (14) days after delivery of the notice. The notice and response shall contain the following: (i) a statement of the party's position and a summary of the arguments supporting that position, and (ii) any evidence supporting the party's position; relevant documents should be attached. The TJPA's Executive Director shall issue a written decision as to all disputes under this Article. The decision of the Executive Director shall be administratively final and conclusive.

The status of any dispute notwithstanding, the Consultant shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written

directions of the TJPA. If the dispute is resolved in the Consultant's favor, the Consultant shall be compensated for actual, documented extra costs incurred in complying with the TJPA's interpretation or direction.

If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party, however, shall be entitled to legal fees or costs for matters resolved under this Article.

## **21 SEVERABILITY**

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

## **22 ENTIRE AGREEMENT**

All of the Agreement between the parties is included herein, and no warranties expressed or implied, representations, promises, or statements have been made by either party unless endorsed hereon in writing, and no change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Agreement.

## **23 NOTICES**

Any notice may be served effectively upon the TJPA or the Consultant by delivering it in writing or by depositing the written notice with the United States Postal Service with postage fully prepaid and addressed to the party to receive the notice, at the respective addresses set forth below. In addition, any notice may be served effectively by delivering or mailing it, as in this paragraph provided, addressed to any other place or places that the TJPA or the Consultant, by written notice served upon the other, from time to time may designate.

### **TJPA'S ADDRESS:**

Transbay Joint Powers Authority  
Attention: Maria Ayerdi, Executive Director  
201 Mission St., Suite 1960  
San Francisco, CA 94105

### **CONSULTANT'S ADDRESS:**

Metcalf & Eddy, Inc.  
Attention: Olivia Chen, Senior Vice President  
1390 Market Street, Suite 1100  
San Francisco, CA 94102

## **24 GUARANTEED MAXIMUM COSTS**

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

Except as may be provided by TJPA Board resolutions governing emergency conditions, the TJPA and its employees and officers are not authorized to request the Consultant to perform services or to provide materials, equipment and supplies that would result in the Consultant performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement unless the Agreement is amended in writing and approved as required by law to authorize the Additional Services, materials, equipment or supplies. The TJPA is not required to reimburse the Consultant for services, materials, equipment or supplies that are provided by the Consultant which is beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement and which was not approved by a written amendment to the Agreement having been lawfully executed by the TJPA.

The TJPA and its employees and officers are not authorized to offer or promise to the Consultant additional funding for the contract which would exceed the maximum amount of funding provided for in the Agreement for the Consultant's performance. Additional funding for the contract in excess of the maximum provided in the Agreement shall require lawful approval and certification by the Controller of the TJPA. The TJPA is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the Agreement unless such additional funding has received the lawful approval and certification of the Controller.

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

## **25 LIABILITY OF THE TJPA**

The TJPA's obligations under this Agreement shall be limited to the payment of the compensation provided for in Article 8 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.

## **26 QUALIFIED PERSONNEL**

Work under this Agreement shall be performed only by qualified and competent personnel under the supervision of and in the employment of the Consultant or its subconsultants. The Consultant's key employees and subconsultants shall all be licensed by the State of California in their respective professional fields as Contractors. The Consultant will conform to the TJPA's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at the TJPA's request, shall be supervised by the Consultant.

## **27 RESPONSIBILITY FOR EQUIPMENT**

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to the Consultant by the TJPA. The acceptance or use of such equipment by the Consultant or any of its employees shall be construed to mean that the Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the TJPA from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, the TJPA employees or third parties, or to property belonging to any of the above.

## **28 OWNERSHIP OF EQUIPMENT**

Any equipment, vehicles, computer programs (software licenses and media), and the like, purchased by the Consultant or its subconsultants in connection with services to be performed under this Agreement shall become property of and will be transmitted to the TJPA at the conclusion of the Consultant's services under the Agreement.

## **29 ASSIGNMENT**

The services to be performed by the Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by the Consultant unless approved by written instrument executed and approved in the same manner as this Agreement; the Consultant, partners of any Joint Venture or

Association that the Consultant may establish for the project, or any of the Consultant's subconsultants, may incorporate or change their business names, provided such incorporation or change does not decrease their obligation or liability under this Agreement.

### **30 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the TJPA and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due thereunder, may be assigned by the Consultant without the prior written consent and approval of the TJPA.

### **31 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.

### **32 COMPLIANCE WITH LAWS**

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

### **33 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

The Consultant 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 subconsultant, must be accessible to the disabled public. The Consultant shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Consultant 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 the Consultant, its employees, agents or assigns will constitute a material breach of this Agreement.

#### **34 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 or as provided by Code of Civil Procedure Section 394; the venue for litigation in a county other than San Francisco pursuant to Section 394 will be Alameda County or San Mateo County.

#### **35 SUBMITTING FALSE CLAIMS**

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 that 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 the contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; (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.

#### **36 INCIDENTAL AND CONSEQUENTIAL DAMAGES**

The Consultant shall be responsible for incidental and consequential damages resulting from the Consultant's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the TJPA may have under applicable law.



### **37 OTHER AGREEMENTS BETWEEN THE TJPA AND THE CONSULTANT**

Through its execution of this Agreement, the Consultant certifies that neither it nor any of its employees has any interest, however remote, in any other Agreement with the TJPA, whether or not such Agreement is with Consultant's respective firms, affiliate firms or through separate employment. The Consultant understands and agrees that failure to disclose such information may result in termination of this Agreement for cause.

### **38 WORKS FOR HIRE**

If, in connection with services performed under this Agreement, the Consultant or its subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audio tapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the TJPA. If it is ever determined that any works created by the Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, the Consultant hereby assigns all copyrights to such works to the TJPA. The TJPA hereby grants to the Consultant a free license to use such works solely for the purpose of marketing, i.e., to document the Consultant's experience and capabilities, and to use or reuse details which are not unique to the design of the Project. With respect to any other use or purpose, the Consultant must obtain the prior express written permission of the TJPA.

### **39 CONSTRUCTION**

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

### **40 SOLE BENEFIT**

This Agreement is intended for the sole benefit of the TJPA and the Consultant, and is not intended to create any third-party rights or benefits.

### **41 NONDISCRIMINATION IN CITY CONTRACTS AND BENEFITS ORDINANCE**

#### **41.1 CONSULTANT SHALL NOT DISCRIMINATE**

In the performance of this Agreement, Consultant agrees not to discriminate 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 HIV status (AIDS/HIV status) against any employee of any City or TJPA employee working with, or applicant for employment with, Consultant in any of Consultant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Consultant. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department of Transportation (DOT)-assisted contracts. Failure by the Consultant 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.

#### **41.2 SUBCONTRACTS**

Consultant shall incorporate by reference in all subconsultants' contracts the provisions of Article 41.1, and Sections 12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subconsultants to comply with such provisions. Consultant's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

#### **41.3 NONDISCRIMINATION IN BENEFITS**

Consultant 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 or where the work is being performed for the City or 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.

#### **41.4 CONDITION TO AGREEMENT**

As a condition to this Agreement, Consultant shall execute the "S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits" form

(Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

#### **41.5 INCORPORATION OF ADMINISTRATIVE CODE PROVISIONS BY REFERENCE**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Article by reference and made a part of this Agreement as though fully set forth herein. Consultant 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, Consultant 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 Consultant and/or deducted from any payments due Consultant.

#### **42 DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant 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 Consultant 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 Consultant 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.

#### **43 REQUIRING MINIMUM COMPENSATION FOR EMPLOYEES**

Consultant 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 City's Website at:

[http://www.sfgov.org/site/olse\\_index.asp?id=27459](http://www.sfgov.org/site/olse_index.asp?id=27459). Capitalized terms used in this Article and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Consultant 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, Consultant 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. For the hourly gross compensation portion of the MCO, Consultant shall pay a minimum of \$10.77 an hour beginning January 1, 2006, and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

(b) Consultant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to Consultant'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) Consultant understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Consultant 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, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Consultant fails to commence efforts to cure within such period, or thereafter fails to diligently 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:

- (i) The right to charge Consultant 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;
- (ii) The right to set off all or any portion of the amount described in Subsection (d)(i) of this Article against amounts due to Consultant under this Agreement;
- (iii) The right to terminate this Agreement in whole or in part;
- (iv) In the event of a breach by Consultant of the covenant referred to in Subsection (b) of this Article, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (v) The right to bar Consultant from entering into future Agreements 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) Consultant 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) Consultant 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 Consultant from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Consultant shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subconsultants.

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

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

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of Subsections (a) and (b) of this Article, and may pursue the following remedies in the event of a breach by Consultant 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. Consultant

understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (i) 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; (ii) in the event of a breach by Consultant of Subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (iii) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Consultant arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Consultant also understands that the MCO provides that if Consultant prevails in any such action, Consultant 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 Consultant is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the TJPA for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Consultant later enters into an agreement or agreements that cause Consultant to exceed that amount in a fiscal year, Consultant 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 Consultant and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### **44 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES**

Unless exempt, Consultant 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 by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the City's Website at [http://www.sfgov.org/site/olse\\_index.asp?id=27461](http://www.sfgov.org/site/olse_index.asp?id=27461). Capitalized terms used in this Article and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- (a) For each Covered Employee, Consultant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Consultant 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 Consultant 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) Consultant's failure to comply with the HCAO shall constitute a material breach of this Agreement. TJPA shall notify Consultant 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, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Consultant 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 Consultant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Article. Consultant shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subconsultant of the obligations under the HCAO and has imposed the requirements of the HCAO on Subconsultant through the Subcontract. Each Consultant shall be responsible for its Subconsultants' compliance with this Article. If a Subconsultant fails to comply, the TJPA may pursue the remedies set forth in this Article against Consultant based on the Subconsultant's failure to comply, provided that TJPA has first provided Consultant with notice and an opportunity to obtain a cure of the violation.
- (e) Consultant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying TJPA with regard to Consultant's noncompliance or anticipated noncompliance 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) Consultant 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) Consultant shall keep itself informed of the current requirements of the HCAO.

(h) Consultant shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on Subconsultants and Subtenants, as applicable.

(i) Consultant shall provide 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) TJPA may conduct random audits of Consultant to ascertain its compliance with HCAO. Consultant agrees to cooperate with TJPA when it conducts such audits.

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

#### **45 FIRST SOURCE HIRING PROGRAM**

(a) Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Article by reference and made a part of this Agreement as though fully set forth herein. Consultant 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 Article and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) First Source Hiring Agreement.

- (i) Consultant 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;
  - (ii) Consultant 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;
  - (iii) Consultant agrees to use good faith efforts to comply with the First Source hiring requirements. A consultant may establish its good faith efforts by filling (a) its first available Entry Level Position with a job applicant referred through the First Source Program; and (b) 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 Consultant's employment records.
- (c) Hiring Decisions.
- Consultant 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 Consultant shall require the subconsultant to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Article.

#### **46 EARNED INCOME CREDIT (EIC) FORMS**

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

Failure to comply with any requirement contained in this Article shall constitute a material breach by Consultant of the terms of this Agreement. If within thirty (30) days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Consultant 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.

Any Subcontract entered into by Consultant shall require the subconsultant to comply, as to the subconsultant's Eligible Employees, with each of the terms of this Article.

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

#### **47 MACBRIDE PRINCIPLES—NORTHERN IRELAND**

Pursuant to San Francisco Administrative Code Section 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards

resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco 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 Consultant acknowledges and agrees that he or she has read and understood this Article.

#### **48 DRUG-FREE WORKPLACE POLICY**

Consultant 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. Consultant agrees that any violation of this prohibition by the Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

#### **49 SUNSHINE ORDINANCE**

In accordance with San Francisco Administrative Code Section 67.24(e), Contracts, Bids and Proposals, contractor's bids, responses to requests for proposals 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 benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

#### **50 NONDISCLOSURE OF PRIVATE INFORMATION**

As of March 5, 2005, Consultant 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 Article 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, Consultant agrees to all of the following:

(a) Neither Consultant nor any of its Subconsultants shall disclose Private Information obtained from the TJPA in the performance of this Agreement to any other Subconsultant, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) The Consultant 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 (i) 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 (ii) the law forbids any person from disclosing.

(d) Any failure of Consultant 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 Consultant, or bring a false claim action against Consultant.

## **51 LIMITATIONS ON CONTRIBUTIONS**

Through execution of this Agreement, Consultant acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (a) the termination of negotiations for such contract or (b) three months after the date the contract is

approved by the City elective officer or the board on which that City elective officer serves.

## **52 PROHIBITING USE OF TJPA FUNDS FOR POLITICAL ACTIVITY**

No funds appropriated by the TJPA for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of TJPA funds will cooperate in audits conducted by the Controller to verify that no TJPA funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant 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. Consultant agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Consultant violates the provisions of this Article, the TJPA may, in addition to any other rights or remedies available hereunder (a) terminate this Agreement, and (b) prohibit Consultant from bidding on or receiving any new TJPA contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this Article.

## **53 RESOURCE CONSERVATION**

Chapter 5 of the San Francisco Environment Code, Resource Conservation, is incorporated herein by reference. Failure by Consultant to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of this Agreement.

## **54 TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN**

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

## **55 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC**

Consultant 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. Consultant 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 Consultant 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.

## **56 GRAFFITI REMOVAL**

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

Consultant shall remove all graffiti from any real property owned or leased by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Article is not intended to require a Consultant to breach any lease or other agreement that it may have concerning its use

of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include (a) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (b) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.).

## **57 FTA REQUIREMENTS**

The provisions contained in "FTA Requirements for Professional Services Contracts," included as Appendix C, are incorporated into this Agreement, and Consultant agrees to abide by such provisions. Such provisions shall be supplementary to the provisions in this Agreement and interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

## **58 PROMPT PAYMENT TO SUBCONTRACTORS**

No later than ten (10) working days from the date of Consultant's receipt of progress payments by the TJPA, the Consultant shall pay any subconsultants, if any, for work that has been satisfactorily performed by said subconsultants in accordance with the provision in Section 7108.5 of the California Business and Professions Code. The ten (10) days is applicable unless a longer period is agreed in writing. Any violation of Section 7108.5 shall subject the violating Consultant or subconsultants 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 30 days of receipt of each payment may take place only for good cause and with the TJPA's prior written approval. Failure to provide such evidence shall be cause for the TJPA to suspend future progress payments



to Consultants. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment, or nonpayment by the Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. Within thirty (30) days of satisfactory completion of all work required of the subconsultants, Consultant shall release any retention withheld to the subconsultants.

If the Consultant does not pay its subconsultants as required under the above paragraph, it shall pay interest to the subconsultants at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

## **59 CERTIFICATION OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION**

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

The 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 TJPA Board. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

## **60 EFFECTIVE DATE OF THE AGREEMENT**

This Agreement shall become effective upon full execution, following approval of this Agreement by TJPA Board by resolution, and when the Chief Financial Officer has

certified to the availability of funds for the first work order or NTP and Consultant has been notified in writing via an NTP.

## **61 QUALITY MANAGEMENT SYSTEM**

The TJPA has established a Quality Management System (QMS) for the Program that requires that all projects within the Program are planned, designed, and constructed with the highest regard for quality, and which includes requirements established by the FTA for quality assurance and quality control applicable to the Project. The QMS Manual is available on the TJPA's website at:

[www.transbaycenter.org/TransBay/content.aspx?id=311](http://www.transbaycenter.org/TransBay/content.aspx?id=311). Within fifteen (15) days of NTP, the Consultant shall submit to the TJPA a copy of its certified ISO 9001:2000 quality management program and a specific quality assurance plan for the Project for approval by the TJPA. If the Consultant does not have a certified ISO 9001:2000 quality management program, Consultant shall submit its quality assurance plan for the Project that complies with the Program QMS. Upon TJPA approval, the Consultant may perform its services according to its certified program and approved quality assurance plan for the Project, provided that its program and plan meet the requirements called for in the Program QMS. The Consultant shall comply with all requirements of the QMS, shall maintain quality records and provide such records to the TJPA as required by the TJPA, shall submit to and cooperate in audits by the TJPA of the Consultant's and its subconsultants' performance and delivery of services, and shall take corrective actions to correct deficiencies in the quality of Consultant's performance and delivery of services and its design products.

## **62 INTERN MENTORING PROGRAM**

The Consultant shall cooperate with the TJPA to either expand its adopted intern mentoring program through a professional engineer/engineering organization's intern mentoring program, or the Consultant shall create an intern mentoring program specifically for this Project. The purpose of the intern mentoring program shall be to involve local high school youth or residents interested in exploring professional careers in engineering, construction management, or related professional services, into the professional services work of the Consultant on the Project. The intern mentoring program will be designed to engage, inform, and challenge youth, and to enlighten and motivate students toward professional careers in engineering, construction

management, and related professional services. The program will include opportunities throughout the period of the Project for local high school youth or local residents to participate as a volunteer or paid intern in the conduct of substantive professional services work of the Consultant on the Project. The Consultant will contact and seek intern applicants from local high schools and community-based organizations. The Consultant shall report to the TJPA those individuals participating in the intern mentoring program, and their activities on the Project.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in  
San Francisco, California on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

TJPA

CONSULTANT

RECOMMENDED BY:

\_\_\_\_\_

APPROVED:

\_\_\_\_\_

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

APPROVED:

\_\_\_\_\_

APPROVED AS TO FORM:  
Dennis J. Herrera  
City Attorney

By \_\_\_\_\_

Deputy City Attorney

By \_\_\_\_\_

Name: Olivia Chen  
Title: Senior Vice President  
Metcalf & Eddy, Inc.  
1390 Market Street, Suite 1100  
San Francisco, CA 94102

By \_\_\_\_\_

Name:  
Title:

By \_\_\_\_\_

Name:  
Title:



## **ATTACHMENT 1 – SCOPE OF SERVICES**

### **Detailed Scope of Work for Basic Services (Task 1 through 9) and Additional Services (Task 10) for the Transbay Transit Center Program Phase 1**

This section defines the scope of work for professional design and engineering services consistent with Agreement No. 07-03-ENG-000 provided to Metcalf & Eddy (the Consultant) by Transbay Joint Powers Authority (TJPA) for the Transbay Transit Center Program (Phase 1) – Relocation of Utilities Project (Project). This scope of work is for the Project limits generally shown in Figure 1-1, which references the expected footprint of utility relocation work; however, utility research and evaluation may extend beyond these limits as necessary. This scope of work is intended to define the work required for the engagement from project initiation to completion of the warranty period.

#### **TASK 1: PROJECT INITIATION**

Within two (2) weeks of Notice to Proceed, the Consultant will prepare a draft Project Work Plan (PWP), which will include a Project team organization chart, a detailed scope of work, resources loading, budget estimates, project Gantt chart list of deliverables, meeting and review schedules, quality management review schedule, record management requirements, and communications, reporting and CADD procedures.

Subtasks include:

- 1.1. Conduct a kick-off meeting; prepare meeting agenda and minutes.
- 1.2. Prepare draft PWP for review and approval by TJPA.
- 1.3. Meet with TJPA and PMPC for comments on draft PWP.
- 1.4. Finalize PWP including scope of work, budget and project schedule.
- 1.5. Participate in Project orientation and training with TJPA staff, including:
  - Training on Constructware
  - Training/orientation on Program CADD standards
  - Training/orientation on TJPA/PMPC document control procedures and development of project-specific quality management systems (QMS)
  - Integration of the QMS
  - Communication hierarchy and protocol
  - Orientation on health and safety plan

#### **Deliverables**

All deliverables shall include 20 hard copies and 4 electronic (3 PDF and 1 native).

1. Draft Work Plan
2. Final Work Plan
3. Draft QMS Plan
4. Final QMS Plan

## TASK 2: UTILITY DESIGNATION AND LOCATION

The utility relocation work for the Project is generally divided into two categories: 1) publicly owned utilities (P); and 2) private or investor-owned utilities (I), as indicated in Table 2.1.

**Table 2.1 – List of Utilities at Project Site<sup>1</sup>**

No.	Utility	Ownership	Design by
<b>Wet (piped) Utilities</b>			
1	Sewer	P	C
2	Stormwater	P	C
3	Water	P	C
4	AWSS	P	SF
5	Steam (NRG)	I	I
<b>Dry Utilities</b>			
6	Gas & Electric (PG&E)	I	I
	<b>Telecom/Cable</b>	I	I
7	AT&T	I	I
8	Pac Bell	I	I
9	Comcast	I	I
10	Abovenet Communications	I	I
11	Sprint	I	I
12	WILTEL	I	I
13	Communications CA	I	I
14	XO California Inc.	I	I
15	Point to Point	I	I
16	San Francisco Thermal	I	I
17	Teleport Comm – SFO	I	I
18	Time Warner BFD 2	I	I
	<b>Fiber Optic</b>	I	I
19	Qwest	I	I
20	Qwest Comm	I	I
21	Global Crossings	I	I
22	Level 3 Comm-Calif	I	I
23	Looking Glass Networks, Inc.	I	I
24	RCN	I	I
25	Verizon	I	I
26	SF Fire & Police	P	C
27	SF Streetlight	P	C
28	SF Emergency – Com (Mayor)	P	C
29	SF Muni – Underground	P	C
30	SF Muni – Overhead	P	C
31	SF Traffic Signal (wire & fiber optic)	P	C
32	SF Hetch Hetchy Power	P	C

**Notes:**

1. Other utilities not listed considered as Additional Services.

C = Design Consultant

I = Investor owned or design by Investor

P = Publicly owned

SF = San Francisco City Departments

This task will be performed in accordance with the American Society of Civil Engineering (ASCE) Standard Guidelines for the "Collection and Depiction of Existing Subsurface Utility Data (Standard C1/ASCE 38-02)." This task will designate to the greatest extent possible, in accordance with the ASCE guidelines, the utility location (horizontal location) provided by TJPA and utility service providers where accessible, and obtain the horizontal and vertical location of critical utility lines during the preliminary design phase to better define the most feasible alternative under Subtask 4.3 – Preliminary Engineering Report (PER).

A two-step approach for subsurface utility engineering (SUE) field operations will be performed. The SUE Step I utility data will include data provided to the Consultant for verification, revision, and/or confirmation. The Step I work is intended to achieve ASCE quality levels (QL) B and C insofar as practical without using subsurface excavation. The Step I designated utility data will be used by the design team to formulate and evaluate alternative relocation strategies, prepare the PER and identify critical locations for detailed design.

The SUE Step II work involves utility locating using probes and vacuum excavation performed at critical locations where utility conflicts are a concern for detailed design purposes. Utility location establishes three-dimensional coordinates, with vertical tolerances of approximately 0.05 foot based on referenced benchmarks. A written log of each pothole will be prepared, derived elevations are transcribed onto CADD reference files, and "locate" points are mapped to QL A on the plans. The Consultant will identify pothole locations, with TJPA's approval, prior to securing permits and conducting field operations.

## 2.1 Detailed Step I subtasks:

2.1.1 Meet with the TJPA and PMPC project management team to review information developed by TJPA and develop the task-specific scope of work, budget, and work schedule for Step I SUE operations.

2.1.2 Deleted.

2.1.3 Contact, verify and update utility data with service providers as shown in Table 2.1 including but not limited to San Francisco Public Utilities Commission (SFPUC) (water and sanitary sewer), Department of Public Works (DPW) (storm drainage), PG&E, AT&T, Muni, and telecommunication and steam service providers.

2.1.4 Provide designating equipment, personnel, traffic control and supplies for SUE field operations for utility locating.

2.1.5 Surveying & Mapping: designate, record and field mark and field survey the horizontal location of existing underground utilities (SUE Step I) including but not limited to water, wastewater and storm drainage, PG&E, AT&T and telecommunications, steam systems, and Muni railway and traffic signal underground components. The survey will be tied horizontally to the city of San Francisco street monuments; elevations will be based upon San Francisco City Datum. Mapping will be in AutoCAD, version 2006.

2.1.5.1 Perform topographic survey of the public streets and sidewalks within the following area: Northeasterly side of Beale Street to the southwesterly side of Second Street and the southeasterly side of Howard Street to the northwesterly side of Mission Street (generally shown in Figure 1-1). Visible sidewalk and street features will be located with spot elevations. Rim elevations of all sewer manholes and catch basins, where accessible, will be measured. Back of walk, top of curb, flow line, edge of



parking strip and center of street elevations will be taken every  $\pm 50$  feet. Survey will be tied both horizontally and vertically to previous surveys done by or for the City of San Francisco for this Project. Coordination with underground utility locator for designating underground utilities.

2.1.5.2 Perform underground utility designation, which will include metallic utilities including water, auxiliary water supply system (AWSS), electric, gas, steam and non-metallic utilities with tracer wire visible. Sewers and storm sewers with a minimum of 4-in. access will be located by inserting a transmitter. The local area is swept and utilities are field marked using electromagnetic field induction method and applying signals directly or indirectly. Field conditions including soil conditions, utility congestion, buried rails, abandoned pipes, and availability of access points for making utility contacts might affect the accuracy of the results beyond the 0.05 ft tolerance.

2.1.5.3 The location of fiber optic lines, which cannot be traced, will be obtained from the service providers' record drawings.

2.1.5.4 Utility location will include accessible manholes, basins and vaults where bottom and pipe/conduit elevations can be measured from surface reference points.

## 2.2 Detailed Step II subtasks:

2.2.1 Review critical utility lines and locations of potential conflicts with Consultant's design team, TJPA and PMPC, and determine level of effort required for probing vacuum excavation, potholing, and surveying, and developing a work schedule. Vacuum excavation techniques will be utilized where necessary to locate underground pipes, footings, foundations, vaults, or other obstructions in areas of critical interference. For estimating purposes, the number of vacuum excavations is assumed to be 50 (excavations exceeding 50 locations would be covered under Additional Services), and the depth of the potholes will be an average of 8 ft.

2.2.2 Obtain necessary permits for working on public rights-of-way and private properties, and coordinate with affected service providers.

2.2.3 Tie horizontal and vertical elevations to a minimum of two checked benchmarks or available datum. Obtain the following pothole information:

- Elevation of top of utility tied to datum of the furnished plan.
- Horizontal location referenced to project coordinate datum.
- Outside diameter of pipe or width of duct banks and configuration of non-encased multi-conduit systems. Ten locations are assumed.

## 2.3 Provide geotechnical engineering-related services, which include:

2.3.1 Review of available geotechnical, geological, and seismological data. Evaluate existing data and prepare a summary of finding to develop field exploration program. Develop field exploration program consisting of 10 borings, with 5 borings to 30 ft deep, and 5 borings to 50 ft deep. The soil samples will be collected using Standard Penetration Test, Modified California in Shelby tubes or in steel or brass liners. Bulk soil samples will be collected as appropriate. The soil samples will be tested for moisture content, Atterburg limits, sieve analysis, unconfined compression, and corrosivity. A

- geotechnical engineering analysis will be performed, the conclusions and recommendations will be developed, and a report will be submitted to TJPA.
- 2.3.2 Geotechnical engineering support during preliminary engineering phase of the Project.
  - 2.3.3 Geotechnical engineering support during design phase of the Project including preparing and/or reviewing plans and specifications.
  - 2.3.4 Construction support services related to geotechnical engineering and site visits.

### **Deliverables**

All deliverables shall include 20 hard copies and 4 electronic (3 PDF and 1 native).

- 1. Step I utilities designation maps (QL B and QL C levels) and site survey map.
- 2. Step II utilities designation and location maps (QL A, QL B, and QL C) final versions.

### **TASK 3: AGENCY INTERACTION AND DATA MANAGEMENT**

The Consultant will interact with utility agencies and service providers to collect, review and update utility information to reflect existing conditions. Subtasks include:

- 3.1 Develop utility plan and section drawings and composites for each utility.
  - Obtain structural and foundation information (spatial coordinates) for the underground structures, elevated roadways and future building development footprints as available from the PMPC and identify barriers and conflicts not only for the new Transit Center but also for
    - 3.1.1 Buildings and structures requiring temporary or permanent shoring, soil nailing or tie backs.
    - 3.1.2 Foundation or soil stabilization conflicts.
- 3.2 Coordinate with utility service providers and review and verify utility data through weekly meetings and information exchange.
- 3.3 Conduct monthly coordination meetings/workshops over a six month period with all utility service providers and disseminate the most current utility map bi-weekly via FTP site to facilitate early identification of conflicts and interferences.
- 3.4 Prepare up to three presentations for the TJPA Board of Directors and attend up to three community meetings (6 total) and other functions.
- 3.5 Provide data management in accordance with the TJPA/PMPC document control procedures.

### **Deliverables**

All deliverables shall include 20 hard copies and 4 electronic (3 PDF and 1 native).

- 1. Utility plan and section drawings of individual utilities and composites for utility agency reviews and verification and for use by Consultant. Approximately fifty (50) cross sections will be developed.
- 2. Monthly progress reports and presentations to the Committee for Utility Liaison on Construction and Other Projects (CULCOP) and TJPA.

3. Minutes of weekly meetings with TJPA utility relocation task force, a subcommittee of CULCOP.
4. Records of contacts and minutes of meetings with each utility service provider will be maintained according to the TJPA/PMPC document control procedures.

#### **TASK 4: DESIGN ANALYSIS AND RECOMMENDATIONS**

Design analysis will be limited to three alternatives for Phase 1 of the Program, and includes the following subtasks.

- 4.1 Update PWP including methodology, tasks, schedule, and man-hour estimates for the design analysis phase, and submit to TJPA for approval.
- 4.2 Perform relocation design analysis:
  - 4.2.1 Estimate utility service loadings for the Transit Center demands.
  - 4.2.2 Coordinate with SFPUC and DPW on future water demand, pressure, and service goals and establish relocation design criteria. DPW will design the AWSS.
  - 4.2.3 Develop hydraulic models for wet utilities (water, sanitary sewer, storm sewer) for appropriate sizing.
  - 4.2.4 Develop relocation concepts and alternatives including a pre-design workshop with TJPA, PMPC, and service providers.
  - 4.2.5 Analyze alternative relocation strategies with TJPA, PMPC and service providers input.
  - 4.2.6 Evaluate and compare three relocation alternatives for Phase 1 of the Program, including service capacities, construction critical path scheduled phasing (with assumptions and contingencies), opinion of probable costs of construction, and construction packaging.
  - 4.2.7 Present findings to the TJPA and PMPC, and service providers, compare relocation alternatives, and select preferred alternative for design.
- 4.3 Develop Preliminary Engineering Report (PER)
  - 4.3.1 Upon completion of preliminary design analysis, recommend the most feasible alternative to TJPA and prepare a draft PER. The PER will summarize existing utility system location, operation, sufficiency, need for expansion and/or for improvements, and construction constraints. The PER will also identify and outline key factors to guide the development of conflict avoidance, relocation alternatives, and opinion of probable cost estimates for each alternative. The PER will include pros and cons analysis and existing and future cross sections and plan views and cost estimates of the recommended utility systems. A draft of the PER will be provided for reviews by TJPA, PMPC, and utility agencies.
  - 4.3.2 Incorporate TJPA, PMPC, and agency comments and finalize the PER.
- 4.4 Develop a list of required permit applications including permitting requirements. Work with SFPUC, DPW, San Francisco Fire Department, San Francisco Police Department, San Francisco Department of Parking and Traffic, San Francisco Department of Building Inspection, and the Mayor's Office to obtain permit requirements for construction of utility relocations.

- 4.5 Review bid strategy, construction phasing, and construction packages with TJPA and PMPC. Phasing or construction sequencing of specific utility relocation will be outlined in a critical path schedule with assumptions and contingency strategies so that the work will be completed within planned schedule and budget. Construction sequencing will be included for each alternative considering:
- East-west utilities in Minna and Natoma streets adjacent to the expanded Transit Center building perimeter wall.
  - North-south utilities crossing the Transit Center in First, Fremont, and Beale streets, including the redirection of any gravity lines to avoid crossing the Transit Center footprint.
  - The dry utilities and the rest of the wet utilities (pressure and any remaining gravity).
- 4.6 Provide legal descriptions, scope of work for each utility, required schedule and maps for the execution of required legal documents (easements, dedications, joint trench agreement) by TJPA.
- 4.7 Revise PWP and resources loading, schedule, and the fee estimate for the Consultant's work during the design and the construction phase based on the selected alternative. Submit revised PWP for TJPA's approval and re-allocation and/or revision of budget from Task 5 through Task 9 accordingly.

### **Deliverables**

All deliverables shall include 20 hard copies and 4 electronic (3 PDF and 1 native).

1. Preliminary Engineering Report: Provide draft of PER for TJPA and agencies' review and comment as well as Final PER. This report is to include the Consultant's estimate of probable relocation costs, critical path schedule, and recommended phasing of relocation construction (schematic design level). Submit PER incorporating TJPA and utility service providers comments.
2. Comment on the review of the legal documents that authorize scope of work and memorialize process by which utilities will be relocated and/or connected.
3. Tabulation of permit requirements for project construction.

### **TASK 5: DESIGN PHASE**

Design phase work will be completed in two parts: 1) Performance of the detailed design of the wet utilities (water, sanitary sewer and storm drainage systems) and the dry utilities owned by the City, 2) Coordination with the investor-owned utility service providers on their design of required relocation work. The Consultant will design all wet utility relocations; all City-owned dry utility relocations; and will coordinate the design of all investor-owned utility relocations and incorporate these designs into the Contract Documents. Consultant is not responsible for the specific design of investor-owned utilities as part of this Agreement. The design at 50%, 90%, and 100% (Construction Documents) level will be developed in accordance with the matrix shown in Table 5.3. (Design for AWSS will be performed by DPW, and incorporated into the design by the Consultant.)

**Table 5.3: Design Delivery Schedule**

<b>Design Submittals</b>	<b>Plans</b>	<b>Specifications</b>	<b>Cost Estimate</b>
<b>Preliminary Design (Pre-50%)</b>	<ul style="list-style-type: none"> <li>• Alignment definition</li> <li>• Alignment profile</li> <li>• Utility sizing</li> <li>• Define prelim. const. sequencing approach (temp. and permanent utility services)</li> <li>• Mitigation sites</li> </ul>	<ul style="list-style-type: none"> <li>• Outline specification</li> <li>• Material selection</li> </ul>	Cost estimate at preliminary design level
<b>50% Design</b>	<ul style="list-style-type: none"> <li>• Conflicts resolution approach</li> <li>• Alignment cross sections</li> <li>• Interim service plans (temp and permanent services during construction)</li> <li>• Demolition plans for interim services</li> </ul>	<ul style="list-style-type: none"> <li>• Standard specifications</li> <li>• Division 01 specification</li> <li>• Outline Special Conditions</li> </ul>	Cost estimate at 50% design level
<b>90% Design</b>	<ul style="list-style-type: none"> <li>• Civil details</li> <li>• Structural details</li> <li>• Electrical details</li> <li>• Mechanical details</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed specifications</li> <li>• Special Conditions</li> <li>• Mitigation measures and monitoring requirements</li> <li>• Traffic control requirements</li> <li>• Permitting requirements</li> </ul>	Cost estimate at 90% design level
<b>100% Design</b>	<ul style="list-style-type: none"> <li>• Final design construction plans including cover sheet, site location index, abbreviations and notes site layout</li> <li>• Demolition plans</li> <li>• Civil, structural, mechanical and electrical plans and details</li> <li>• Construction sequencing plans</li> <li>• Environmental mitigation plans</li> <li>• Traffic circulation plans</li> </ul>	<ul style="list-style-type: none"> <li>• Final Construction Documents</li> <li>• Division 01</li> <li>• General conditions</li> <li>• Special provisions</li> <li>• Geotechnical report</li> </ul>	Final cost estimate at 100% design level

Design phase services are estimated to include 200 sheets of construction drawings complete with notes, legends, site plans, profiles cross sections, details, specifications, and cost estimates. The design of sewage or stormwater pumping systems and AWSS cistern relocations is not included in this scope of work. No bridge designs are anticipated or budgeted for street crossings over the rail box or other areas.

Subtasks include:

- 5.1 Based on the PER, develop preliminary design submittal for TJPA and PMPC reviews.
- 5.2 Incorporate TJPA and PMPC review comments and submit the preliminary design for review by service providers and permitting agencies.

- 5.3 Review comments with TJPA and PMPC, resolve design issues, and finalize the design concept at preliminary design level as shown in Table 5.3. After the approval of the alignments and profiles of major utilities, the changes to the design concept will require TJPA Project Manager's written authorization as Additional Services.
- 5.4 Prepare 50% design plans and specifications for submittal to TJPA and agency for review (Table 5.3).
- 5.5 Incorporate review comments from 50% design and develop 90% design, plans and specifications for TJPA, PMPC, and agencies' reviews (Table 5.3).
- 5.6 Incorporate review comments and finalize Construction Documents.
- 5.7 Conduct weekly coordination meetings with utilities relocation project team, bi-weekly meetings with TJPA/PMPC, and monthly meetings with CULCOP.

### **Deliverables**

All deliverables shall include 20 hard copies and 4 electronic (3 PDF and 1 native).

1. Meeting minutes for meetings with TJPA/PMPC/CULCOP, and utility agencies and service providers.
2. Construction Documents: Provide preliminary engineering, 50%, 90% and final 100% construction packages including utility plans, technical specifications, details and traffic control plans. The TJPA will separately authorize each phase following its review and comment period. The design will be based on one bid package with the possibility for multiple construction phases.
3. Cost estimates: Provide Consultant's estimate of probable utility relocation costs and quantities at preliminary engineering, 50%, 90%, and final (100%) submittals. These estimates are to be submitted within ten working days of each progress submittal.

### **TASK 6: PERMITTING SUPPORT**

The Consultant will prepare and coordinate the submission of permit applications based on the construction strategy recommended in the PER. Permit applications in excess of three will be included as Additional Services. Permitting requirements to be met by the Construction Contractor will be included in the construction specifications' Special Conditions.

Subtasks include:

- 6.1 Prepare checklists of permitting requirements for each permitting agency.
- 6.2 Conduct pre-application meeting jointly and individually with each agency and review submittal package.
- 6.3 Deleted.
- 6.4 Prepare permit applications.
- 6.5 Deleted.
- 6.6 Facilitate incorporation or resolution of permit conditions in contractor's bid documents.

### **Deliverables**

1. Permit application packages as outlined in the PER.
2. Monthly progress reports on permitting status.

## **Task 7: BIDDING PHASE**

During the bidding phase, subtasks are presented below. For budgetary purposes, one bidding phase is included.

7.1-7.2-7.3 Deleted.

7.4 Participate in and assist TJPA with a pre-bid conference.

7.5 Prepare addenda to the bid documents to interpret, expand or clarify the bid documents including allowable substitutions of materials and equipment.

### **Deliverables**

All deliverables shall include 20 hard copies and 4 electronic (3 PDF and 1 native).

1. Addenda to the bid document.

## **TASK 8: SERVICES DURING CONSTRUCTION**

In this Task, Consultant will be responsible for performing the following services for the Consultant-designed utilities. Private utility agencies shall be responsible for work relating to their respective utility systems. Consultant will provide coordination to ensure consistency if such services are needed for the construction of the investor-owned utilities.

8.1 Deleted.

8.2 Interpret the Contract Documents and furnish original and one copy of all documents in CADD-produced reproducible form of all clarification on the drawings and other documentation prepared by the Consultant for issue by the TJPA.

8.3 Review requests for information (RFIs), submittals, mark-ups, substitutions, and change requests from the Construction Contractor as specified in the Contract Documents, and advise the TJPA on Construction Contractor-proposed substitutions, revisions or changes.

8.4 Deleted.

8.5 Prepare drawings, specifications that may be necessary for the Construction Manager to prepare change orders for approval by TJPA and execution. The TJPA will prepare and effect any required contract modifications and change orders.

8.6 Deleted.

8.7 Schedule with subconsultants (design discipline/engineers) weekly visits to the project site as appropriate to the stage of construction to observe the progress and quality of the work; defects and deficiencies in the work; determine in general if the work is being performed in accordance with the Contract Documents. These visits are not to be construed as inspection. The Consultant shall prepare a written report of each site visit, and shall advise and report to the TJPA in writing of any observed deviations from the Contract Documents, or issues of concern.

The Consultant, as part of Basic Services, will assign a primary and an alternate senior engineer from its design team to be key representatives; one of the two key representatives will be available within two (2) hours of receiving notice. Throughout the construction phase, these key representatives will be authorized to render decisions in design and construction coordination matters. Specialty consultants, as defined in Article 4.1.1, are required to perform similar on-site services for the contract period, and it is the

Consultant's responsibility to coordinate the availability of other consultants and schedule such on-site services.

- 8.8 Attend project meetings throughout the construction phase scheduled weekly and as requested by the TJPA and PMPC as Additional Services. It is TJPA Construction Manager's responsibility to coordinate with the Consultant in matters pertaining to additional meetings. The Consultant and its subconsultants shall coordinate and cooperate with the Construction Manager to schedule visits to avoid duplication of work by both parties.

8.9-8.10-8.11 Deleted.

- 8.12 When requested by TJPA, advise the TJPA to reject work that the Consultant believes in good faith does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable to implement the intent of the Contract Documents, the Consultant will advise the TJPA to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed.

- 8.13 Review proposed procedures and results of testing and special inspection procedures that are required by the Contract Documents, and report to the TJPA. Review and advise the TJPA on special testing and/or inspection that may arise due to field conditions or as requested by appropriate authorities. It is understood that separate contracts for testing and special inspection consultants, laboratories or agencies will be arranged by the Construction Manager for approval by the TJPA. Attend inspections with appropriate consultants when requested to do so by the TJPA.

8.14 Deleted.

- 8.15 Review and advise the TJPA regarding the approval of shop drawings, laboratory reports, samples, wiring and control diagrams, schedules and lists of materials and equipment, and other descriptive data pertaining to specified materials, equipment and storage thereof.

Such review shall be made by the Consultant upon receipt of submittals that have been dated, signed and approved by the Consultant, except where otherwise directed by the TJPA. The Consultant may note the exceptions taken or not taken, the corrections necessary, and the resubmittals required, and will return the documents or materials with such notations to the Construction Contractor as directed by the TJPA. The following statement shall be included in Contract Document provisions: "The Consultant's review of the Construction Contractor's submittals does not alter the Consultant's responsibility for errors and omissions in such submittals."

The Consultant shall review and advise the TJPA as to the approval of substitutions proposed by the Construction Contractor, including advice as to whether or not acceptance of the substitutions will require substantial revision to the Contract Documents. Additional costs incurred by the Consultant for substantial revision, as determined by the TJPA, of documents to accommodate the substitutions shall be compensated under Additional Services.

- 8.16 In conjunction with the Construction Manager and Construction Contractor, participate in a final walk through, review the final punch list, recommend changes, and advise the TJPA as to the approval of work performed by the Construction Contractor.

8.17 Moved to Additional Services, Subtask 10.21.



- 8.18 Assist the TJPA's maintenance and operations personnel in conducting Final Warranty Inspections at the end of the warranty period.

Consultant shall observe and review the condition of completed work, and provide assistance to the TJPA to develop a list of Corrective Warranty Work and a schedule for completion for systems, components, and equipment that have failed to meet the specified performance criteria, following Final Completion.

The Final Warranty Inspection shall take place no earlier than the eleventh (11<sup>th</sup>) month following Final Completion and no later than the twelfth (12<sup>th</sup>) month following Final Completion.

In the event that systems, components and equipment fail to meet the specified performance criteria at any time prior to the Final Warranty Inspection, Consultant shall observe and review the condition of completed work, and provide assistance to the TJPA to develop a list of Corrective Warranty Work and a schedule for completion.

## **TASK 9: MITIGATION MONITORING AND REPORTING**

The Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) for the Transbay Program was certified by the San Francisco Redevelopment Agency, the San Francisco Planning Commission, and the Peninsula Corridor Joint Powers Board in late April 2004. The FEIS/EIR identified mitigation measures required to minimize impact to the existing environment, and the stipulations are described in the "Memorandum of Agreement and Execution by the Federal Transit Administration, the California State Historical Preservation officer for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project in San Francisco County, California."

The FEIS/EIR mitigation measures and a framework for their implementation were included in the Program's Mitigation Monitoring and Reporting Program (MMRP), prepared pursuant to the requirements of Section 21081.6 of the California Public Resources Code. The MMRP was adopted by the TJPA Board on April 22, 2004.

These mitigation measures cover the entire Transbay Transit Center Program including the construction of the Transit Center, the Caltrain Downtown Extension and other auxiliary projects. This task is limited to the area impacted by the Relocation of Utilities under this Agreement generally shown in Figure 1-1, relates to the construction of Phase 1 of the Program.

Subtasks include:

- 9.1 Review MMRP requirements and commitments.
- 9.2 Review MMRP database and identify locations of concern where construction impact will likely occur, including mitigation of effects on the Second and Howard Streets Historic District and protective measures for the Rincon Point/South Beach Historic Warehouse Industrial District, if applicable.
- 9.4 Implement MMRP relevant to this Project including:
  - 9.4.1 Incorporating specific MMRP requirements for utility coordination into the construction plans and specifications. For hazardous materials, this will include review of the environmental investigation reports prepared in accordance with Mitigation Measure HMC 02 (Site History Report, Sampling and Analysis Work Plan, and Field Investigation Report). Detailed procedures for management of soil and groundwater will be incorporated into the specifications in accordance

with Mitigation Measures HMC 01, HMC 03 through HMC 06 and HMC 08. Dewatering wells would be designed in accordance with Mitigation Measure HMC 07. Specifications for investigation and abatement of asbestos-containing materials would be required in accordance with Mitigation Measure HMC 09. Other construction safety requirements related to hazardous materials would be included in the specifications in accordance with these and other mitigation measures.

9.4.2 Providing monitoring support to the TJPA during construction.

9.4.3 Providing coordination, documentation and monthly reporting to support the Transit Center A/E firm under the MMRP.

9.4.4 Preparing final report on MMRP upon project closeout.

### **Deliverables**

1. Mitigation plan and specification to be included in the bid package.
2. Monthly MMRP implementation progress reports.
3. Final report, upon project closeout on MMRP pursuant to Section 21081.6 of California Public Resources Code.
4. Database on identified mitigation measures, locations, and status of implementation.

### **TASK 10: ADDITIONAL SERVICES**

Additional Services are the services in addition to the Basic Services of this Agreement. The Consultant shall not proceed with any Additional Services without the written authorization of the TJPA. The written authorization to perform Additional Services must include a statement describing the services as Additional Services. Compensation shall be based on a pre-approved negotiated budget estimate based on time and materials.

Additional Services include the following:

- 10.1 Develop and analyze additional relocation alternatives beyond the three alternatives analyzed as part of the PER.
- 10.2 Provide services for utility relocation due to unknown conditions or beyond the construction area (project limits generally shown in Figure 1-1) of the Transit Center building including surveying, utility designation, geotechnical investigation, data management, utility locations, mitigation monitoring, PER, design, construction support, and project closeout, not reasonably required to facilitate utility relocation within the construction area.
- 10.3 Provide services relative to detailed investigation, design, testing, surveys, locations, valuations, inventories, or appraisals of existing conditions, facilities, or equipment, or make measured drawings thereof, or verify the accuracy of drawings or other information furnished by the TJPA or others beyond what is provided in Tasks 1 through 9, including civil, mechanical, structural, electrical, geotechnical investigation, surveying, or underground utility designation and location.
- 10.4 Attend additional public workshops and make Board presentations beyond those described in Tasks 1 through 9.
- 10.5 Provide services required in connection with construction performed by the TJPA, such as secondary relocations necessitated by the design or construction of the Transit

Center building, railbox, or ramps, that are not part of the project work as indicated in Tasks 1 through 9.

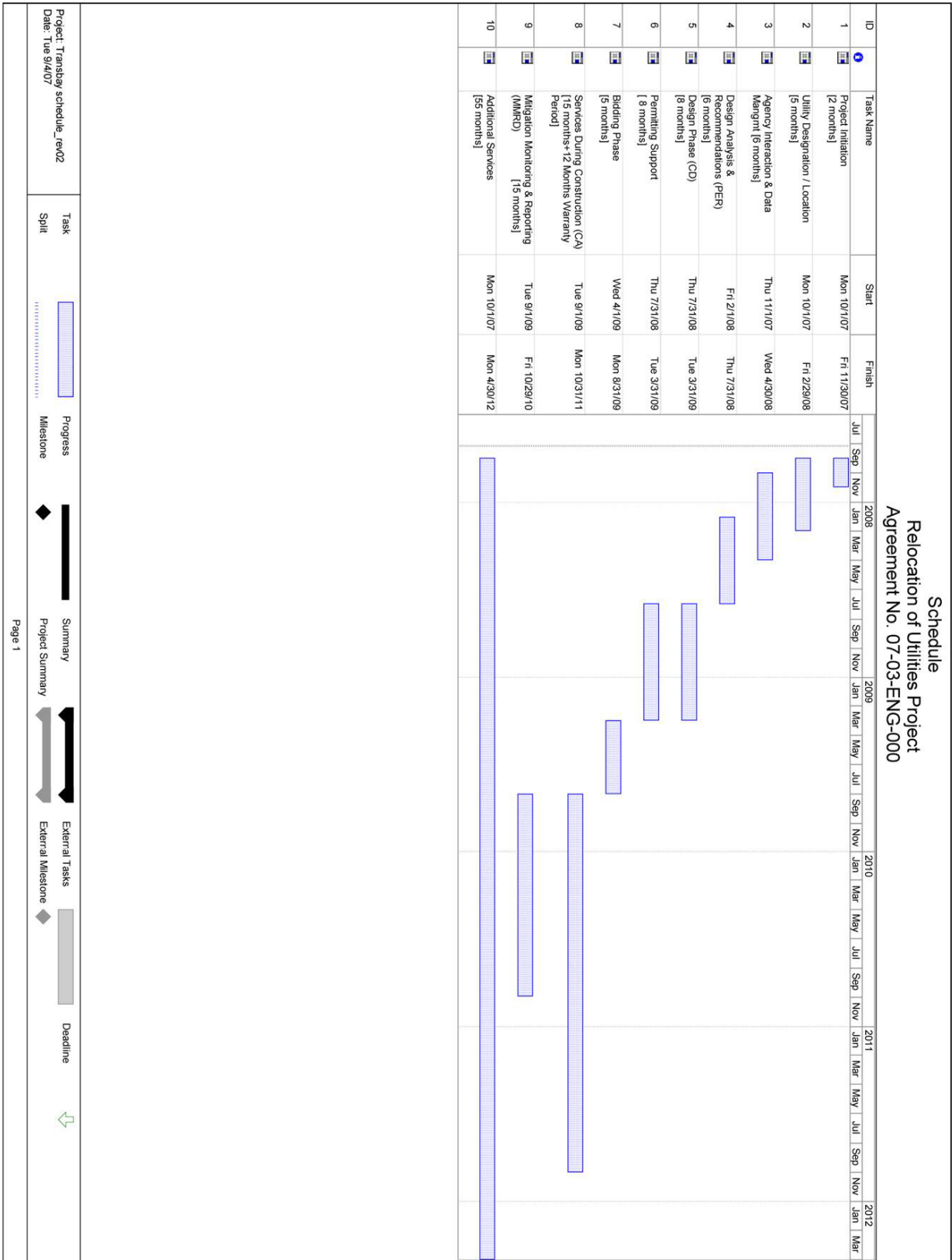
- 10.6 Provide consultation concerning replacement of any work damaged by fire or earthquake other natural or man-made action during construction and furnishing services as may be required in connection with the replacement of such work.
- 10.7 Provide services made necessary by the fault of the Construction Contractor, or by major defects or deficiencies in the work of the Construction Contractor, or otherwise caused by the Construction Contractor or others during construction, excluding the Consultant's subconsultants or employees.
- 10.8 Provide services more than one year after Substantial Completion, unless such services are a result of the Consultant's sole negligence error or omissions.
- 10.9 Provide services, consultation, or scope of work not stipulated as included in this Agreement, and not customarily provided as part of Consultant's Basic Services, which include:
  - 10.9.1 Environmental consulting.
  - 10.9.2 Archaeological or historic resources consulting.
  - 10.9.3 Hazardous materials consulting.
  - 10.9.4 Other specialized consultants requested by the TJPA that were not included on the Consultant's team upon execution of this Agreement.
  - 10.9.5 Structural engineering: time history analysis and/or design of shoring, excavation, bracing and underpinning systems.
- 10.10 Provide services made necessary by reversals of authorizations, approvals or instructions previously given by the TJPA and/or by the permitting agencies, but only such services that are in excess of what would have been required if there had not been such reversals. Such services include the excess work caused by the change of the most feasible alternative after the approval of PER under Subtask 4.3 and the change of permitting requirements after submittal of permit set.
- 10.11 Provide services to incorporate relocation changes to the selected utilities relocation alternatives after the completion and approval of the design of the relocation alignments and profiles under Subtask 5.3.
- 10.12 Provide services in connection with change in scope of the Project directed by the TJPA, but not including changes proposed and recommended by the Consultant.
- 10.13 Deleted.
- 10.14 Perform public outreach services when requested.
- 10.15. The schedule delays beyond the reasonable expectation of the Consultant as shown on Attachment 2 and Article 1.3.3. Such delays are out of control of the Consultant, and requiring additional resources beyond the budget shown from Task 1 through 9, including permitting, reviews by agencies including TJPA, multiple bids, and the construction delays.
- 10.16 Prepare design submittals for the investor-owned utilities upon request by TJPA and the owner of the utility systems.
- 10.17 Provide bid support beyond the Basic Services.

- 10.18 Upon award of a construction contract, consolidate a set of Construction Documents with all addenda, and incorporate accepted or rejected alternates into appropriate specification sections or drawing sheets. Provide TJPA with a conformed "For Construction" Drawing Set and Project Manual including specifications.
- 10.19 Review additional RFIs.
- 10.20 Review additional shop drawings.
- 10.21 Prepare record drawings showing changes and relations in the work made during construction based on marked-up prints, drawings and other data furnished by the Construction Contractor to the Consultant.
- 10.22 Provide construction phase services additional support.



Figure 1-1, Utility Map

## ATTACHMENT 2 – SCHEDULE OF SERVICES





## **ATTACHMENT 4**

### **TJPA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS**

#### **CALTRANS EXHIBIT 10-I**

**May 5, 2006**

#### **NOTICE TO BIDDERS/PROPOSERS**

#### **DISADVANTAGED BUSINESS ENTERPRISE INFORMATION**

The Transbay Joint Powers Authority (the "Authority") has not established a DBE Availability Advisory Percentage for this Agreement. However, bidders/proposers are encouraged to obtain DBE participation for this Agreement.

#### **1. TERMS AS USED IN THIS DOCUMENT**

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "bidder" also means "proposer" or "offerer."
- The term "Agreement" also means "Contract."
- Authority also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

#### **2. AUTHORITY AND RESPONSIBILITY**

A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.") The Contractor should ensure that DBEs and other SBs have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

C. Meeting the DBE Availability Advisory Percentage is not a condition for being eligible for award of the Agreement.

#### **3. SUBMISSION OF DBE INFORMATION**

The Authority's "Bidders/Proposers Information Request Form" will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.



#### **4. DBE PARTICIPATION GENERAL INFORMATION**

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR 26, and the Authority's DBE program developed, pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55, that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

#### **5. RESOURCES**

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidders/Proposers may call (916) 440-0539 for web or download assistance.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.

- Click on the link in the left menu titled [Find a Certified Firm](#).
- Click on [Query Form](#) link, located in the first sentence.
- Click on [CUCP Database \(Certified DBEs\)](#) located in the center of the page.
- Click on [Click To Access DBE Query Form](#).
- Searches can be performed by one or more criteria.
- Follow instructions on the screen.
- "START SEARCH," "CLEAR FORM," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form.

C. How to Obtain a List of Certified DBEs without Internet Access

**DBE Directory:** If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

**6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBEs MAY COUNT AS FOLLOWS:**

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:**

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS**

### **CALTRANS EXHIBIT 10-J**

#### **STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION**

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##### **1. Subcontractors**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Authority and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Authority for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Authority's obligation to make payments to the Contractor.

B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Authority.

D. Any substitution of subcontractors must be approved in writing by the Authority's Contract Manager in advance of assigning work to a substitute subcontractor.

##### **2. Disadvantaged Business Enterprise (DBE) Participation (Without Availability Advisory Percentage)**

A. The Authority has not established a DBE Availability Advisory Percentage for this Agreement. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The contractor, subrecipient 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 US DOT-assisted agreements. 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 recipient deems appropriate.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

### **3. Performance of DBE Contractors, and other DBE Subcontractors/Suppliers**

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

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

If the Authority requires retainage from the prime contractor and prompt and regular incremental acceptances of portions, as determined by the Authority 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 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Authority. Federal law (49CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Authority's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. 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.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

### **5. DBE Records**

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to

all firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work. The Authority will require the Contractor to submit a "Summary of Payment Form" with every invoice, summarizing the records as described above.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form "Final Expenditure Report," certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Expenditure Report" is submitted to the Contract Manager.

- a. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Authority's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Authority's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.
- b. The Contractor shall also submit to the Authority's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to the Contractor by the Authority's Contract Manager.

## **6. DBE Certification and De-Certification Status**

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Authority's Contract Manager within 30 days.

### **When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:**

- A. If the materials or supplies are obtained from a DBE manufacturer, 100% of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its

principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**When Reporting DBE Participation, Participation of DBE Trucking Companies may count as follows:**

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Download form in a Microsoft Excel or PDF format at  
<http://www.transbaycenter.org/TransBay/content.aspx?id=311>

[illegible]

INACS Code: North American Industry Classification System Code. Codes can be found at <http://www.census.gov/ipeds/data/naics02.htm>  
 \* Types of DBE: (1) African-American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated by the Small Business Administration)  
 DBEs must be certified by Caltrans or an agency participating in the California Unified Certification Program. Visit the Caltrans website at <http://dot.ca.gov/subpage.asp> for a list of participating agencies.  
 Important: Attach the proof of certification for each DBE firm used toward meeting the DBE goal.  
 This information will be used to create and maintain a Bidders List.  
 Use additional sheets as necessary.



## SUMMARY OF PAYMENT FORM

Download form in a Microsoft Excel or PDF format at  
<http://www.transbaycenter.org/TransBay/content.aspx?id=311>

This form must be completed and submitted with every invoice submitted to TJPA and must include complete payment information for all subconsultants and vendors utilized on this Contract including each joint venture partner for the period of the invoice. Failure to submit all required information may lead to partial withholding of progress payment.

Date \_\_\_\_\_

Contract Title/No. \_\_\_\_\_

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

Invoice No. \_\_\_\_\_

Period \_\_\_\_\_

Total Amount of Invoice \_\_\_\_\_

Subconsultant/Vendor/ Joint Venture	Business Address	Amount Paid	Payment Date	Check Number

\_\_\_\_\_  
Signature of Project Manager

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Phone

Download form in a Microsoft Excel or PDF format at  
<http://www.transbaycenter.org/TransBay/content.aspx?id=311>

[illegible]

## SUBCONTRACTOR DECLARATION FORM

Download form in a Microsoft Excel or PDF format at  
<http://www.transbaycenter.org/TransBay/content.aspx?id=311>

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

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

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

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

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

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

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

Subcontractor/ Vendor/JV	DBE (Y/N)	Business Address Payment Sent To	Amount Paid	Payment Date	Check Number

Total Amount Paid to Subconsultants (this Pay Period) \_\_\_\_\_

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Phone

## DIRECTORY OF KEY Staff

### DIRECTORY OF KEY EMPLOYEES AND SUB CONSULTANTS

#### CONTRACTOR

COMPANY	NAME	ROLE	E-mail	OFFICE CONTACT
<b>Metcalf &amp; Eddy</b> (Prime Contractor)	<i>Olivia Chen</i>	Project Principal	<a href="mailto:olivia.chen@m-e.aecom.com">olivia.chen@m-e.aecom.com</a>	1390 Market St., Suite 1100 San Francisco, CA 94102 t 415-522-5010 f 415-522-5220
	<i>Dan Seidel</i>	Senior Project Manager/Project Director	<a href="mailto:dan.seidel@m-e.aecom.com">dan.seidel@m-e.aecom.com</a>	
	<i>Manjit Saini</i>	Project Manager	<a href="mailto:manjit.saini@m-e.aecom.com">manjit.saini@m-e.aecom.com</a>	

#### SUBCONTRACTORS

<b>DMJM + Harris, Inc.</b>	<i>Bill Hagemeir</i>	Project Manager QMS Compliance/Technical Specialist	<a href="mailto:bill.hagemeir@dmjinharris.com">bill.hagemeir@dmjinharris.com</a>	150 Grand Ave., Suite 700 Oakland, CA 94612 t 510-763-2929 f 510-763-2796
<b>YEI Engineers, Inc.</b>	<i>Larry Lam</i>	Project Manager Electrical, Natural Gas and Steam Systems	<a href="mailto:llam@yeiengineers.com">llam@yeiengineers.com</a>	7700 Edgewater Drive, Suite 828 Oakland, CA 94621 t 510-383-1050 f 510-383-1057
<b>AGS, Inc.</b>	<i>Bahram Khamenehpour</i>	Project Manager Geotechnical Engineering	<a href="mailto:bkhamenehpour@agsinc.com">bkhamenehpour@agsinc.com</a>	111 New Montgomery St., Suite 500 San Francisco, CA 94102 t 415-777-2166 f 415-777-4874
<b>Ansari Structural Engineers, Inc.</b>	<i>Mehri Ansari</i>	Project Manager Structural Engineering	<a href="mailto:mehri@ansariinc.com">mehri@ansariinc.com</a>	235 Montgomery St., Suite 440 San Francisco, CA 94104 t 415-348-8948 f 415-348-8947
<b>Baseline Environmental Consulting</b>	<i>Yane Nordhav</i>	Environmental Mitigation	<a href="mailto:yane@baselineenv.com">yane@baselineenv.com</a>	5900 Hollis St., Suite D Emeryville, CA 94608 t 510-420-8686 f 510-420-1707

## ATTACHMENT 6

### DIRECTORY OF KEY EMPLOYEES AND SUBCONSULTANTS

## DIRECTORY OF KEY Staff

COMPANY	NAME	ROLE	E-mail	OFFICE CONTACT
<b>SUBCONTRACTORS</b>				
Carey & Co., Inc.	Alice Carey	Architecture (historical preservation)	<a href="mailto:acarey@careysf.com">acarey@careysf.com</a>	460 Bush St. San Francisco, CA 94108 t 415-773-0773 f 415-773-1773
Marina Dee Design	Marina Dee	3D CADD	<a href="mailto:marina.dee@sbcglobal.net">marina.dee@sbcglobal.net</a>	1390 Market St., Suite 1100 San Francisco, CA 94102 t 415-522-5008 f 415-522-5220
GeoTech	Nejat Yolasan	Utility Location	<a href="mailto:nyolasan@geotechlocating.com">nyolasan@geotechlocating.com</a>	P.O. Box 1181 El Cerrito, CA 94530 t 510-235-4144 f 510-235-4244
Martin M. Ron Associates, Inc.	Ben Ron	Surveying and Mapping, Utility Location and Designation	<a href="mailto:ben@martinron.com">ben@martinron.com</a>	501 Second St., Suite 210 San Francisco, CA 94107 t 415-543-4500 f 415-543-6255
Subtronic Corp.	J.C. Taylor	Utility Location and Designation	<a href="mailto:subtronic@subtronic.com">subtronic@subtronic.com</a>	2430 Sprig Court, Suite C Concord, CA 94520 t 925-686-3747 f 925-686-5281
Point to Point Connections, Inc.	John Jordeson	Telecommunications	<a href="mailto:jjordeson@ptpcinc.com">jjordeson@ptpcinc.com</a>	670 Saint George Road Danville, CA 94526 t 925-855-1450 f 925-855-1451

## APPENDIX C

### FTA REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

#### **1. DEFINITIONS.**

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

- (a). **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the TJPA is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- (b). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.
- (c). **Federal Cooperative Agreement** means the instrument by which FTA awards Federal assistance to the TJPA to support a particular Project, and in which FTA takes an active role or retains substantial control.
- (d). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (e). **FTA Directive** includes any FTA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines, including the Master Agreement between FTA and the TJPA. In addition to FTA Directives, certain U.S. DOT directives also apply to the Project.
- (f). **Grant Agreement** means the instrument by which FTA awards Federal assistance to the TJPA to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304.
- (g). **Government** means the United States of America and any executive department thereof.
- (h). **Project** means the task or set of tasks listed in the Approved Project Budget that is the subject of this Agreement, as well as any modifications stated in the Conditions to the Grant Agreement or Federal Cooperative Agreement applicable to the Project. In the case of the formula assistance programs for urbanized areas, for elderly and persons

with disabilities, and non-urbanized areas, 49 U.S.C. sections 5307, 5310, and 5311, respectively, the term "Project" encompasses both a program and each project within a program, as the context may require, to effectuate the requirements of the Grant Agreement or Federal Cooperative Agreement.

- (i). **Recipient** means the TJPA.
- (j). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (k). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by FTA.
- (l). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (m). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## **2. FLY AMERICA REQUIREMENTS.**

*\*\* This provision applies to any Agreement that involves the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S. These requirements do not apply to micro-purchases. Micro-purchases are defined as those purchases under \$2,500.*

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

### **3. BUY AMERICA REQUIREMENTS.**

**\*\*** *This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods valued at more than \$100,000; and agreements for the acquisition of rolling stock valued at more than \$100,000. This requirement does not apply to lower tier Subcontracts.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects, such as the Transbay Transit Center Program that is the subject of this Agreement, are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR Section 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR Section 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
- (b). The Contractor shall submit the "Buy America Certification."

### **4. CARGO PREFERENCE REQUIREMENTS.**

**\*\*** *This provision applies to all Agreements for more than \$2,500 involving equipment, materials, or commodities which may be transported by ocean vessels.*

The Contractor agrees to:

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

### **5. SEISMIC SAFETY REQUIREMENTS.**

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



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

## **6. ENERGY CONSERVATION REQUIREMENTS.**

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

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

## **7. CLEAN WATER REQUIREMENTS.**

*\*\* This provision applies to all Agreements, and all Subcontracts greater than \$100,000.*

- (a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **8. LOBBYING.**

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

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

- (a). The contractor shall submit the "New Restrictions on Lobbying Certification."
- (b). The Contractor and each subcontractor shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. Section 1352. The Contractor and each subcontractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to a Federal

contract, grant or award covered by 31 U.S.C. Section 1352. Such disclosures are forwarded from tier to tier up to the TJPA.

## **9. ACCESS TO DOCUMENTS.**

**\*\*** *This requirement applies to all Agreements. FTA does not require the inclusion of these requirements in Subcontracts.*

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

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

## **10. FEDERAL CHANGES.**

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

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

## **11. BONDING REQUIREMENTS.**

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

- (a). A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.*
- (b). A performance bond on the part to the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.*
- (c). A payment bond on the part of the Contractor for 100 percent of the Agreement price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:*
  - (1) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;*
  - (2) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or*
  - (3) \$2.5 Million if the Agreement price is more than \$5 Million.*
- (d). A cash deposit, certified check or other negotiable instrument may be accepted by a Recipient in lieu of performance and payment bonds, provided the Recipient has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.*

### **(1). Bid Bond Requirements (Construction)**

- (a). Bid Security**  
A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.
- (b). Rights Reserved**  
In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed

that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

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

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

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

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

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

(a). Performance Bonds

1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b). Payment Bonds

1. The penal amount of the payment bonds shall equal:
  - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
  - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
  - (iii) \$2.5 Million if the Agreement price is more than \$5 Million.
2. If the original Agreement price is \$5 Million or less, the TJPA may require additional protection, as required by subparagraph 1, if the Agreement price is increased.

(3). **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor also may be required to obtain performance and payment bonds when necessary to protect the TJPA's interest.

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

The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.
- (5). **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.
- (6). **Warranty of the Work and Maintenance Bonds**
  - (a). The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so

conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

## **12. CLEAN AIR.**

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

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

## **13. RECYCLED PRODUCTS.**

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

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

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

#### **14. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS.**

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

##### **(a). Minimum Wages**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.



- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- (b). **Withholding** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under

the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

(i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

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

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

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

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

(d). **Apprentices and Trainees**

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

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

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

opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

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

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

- (a). **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she

is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (b). **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (c). **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

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

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

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

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

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

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

Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

## **18. TERMINATION.**

*\*\* This requirement applies to all Agreements in excess of \$10,000, except when the Contractor is a nonprofit organization or institution of higher education. When the Contractor is a nonprofit organization or institution of higher education, this requirement applies to all Agreements greater than \$100,000.*

*\*\* Please be aware that the requirements in the Agreement, Section \_\_, regarding termination for convenience are more broadly applicable than the FTA Requirements described below. Both the requirements described below and the provisions in the Agreement are applicable to the Agreement.*

- (a). **Termination for Convenience (General Provision)** - The TJPA may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the TJPA. If the Contractor has any property in its possession belonging to the TJPA, the Contractor will account for the same, and dispose of it in the manner the TJPA directs.
- (b). **Termination for Default [Breach or Cause] (General Provision)** - If the Contractor (1) does not deliver supplies in accordance with the Agreement delivery schedule, or (2) if the Agreement is for services the Contractor fails to perform in the manner called for in the Agreement, or (3) if the Contractor fails to comply with any other provisions of the Agreement, the TJPA may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the TJPA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the TJPA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- (c). **Opportunity to Cure (General Provision)** - The TJPA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor a period of time in which

to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the TJPA's satisfaction the breach or default of any of the terms, covenants, or conditions of this within ten (10) days after receipt by Contractor of written notice from the TJPA setting forth the nature of said breach or default, the TJPA shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the TJPA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- (d). **Waiver of Remedies for any Breach** - In the event that TJPA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by the TJPA shall not limit the TJPA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
  - (e). **Termination for Convenience (Professional or Transit Service Agreements)** - The TJPA, by written notice, may terminate this Agreement, in whole or in part, when it is in the Government's interest. If this Agreement is terminated, the TJPA shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.
  - (f). **Termination for Default (Supplies and Service)** - If the Contractor fails to deliver supplies or to perform the services within the time specified in this Agreement or any extension or if the Contractor fails to comply with any other provisions of this Agreement, the TJPA may terminate this Agreement for default. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this Agreement.
- If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the TJPA.
- (g). **Termination for Default (Transportation Services)** - If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this Agreement or any extension or if the Contractor fails to comply with any other provisions of this Agreement, the TJPA may terminate this Agreement for default. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If this Agreement is terminated while the Contractor has possession of TJPA goods, the Contractor shall, upon direction of the TJPA, protect and preserve the goods until surrendered to the TJPA or its agent. The Contractor and the TJPA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.



If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the TJPA.

- (h). **Termination for Default (Construction)** - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this Agreement or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this Agreement, the TJPA may terminate this Agreement for default. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the TJPA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the TJPA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the TJPA in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

- (1). The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, acts of the TJPA, acts of another Contractor in the performance of a Agreement with the TJPA, epidemics, quarantine restrictions, strikes, freight embargoes; and
- (2). The Contractor, within ten (10) days from the beginning of any delay, notifies the TJPA in writing of the causes of delay. If in the judgment of the TJPA, the delay is excusable, the time for completing the work shall be extended. The judgment of the TJPA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the TJPA.

- (i) **Termination for Convenience or Default (Architect and Engineering)** - The TJPA may terminate this Agreement in whole or in part, for the TJPA's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. The TJPA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

If the termination is for the convenience of the TJPA, the contracting officer shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the Agreement obligations, the TJPA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the TJPA.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the TJPA.

- (j). **Termination for Convenience of Default (Cost-Type Agreements)** - The TJPA may terminate this Agreement, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the TJPA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the Agreement. The Contractor shall account for any property in its possession paid for from funds received from the TJPA, or property supplied to the Contractor by the TJPA. If the termination is for default, the TJPA may fix the fee, if the Agreement provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the TJPA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the TJPA, the Contractor shall be paid its Agreement close-out costs, and a fee, if the Agreement provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the TJPA determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the TJPA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

- (a). This Agreement is a “covered transaction” for purposes of 49 CFR Part 29, and the Contractor is required to comply with 49 CFR Section 29, Subpart C. In particular, the Contractor is required to verify that the Contractor, its “principals,” as defined at 49 CFR Section 29.995, and its “affiliates,” as defined at 49 CFR Section 29.905, are not “excluded” or “disqualified,” as defined at 49 CFR sections 29.940 and 29.945.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

## **20. CIVIL RIGHTS REQUIREMENT.**

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

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

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
  - (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## **21. BREACHES AND DISPUTE RESOLUTION.**

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

- (a).    **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b).    **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c).    **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- (d).    **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e).    **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

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

- (a).    This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The TJPA's overall goal for DBE participation is 4.3 percent.

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

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

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

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

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

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

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

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

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

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

### **23. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

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

## **FLY AMERICA CERTIFICATION**

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

## BUY AMERICA CERTIFICATION

### **(A) Certification requirement relating to procurement of steel, iron, or manufactured products.**

#### *Certificate of Compliance*

The Contractor hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

#### *Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 CFR 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**(B) Certification requirement relating to procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance*

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.11.

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_



## NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

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

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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### Part A: Primary Covered Transactions

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

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Part B: Certification Regarding Debarment, Suspension, and Other Responsibility Matters  
Lower Tier Covered Transactions (transactions between the bidder and persons other  
than the Federal Government)

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*CHECK \_\_\_ IF THIS CERTIFICATION IS FOR A LOWER TIER TRANSACTION AND IS  
APPLICABLE.*

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

As the authorized certifying official, I hereby certify that the above specified certifications are true.

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

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

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

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

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

# **Relocation of Utilities Project**

## **Selection Committee Report**

September 20, 2007



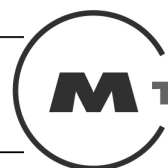
**Transbay Transit Center**

**URS**

Preparation of this report was made possible in part by the  
San Mateo County Transportation Authority  
through Sales Tax funds.



Preparation of this report was made possible in part by the  
Metropolitan Transportation Commission through a grant of  
Regional Measure 2 (RM2) funds.



Preparation of this report was made possible in part by the  
San Francisco County Transportation Authority through a grant of  
Proposition K Local Transportation Sales Tax funds.



# TRANSBAY TRANSIT CENTER PROGRAM RELOCATION OF UTILITIES PROJECT SELECTION COMMITTEE REPORT

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## 1.0 EXECUTIVE SUMMARY AND RECOMMENDATION

- a) In response to Request for Proposals (RFP) 07-03 for Design Services for Early Relocation of Utilities (Services), two proposals from firms meeting all minimum qualifications were received on March 12, 2007, before the 5:00 p.m. deadline. A selection committee convened on March 19, 2007, to evaluate the proposals. Interviews with the two qualified firms were conducted on March 30, 2007.
- b) Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA negotiate an agreement for Services with **Metcalf & Eddy/AECOM** (Consultant).

## 2.0 BACKGROUND

Existing site utilities will need to be relocated in order to clear the footprint of the new Transbay Transit Center building. This work is planned to occur as part of a utilities project construction package associated with the Transit Center building construction. The utilities affected include the following:

- sanitary, storm and combined sewers
- domestic water lines and hydrants
- auxiliary water supply system (AWSS) lines and hydrants (white with blue top)
- PG&E electric and gas lines and infrastructure
- communication lines (AT&T and others)
- traffic signal lines
- Muni overhead electric power systems
- Bureau of Light, Heat and Power street lights
- NRG steam lines
- other utilities

The engineering design of the utility relocation work will be performed either by the Consultant or by the utility providers themselves (e.g., PG&E). The Consultant will:

1. lead the development of the overall utility relocation strategy
2. collaboratively facilitate interaction between the TJPA, the utility providers, and the Committee for Utility Liaison and Construction of Other Projects (CULCOP)
3. develop alternatives to ensure the utilities relocation project meets schedule and cost requirements
4. perform conceptual design of all utility systems to ensure feasibility
5. perform detailed design of all non-provider designed system relocations and/or abandonment(s)
6. coordinate submission of permit applications
7. oversee bid and contract award of construction, including inspection coordination

A public solicitation process was required to secure the services of an engineering team, consistent with the Federal Transit Administration requirements and TJPA policy.

## 3.0 AGREEMENT

The agreement with the Consultant for Services is for an amount not to exceed \$5,198,015 through the end of utility construction and warranty period.

# **TRANSBAY TRANSIT CENTER PROGRAM RELOCATION OF UTILITIES PROJECT SELECTION COMMITTEE REPORT**

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A Notice to Proceed (NTP) will be issued for each phase of design services. Billings for each task order will be on an hourly basis, with a not-to-exceed maximum value.

To minimize potential for a conflict of interest or unfair competitive advantage, the TJPA reserves the right, in its sole discretion, to bar members of the Consultant engineering design team from providing construction management services.

## **4.0 RFP SCHEDULE**

- |                                 |                   |
|---------------------------------|-------------------|
| 1) RFP Advertised/Posted        | February 9, 2007  |
| 2) Pre-proposal Conference      | February 16, 2007 |
| 3) Proposals Due                | March 12, 2007    |
| 4) Evaluation of Proposals      | March 19, 2007    |
| 5) Interviews and Final Scoring | March 30, 2007    |

## **5.0 RFP OUTREACH**

An announcement of the RFP was advertised in the *San Francisco Chronicle* on February 9, 2007, and on the City Purchasers' Bids and Contracts website; Attachment A shows a copy of the announcement. On the same date, the RFP was also posted on the TJPA's website for the public to view and print, and sent 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 two proposals on or before the RFP submission deadline, from:

- |   |  |
|---|--|
| a) Metcalf & Eddy/AECOM<br>Fox Plaza, 1390 Market Street, Suite 1100<br>San Francisco, CA 94102<br>415-522-5225<br>415-522-5220 fax | b) Winzler & Kelly Consulting Engineers<br>417 Montgomery Street, Suite 700<br>San Francisco, CA 94104<br>415-283-4970<br>415-283-4980 fax |
|---|--|

## **6.0 SELECTION COMMITTEE MEMBERS**

The following individuals were asked to evaluate the written proposals and conduct the interviews. These individuals have in-depth experience with utility engineering and relocation. Their expertise was essential in choosing the most qualified candidates to recommend to the TJPA.

- Grace Moore, San Francisco Department of Public Works (DPW), Bureau of Street Use & Mapping
- Nick Elsner, DPW, Bureau of Street Use & Mapping
- Kevin Masuda, San Francisco Redevelopment Agency
- Ken Eichstaedt, URS Corporation
- Phil Sandri, TJPA PMPC (non-voting)
- Ed Sum, TJPA (non-voting)

# **TRANSBAY TRANSIT CENTER PROGRAM RELOCATION OF UTILITIES PROJECT SELECTION COMMITTEE REPORT**

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## **7.0 SELECTION COMMITTEE EVALUATION**

The selection committee met on March 19, 2007, to review the two written proposals that met the minimum criteria of the RFP and to select the most qualified candidates to recommend for interviews, the next phase in the selection process.

The selection committee evaluated each written proposal for its responsiveness to the RFP. Committee members used scoring sheets that described the selection criteria and the maximum points assigned each criterion. A copy of the scoring sheet is included as Attachment B. Each committee member completed and signed a score sheet for each proposal. The TJPA's DBE (Disadvantaged Business Enterprise) Officer collected and tabulated the score sheets. The TJPA scheduled interviews on March 30, 2007, with the two respondent teams.

On March 30, 2007, the selection committee interviewed the two candidate teams. During the interviews, each team was afforded 20 minutes to make a presentation on any aspect of the written proposal they wished to emphasize. Following the presentation, the selection committee members asked each respondent the same eight questions. Committee members were provided scoring sheets (reference Attachment D), which listed the eight questions and the maximum points assigned for each question. The committee members awarded points based on their evaluation of each candidate's responses. A summary of the scores is provided as Attachment D. The firm with the highest total combined points from the written proposal and interview is being recommended for award of a contract for Design Services for Relocation of Utilities.

All proposals submitted in response to this RFP are available for review at 201 Mission Street, Suite 1960. Contact the TJPA's Office Manager. Proposals will be kept for two years, then discarded, except for the selected consultants' proposals. These will be maintained on permanent record.

## **8.0 ATTACHMENTS**

**Attachment A**, RFP Announcement

**Attachment B**, Scoring Sheet for Written Proposals

**Attachment C**, Interview Scoring Worksheet

**Attachment D**, Summary of Scores

## **9.0 REFERENCE**

Request for Proposals No. 07-03 for Design Services for Early Relocation of Utilities issued by the Transbay Joint Powers Authority on February 9, 2007



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**ANNOUNCEMENT**

**REQUEST FOR PROPOSAL  
DESIGN EARLY RELOCATION OF UTILITIES**

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The Transbay Joint Powers Authority (the "TJPA") is issuing a Request for Proposals (RFP) for DESIGN SERVICES FOR EARLY RELOCATION OF UTILITIES for the Transbay Transit Center Program from qualified engineering firms.

All Services shall comply with federally-funded project engineering and design guidelines described in the Code of Federal Regulations and the California Department of Transportation Highway Design Manual.

The TJPA plans to select one design team to perform engineering design services for early relocation of utilities while working closely with the TJPA's staff and other consultants. The contract will be established for a period up to three (3) years, although the TJPA will have an option to extend the term for two additional years by mutual agreement of the parties.

The selected consulting team must be led by an engineering firm ("Lead Consultant") with prior relevant experience providing utility engineering consulting services. Key professional personnel and sub-consultants shall possess appropriate state of California licenses or other required licenses, registrations or certification in the particular discipline.

A Pre-submittal Meeting will be held at One South Van Ness Avenue, Second Floor Conference Room in San Francisco, California on Friday, February 16, 2007, beginning at 9 a.m. Pacific Standard Time (PST). Attendance at this meeting is encouraged, however it is not mandatory.

Submittal packages must be received by the TJPA no later than 5:00 p.m. on Monday, March 12, 2007 at the address below.

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

Late proposal packages will not be considered. Prospective Respondents may obtain copies of the RFP, including required forms, by visiting the TJPA's website at [www.TransbayCenter.org](http://www.TransbayCenter.org) or by contacting:

Ms. Nila Gonzales, Office Manager  
Transbay Joint Powers Authority  
201 Mission Street, Suite 1960  
San Francisco, CA 94105  
(415) 597-4620  
Email: [RFPEarlyUtilitiesReloc@TransbayCenter.org](mailto:RFPEarlyUtilitiesReloc@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.



Transbay Transit Center Program

**SCORING SHEET**  
**RFP 07-03: Early Relocation of Utilities**  
**Written Proposals**

19 March 2007

Name of Respondent: **Metcalf & Eddy / AECOM**

Name of Panelist: \_\_\_\_\_

Signature of Panelist: \_\_\_\_\_

**TOTAL  
SCORE**

[100 points max- total of  
scores below]

RFP Section	Description	Score	Notes
<b>7.0 Minimum Necessary Requirements</b>	<p>The following are minimum necessary qualifications for Respondents to this RFP.</p> <ol style="list-style-type: none"><li>1. Registered Professional Engineer (Mechanical, Electrical, Civil and Structural) in the State of California</li><li>2. Prior experience with design and construction of at least one public utilities design project within the City of San Francisco requiring approvals and permits from the City</li><li>3. Prior experience with design and construction of at least one utilities design project requiring coordination with local utility agencies.</li><li>4. Quality Management System: The Respondent team will be required to demonstrate the establishment, implementation and maintenance of an acceptable quality control program meeting QMS requirements appropriate for their scope of work that will be used to control, verify, document, and validate the design work for the project. A copy of the Transbay Transit Center Program QMS Manual can be viewed at <a href="http://www.transbaycenter.org/TransBay/content.aspx?id=311">http://www.transbaycenter.org/TransBay/content.aspx?id=311</a>.</li></ol>	Yes or No  If no, do not evaluate any further.	

RFP Section	Description	Score	Notes
<b>9.1.1 Introduction and Executive Summary (5 pg. max.)</b>	<p>This section must include a letter of introduction and an executive summary of the submittal package. The introductory letter must be signed by a person or persons authorized to obligate the firm (or team if a joint-venture) to honor the commitments set forth in the submittal package and to verify the accuracy of the information included in the submittal package.</p> <p>Submission of the introductory letter will constitute a representation by the firm or team that it is willing and able to successfully perform the Services, and that all information contained in the submittal package is true, correct, and not misleading in any material way.</p>	5 points max.	
<b>9.1.2 Project Approach (5 pg. max.)</b>	<p>Describe the services and activities that your firm proposes to provide including the following:</p> <p><b>A.</b> Over-all approach to the project.</p> <p><b>B.</b> Ability to complete work assignments within the TJPAs required timeframe, and if necessary, on short notice.</p> <p><b>C.</b> Approach to assignment of work within your team and how the team will conduct tasks and prepare anticipated deliverables.</p> <p><b>D.</b> Possible constraints, problems, or issues that should be anticipated during execution of services under the agreement, and suggested approaches to resolving them.</p>		
<b>9.1.3 Qualifications and Experience of Respondent Team</b>	<p>Provide a brief description of the Respondent team and a summary of the team's capabilities and experience in utility relocation engineering.</p> <p>Describe how the Respondent team meets the minimum requirements described in Section 7.0. Be as specific as possible. Failure to satisfy the minimum requirements will disqualify the Respondent team from consideration by the TJPAs.</p> <p>Describe how the Respondent team has additional qualifications for performance of the Services. Be as specific as possible.</p>	<p>10 points max.</p> <p>10 points max.</p> <p>10 points max.</p>	

<b>RFP Section</b>	<b>Description</b>	<b>Score</b>	<b>Notes</b>
(20 pg. max.)	Provide examples of 3 to 5 projects performed within the last 5 years involving the design of utility relocations especially in a congested urban environment. The information for each project should be limited to one page and include the following elements: project description, approach, project cost and outcome, and references.	15 points max.	
70 points max. for entire section	Provide a brief description of the team and the proposed staffing plan to complete the Services. Specifically, provide the name, title, agency, business address, email, and phone number of key staff who would be assigned to provide the Services; qualifications and work experience of each such staff member; including brief résumés if necessary. (Note that the length of résumés must be shortened if necessary to avoid exceeding the maximum page limit established for the submittal.) Describe the role each staff member would have in providing the Services. There is no restriction on where the Respondent firm is headquartered. However, assigned staff must work out of offices within the nine-county San Francisco Bay Area, which comprises the counties of San Francisco, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and be able to reach TJPA offices in a reasonable amount of time as required.	20 points max.	
9.1.4 <b>References</b> (3 pg. max.)	Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies.	5 points max.	
9.2 <b>Fee Schedule</b>	Provide current references that may be contacted by the TJPA for at least five (5) recent clients (preferably other public agencies) for the Respondent firm and any assigned key staff; include the reference name, position, agency, address, telephone number, email, and specific project for each reference.	10 points max.	
9.3 <b>Other Required Documents</b>	The submittal shall include fee schedules applicable for the entire contract period. Such fee schedules shall be provided in a separately sealed envelope together with the submittal.	Submitted? Yes or No	
	A. Certification Regarding Debarment, Suspension, and Other Responsibility Matters. (Attachment 5a)	Signed and submitted? Yes or No	

RFP Section	Description	Score	Notes
	B. Certification Regarding Lobbying (Attachment 5b)	Submitted? Yes or No	
	C. Disadvantaged Business Enterprise Program Requirements – Bidders/Proposers Information Request Form (Attachment 5c).	Submitted? Yes or No	
	D. Respondents shall also submit a copy of the Respondent's nondiscrimination program or EEO (Equal Employment Opportunity) policy statement in the submittal package	Submitted? Yes or No	





**RFP No. 07-03: Design Services For Early Relocation of Utilities**

**Interview Scoring Worksheet**

1. Describe one of the most challenging aspects of one of your recent projects and elaborate on how it may apply to the Early Relocation of Utilities Project.

1 2 3 4 5

2. What are the relative strengths and weaknesses of your team?

1 2 3 4 5

3. How will you manage your team's performance on both technical and non-technical issues to ensure that the TJPA is getting high quality and consistent performance?

1 2 3 4 5

4. Section 6.8 of the RFP describes MMRP requirements for the project. Describe your understanding of these requirements & your plans for managing them.

1 2 3 4 5

5. Utility relocation projects within the City and County of San Francisco often involve coordination with multiple agencies. Please describe some of these agencies and your protocol for interfacing with these agencies.

1 2 3 4 5



**RFP No. 07-03: Design Services For Early Relocation of Utilities**

**Interview Scoring Worksheet**

6. What actions will you take to ensure that the utility infrastructure put in place as part of the Early Relocation of Utilities Project will be sufficient to serve the Transit center Building in the future?  
1 2 3 4 5
  
  
  
  
  
  
  
  
  
  
7. What do you see as the most important scheduling, phasing, and packaging issues related to the utility work on this project?  
1 2 3 4 5
  
  
  
  
  
  
  
  
  
  
8. Discuss your process for engineering the relocation of existing utilities, including how you determine if a utility needs relocation, and what are the steps for commencing relocation.  
1 2 3 4 5

**Summary of Scores**

	<b>Written Proposal</b>	<b>Interview</b>	<b>Total Score</b>
<b>Metcalf &amp; Eddy/AECOM</b>	70	33	103
<b>Winzler &amp; Kelly</b>	56.25	45.25	101.5