

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.6**  
**FOR THE MEETING OF: June 12, 2025**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorizing the Executive Director to execute a professional services agreement for independent auditing services with Baker Tilly US, LLP (Baker Tilly) for an amount not to exceed \$307,225 for a five-year term.

**SUMMARY:**

On February 6, 2025, TJPA issued Request for Proposals (RFP) 25-01 for independent auditing services, seeking qualified Certified Public Accounting firms to serve as the independent auditor of TJPA's financial statements. TJPA's current auditing services contract expires in June 2025.

The RFP sought the services of a qualified auditor to conduct an audit of the Basic Financial Statements of TJPA for each fiscal year of the term for the purpose of expressing an opinion on these financial statements and issuing an independent auditor's report. The audits are to be performed in accordance with all applicable Generally Accepted Auditing Standards (GAAS), including but not limited to auditing standards set forth by the American Institute of Certified Public Accountants (AICPA), the standards for financial audits set forth in the U.S. Government Accountability Office's Government Auditing Standards, the provisions of the Single Audit Act of 1984 and amendments, and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and applicable State of California audit guidelines.

The Auditor will also perform the federally-required Single Audit of TJPA's expenditures of federal grants, and audit the compliance of TJPA with the types of compliance requirements described in the *U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement* that are applicable to each of its major federal programs identified in the Schedule of Expenditures of Federal Awards, for the purpose of expressing an opinion as to whether TJPA complied, in all material respects, with the applicable requirements. The supplemental Schedule of Expenditures of Federal Awards is to be subjected to the auditing procedures applied in the audit of the Basic Financial Statements to determine if the Schedule is fairly stated, in all material respects, in relation to the Basic Financial Statements taken as a whole.

The RFP was emailed to approximately 900 contacts on TJPA's contractor/bidders email list, achieving a 57% open rate. Additionally, the RFP was broadcast through DemandStar to 85 recipients, with only one recipient adding it to their watch list. TJPA's former auditor indicated that due to the increased volume of their audit engagements, they lacked the capacity to support TJPA's audit for this period and did not compete for this procurement.

On March 20, 2025, TJPA received one proposal, from Baker Tilly. The proposal met all the minimum qualifications of the RFP. A selection committee evaluated the written proposal for technical merit. Based on the evaluation of the proposal, the selection committee recommended that an agreement be negotiated with Baker Tilly. The Selection Committee Report is attached.

Baker Tilly is a firm founded in 1931 with a focus on municipalities. They are a professional services corporation based in Milwaukee, Wisconsin. They are members of the AICPA, the California Society of CPAs, and Government Finance Officers Association (GFOA).

TJPA staff successfully negotiated a contract with Baker Tilly, and the firm has signed the contract enclosed herewith. The audit of the Basic Financial Statements and the Single Audit comprises the base services under the agreement. All services will be performed at a fixed fee per service established in the contract; the annual rate is \$53,000 with annual escalation and a 5% technology fee. The proposed fee falls at the low-to-mid end of the typical cost range for comparable agencies requiring both financial and Single Audit services. TJPA has already reached out to as many qualified firms as possible to invite them to bid on this contract, and staff determined that further efforts to competitively bid the contract would be unnecessary and unlikely to produce a more favorable outcome.

**RECOMMENDATION:**

TJPA staff recommends that the TJPA Board authorize the Executive Director to execute a professional services agreement for independent auditing services with Baker Tilly for an amount not to exceed \$307,225 for a five-year term.

**ENCLOSURES:**

1. Resolution
2. Selection Committee Report
3. Professional Services Agreement

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires the services of a Certified Public Accounting firm to provide independent auditing services for the Transbay Program; and

WHEREAS, On February 6, 2025, TJPA issued Request for Proposals (RFP) 25-01 for independent auditing services; and

WHEREAS, On March 20, 2025, TJPA received one proposal from Baker Tilly US, LLP (Baker Tilly), a firm meeting all minimum qualifications in response to the RFP, and a selection committee was convened to evaluate the proposals for technical merit; and

WHEREAS, The selection committee found that Baker Tilly is well qualified to perform the scope of services in a cost-effective manner; and

WHEREAS, Based on the selection committee's recommendation, staff negotiated a contract with Baker Tilly to provide the services for an amount not to exceed \$307,225 over a five-year term; now, therefore, be it

RESOLVED, That the Board authorizes the Executive Director to execute a professional services agreement in the form attached for independent auditing services with Baker Tilly for an amount not to exceed \$307,225 over a five-year term.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 12, 2025.

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



## **Independent Auditing Services Selection Committee Report June 2025**

### **Executive Summary and Recommendation**

In response to Request for Proposals No. 25-01 for Independent Auditing Services for qualified Certified Public Accounting firms to serve as the independent auditor of the TJPA's financial statements, issued on February 6, 2025, the Transbay Joint Powers Authority (TJPA) received one proposal by the Wednesday, March 7, 2025 deadline. A selection committee comprised of subject matter experts in the field of finance was sent the proposal and evaluation documents on Thursday, March 13, 2025 via email to evaluate and score the proposal, with a due date to return their evaluation and scores by Friday, March 21, 2025.

Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA negotiate a professional services agreement with **Baker Tilly US, LLP** to provide Independent Auditing Services for a five-year term.

### **Background**

The TJPA is seeking the services of a qualified Certified Public Accounting firm to serve as the independent auditor of the TJPA's financial statements for each of the fiscal years, starting with the fiscal year ending June 30, 2025. The firm must have demonstrated ability in auditing governmental financial statements including Single Audits and capital project accounting.

### **Schedule**

1) RFP advertised/posted	February 6, 2025
2) Deadline for Submission of Questions	February 14, 2025
3) Answers to Written Questions Posted	February 21, 2025
4) Proposals Due	March 7, 2025
5) Selection committee evaluation meeting	March 13, 2025

### **Selection Committee Members**

Davina Vrazia, TJPA Accounting Supervisor  
Mary Pryor, NWC Partners, Financial Consultant  
Bailey Coleman, Sperry Capital, Vice President

### **RFP Outreach**

The TJPA posted the RFP on its website for the public to view and print; posted the RFP on DemandStar, a free e-procurement solution that allows the TJPA to cast a broader net to suppliers; and, also sent an announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. In total, the announcement

was sent to approximately 900 contacts who have signed up on the TJPA website for notice of all TJPA professional services contracts.

The TJPA received one proposal on or before the proposal due date, from:

- Baker Tilly US, LLP

### **Selection Committee Evaluation**

The selection committee received the written proposal, evaluation documents, and instructions on how to evaluate strengths and weaknesses using the criteria listed in the RFP on Thursday, May 13, 2025. Each committee member individually filled out scoring sheets (Attachment B). Based on the results, the selection committee did not elect to conduct an interview with the single firm. Written Proposal Scores are shown in Attachment C.

The committee recommends that the TJPA negotiate an agreement with Baker Tilly US, LLP.

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The proposal submitted in response to this RFP is available for review at TJPA offices.

### **Attachments**

Attachment A, RFP Announcement  
Attachment B, Evaluation Criteria Scoring Sheets  
Attachment C, Evaluation Panelists' Scores

### **Reference**

Request for Proposals No. 25-01 for Independent Auditing Services, seeking qualified Certified Public Accounting firms to serve as the independent auditor of the TJPA's financial statements, issued by the Transbay Joint Powers Authority on February 6, 2025.

## **Attachment A**

### **ANNOUNCEMENT REQUEST FOR PROPOSALS**

#### **REQUEST FOR PROPOSALS FOR INDEPENDENT AUDITING SERVICES**

The Transbay Joint Powers Authority (TJPA) issues this Request for Proposals (RFP) for INDEPENDENT AUDITING SERVICES (Services) for the Transbay Program (Program) from qualified Certified Public Accounting firms (Respondents) with qualifications and expertise in independent auditing of financial statements. Respondents to this RFP must have demonstrated ability in auditing governmental financial statements including Single Audits and capital project accounting.

The TJPA plans to award one Respondent for a contract for a period not to exceed five (5) years. Services are described in Section 3, Scope of Services in the RFP.

Proposal packages must be received by the TJPA no later than **2:00 p.m. on Friday, March 7, 2025**. Proposals submitted electronically shall be in Adobe PDF (Portable Document Format) and sent via email or file sharing link to [RFP@tjpa.org](mailto:RFP@tjpa.org). Late proposal packages will not be considered.

Respondents may obtain copies of this RFP, including the forms to be submitted in the proposal package, by downloading the document from the TJPA [website](#) or by contacting the TJPA by email: [RFP@tjpa.org](mailto:RFP@tjpa.org).

## Attachment B

### EVALUATION CRITERIA RFP 25-01 Independent Auditing Services

Reviewer \_\_\_\_\_

Respondent \_\_\_\_\_  
Total Score \_\_\_\_\_

Exceptional 100-75% Respondent provided extensive information and/or excellent documentation	Acceptable 74-50% Respondent provided satisfactory information and/or sufficient documentation	Marginal 49-25% Respondent provided partial information and/or included some documentation.	Poor 24-0% Respondent did not provide sufficient information and documentation as required
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#### **A. Qualifications and Experience of Respondent (50 points)**

1. Does respondent explain how the organization is qualified to implement the proposed services? Did respondent describe experience with/history of successfully providing these services, and serving agencies who receive federal, state, and local funding and debt financing? (50 points)

(50 points: Exceptional 50-38; Acceptable 37-25; Marginal 24-12; Poor 11-0)

Comments:	Points

#### **B. Qualifications and Experience of Project Staff (50 Points)**

1. Does the respondent clearly describe the agency's qualifications and experience of project staff? Do they identify the Respondent firm's representatives designated as the Audit Partner and Audit Manager, and other key team members such as associates and describe the role each will play in providing the Services? Based on job descriptions and qualifications for key team members, does the project staff have the necessary skill, training, and experience to successfully provide the proposed services? (50 points)

(50 points: Exceptional 50-38; Acceptable 37-25; Marginal 24-12; Poor 11-0)

Comments:	Points

**C. Audit Approach and Work Plan (50 Points)**

1. Does respondent's approach clearly demonstrate an understanding of the engagement requirements, approach to the work specifically addressing the requirements of the Single Audit as presented in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), and approach to analyzing account balances and transactions? Did they provide a statement of any special areas of expertise or special audit approaches that are planned for use on the proposed engagement? Does respondent clearly describe how they would tailor its services to meet the needs of the TJPA by summarizing the estimated audit hours for the contract term by staff level? (50 points)

(50 points: Exceptional 50-38; Acceptable 37-25; Marginal 24-12; Poor 11-0)

Comments:	Points

**D. Quality and Content of Sample Financial Report (25 Points)**

1. Does the sample financial report reflect a project similar to the Transbay Program? Is it clear and easy to understand? Does the management letter address systems of internal control, accounting and financial systems, functions, procedures, and processes, especially with regard to cost effectiveness, and compliance with laws, regulations, contracts, and grants? (25 points)

(25 points: Exceptional 25-20; Acceptable 19-13; Marginal 12-6; Poor 5-0)

Comments:	Points

**E. Cost (25 Points)**

1. Compared to industry standards are overall costs reasonable, justified, and competitive? Is the fee proposal correct and easy to understand? (25 points)

(25 points: Exceptional 25-20; Acceptable 19-13; Marginal 12-6; Poor 5-0)

Comments:	Points



## Attachment C

### Evaluation Scores (200 points max)

Firm	Panelist A	Panelist B	Panelist C	Total Average Score
Baker Tilly US, LLP	138	176	127	<b>147</b>

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the 12th day of June 2025, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and **BAKER TILLY US, LLP** (“Contractor”).

### Recitals

- A. The TJPA requires Independent Auditing Services for the Transbay Program (“Program”).
- B. The Contractor submitted a written proposal (“Proposal”) in response to the TJPA’s Request for Proposals (“RFP”). Based on that Proposal, the TJPA’s selection committee determined the Contractor to be the highest-ranked respondent to the RFP and the TJPA invited the Contractor for exclusive negotiations. This Agreement is the product of those negotiations.
- C. The Contractor represents and warrants that it is qualified to perform the services required by this Agreement as set forth in Appendix A Scope of Services.
- D. The TJPA and the Contractor intend that this Agreement comply with the regulations of the United States Department of Transportation (“USDOT”) and certain contracting requirements of the City and County of San Francisco (the “City”).
- E. On June 12, 2025, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_ authorizing the TJPA’s Executive Director to execute this Agreement with the Contractor.

Now, THEREFORE, the parties agree as follows:

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

- a. Charges under this Agreement will accrue only after prior written authorization certified by the TJPA’s Chief Financial Officer and services under contract shall not commence prior to the Chief Financial Officer’s issuance of a Notice to Proceed. The amount of the TJPA’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- b. This Agreement will terminate without penalty, liability or expense of any kind to the TJPA at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the fiscal year for which funds are appropriated.
- c. The TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or Program costs. The TJPA’s budget decisions are subject to the discretion of the TJPA Board of Directors. The Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

Subject to Section 1, the term of this Agreement shall be for five (5) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement."

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

The effective date of this Agreement shall be the date on which the Agreement is fully executed by all required parties ("Effective Date").

### **4. Authorization to Commence Work.**

The Contractor shall not commence any work under this Agreement until the Chief Financial Officer has certified the availability of funds and has issued formal written authorization to proceed in the form of a Notice to Proceed ("NTP"). Such authorization may be for a partial or full scope of work

### **5. Services the Contractor Agrees to Perform**

The Contractor agrees to perform the services listed in Appendix A, Scope of Services, attached hereto and incorporated by reference as though fully set forth within. TJPA representatives are not authorized to request, and the TJPA is not required to reimburse the Contractor for, service beyond the scope of Appendix A, unless the changed scope is authorized by written amendment and approved as required by law. Each NTP shall relate to a specified part of the services, and a not-to-exceed maximum price under that NTP. No NTP can be amended, except in writing and signed by an authorized representative of the TJPA.

### **6. Compensation**

a. All work under this Agreement shall be compensated on a fixed fee by service basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed **Three Hundred Seven Thousand, Two Hundred Twenty Five Dollars (\$307,225)**. The breakdown of the Contractor's fees appears in Appendix B, Calculation of Charges.

b. Fixed fee for services are to remain fixed during the entire contract period, pursuant to Appendix B.

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

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

### **7. Guaranteed Maximum Costs**

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

b. Except as may be provided by laws governing emergency procedures, TJPA representatives are not authorized to request, and the TJPA is not required to reimburse the Contractor

for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 6, "Compensation," unless the changed scope is authorized by written amendment and approved as required by law.

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

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

## **8. Payment**

Invoices furnished by the Contractor under this Agreement must be in a form acceptable to the TJPA and must include a unique invoice number. Invoices shall include the first and last day of a calendar month and be submitted within thirty (30) days of the end of said calendar month. The Contractor must submit required DBE/SBE Progress Payment Reports with every invoice. Compensation shall be made for services identified in the invoice that the TJPA Executive Director, in their sole discretion, concludes have been satisfactorily performed. Services that do not conform to the requirements of this Agreement may be rejected by the TJPA and in such case must be replaced by the Contractor without delay at no cost to the TJPA. If the Contractor fails to provide the services in accordance with the Contractor's obligations under this Agreement, the TJPA may withhold any and all payments due the Contractor until such failure to perform is cured, and the Contractor shall not stop work as a result of the TJPA's withholding of payments as provided herein. All amounts paid to the Contractor shall be subject to audit by the TJPA.

The TJPA shall make payment to the Contractor at the address specified in Section 24, "Notices to the Parties."

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

Pursuant to San Francisco Administrative Code Chapter 6, Article V [OR] Section 21.35, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

## **10. Disallowance; Suspension and Debarment**

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

may offset the amount disallowed from any payment due or to become due to the Contractor under this Agreement or any other Agreement.

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

## **11. Taxes**

Except for any applicable California sales and use taxes charged by the Contractor to the TJPA, the Contractor shall pay all taxes, including possessory interest taxes, levied upon or as a result of this Agreement, the transaction, or the services delivered pursuant hereto.

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

The granting of any payment by the TJPA, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may have been apparent or detected at the time such payment was made.

## **13. Qualified Personnel**

The Contractor represents to the TJPA that the services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the services are performed. The Contractor represents TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Contractor are shown in Appendix A, and shall not be changed or substituted without the prior written consent of the TJPA. All personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## **14. 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 Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the TJPA.

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

### **a. Independent Contractor**

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

Contractor shall neither have employee status with the TJPA nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

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

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

Should the TJPA, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Contractor that can be applied against this liability). The TJPA shall then forward those amounts to the relevant taxing authority.

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement. The Contractor shall not be considered an employee of the TJPA.

**16. Insurance**

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

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

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

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

(4) Professional Liability Insurance with limits not less than \$3,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

(5) NOT APPLICABLE.

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

(1) Name as Additional Insured the entities indicated in Appendix C, Additional Insureds.

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

c. The Contractor shall provide thirty (30) days' advance written notice to the TJPA of cancellation of coverages for any reason. Notices shall be sent to the address specified in Section 24, "Notices to the Parties."

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

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

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

g. Before commencing any operations under this Agreement, the Contractor shall furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A.M. Best A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the TJPA for all work performed by the Contractor, its employees, agents and subcontractors.

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

j. If the Contractor will use any subcontractor(s) to provide the services, the Contractor shall require the subcontractor(s) to provide all necessary insurance and to name as Additional Insured the entities indicated in Appendix C.

## **17. Indemnification – Omitted**

## **18. Incidental and Consequential Damages; Limitation of Liability**

The liability (including attorney's fees and all other costs) of Contractor and its present or former partners, principals, agents or employees related to any claim for damages relating to the Services performed under this Agreement shall not exceed the fees paid to Contractor for the portion of the work under the NTP to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Contractor relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages.

Because of the importance of the information that TJPA provides to Contractor with respect to Contractor's ability to perform the Services, TJPA hereby releases Contractor and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney's fees, relating to the Services, that arise from or relate to any information, including representations by management, provided by TJPA, its personnel or agents, that is not complete, accurate or current, whether or not management knew or should have known that such information was not complete, accurate or current.

Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.

Each party accepts and acknowledges that any legal proceedings arising from or in conjunction with the Services provided under this Agreement must be commenced within the applicable statute of limitations.

## **19. Liability of TJPA**

The TJPA's payment obligations under this agreement shall be limited to the payment of the compensation provided for in Section 6, "Compensation." Notwithstanding any other provision of this Agreement, in no event shall the TJPA be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

## **20. Liquidated Damages – Omitted**

## **21. Termination for Default; Remedies**

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

(1) The Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: Payment; Submitting False Claims,



Monetary Penalties; Taxes; Insurance; Indemnification; Proprietary or Confidential Information of the TJPA; Protection of Private Information; Assignment; Drug-Free Workplace Policy; Compliance With Laws; USDOT Requirements.

(2) The Contractor fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) days after written notice thereof from TJPA to the Contractor.

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

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

b. On and after any Event of Default, the TJPA shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement.

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

## **22. Termination for Convenience**

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

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

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

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

(3) Terminating all existing orders and subcontracts.

(4) Reserved.

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

(6) Reserved.

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

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to the TJPA an invoice, which shall set forth the reasonable cost to the Contractor for all services and other work the TJPA directed the Contractor to perform prior to the specified termination date, for which services or work the TJPA has not already tendered payment. The costs shall be determined as provided in Section 6, "Compensation," and shall be invoiced as provided in Section 8, "Payment." The Contractor may also recover the reasonable cost of preparing the invoice.

d. In no event shall the TJPA be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the TJPA, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. With respect to the amount due to the Contractor under this Section, the TJPA shall remit such amount without deduction or withholding for any other amounts.

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

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

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

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, "Term of Agreement," this Agreement shall terminate and be of no further force or effect.

## **24. Notices to the Parties**

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

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

To Contractor:            Wendi Unger  
Baker Tilly US, LLP  
790 N Water Street, Suite 2000  
Milwaukee, WI 53202  
(414) 777-5423  
[Wendi.unger@bakertilly.com](mailto:Wendi.unger@bakertilly.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

The Contractor agrees that all information disclosed by the TJPA to the Contractor shall be held in confidence and used only in performance of this Agreement, except to the extent the use or disclosure is: (i) authorized by this Agreement; (ii) made after the Contractor receives advance written approval from the TJPA; or (iii) required by law or judicial order.

## **26. San Francisco Protection of Private Information**

a. If this Agreement requires the TJPA to disclose “Private Information” to the Contractor within the meaning of San Francisco Administrative Code Chapter 12M, the Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services. The Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

## **27. News Releases/Interviews**

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

## **28. Ownership of Results – Omitted**

## **29. Works for Hire – Omitted**

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

The Contractor agrees to maintain and make available to the TJPA, during regular business hours, accurate books and accounting records relating to its invoices and billings issued under this Agreement.

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

**31. Omitted**

**32. Omitted**

**33. Subcontracting**

The Contractor will be permitted to subcontract - portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of the Services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed. The TJPA shall be provided with a copy of each subcontract promptly upon execution. Any agreement made in violation of this provision shall be null and void.

**34. Assignment**

The Services to be performed by the Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by the TJPA by written instrument executed and approved in the same manner as this Agreement. Contractor may assign and transfer this Agreement to any successor that acquires all or substantially all of the business or assets of Contractor by way of merger, consolidation, other business reorganization, or the sale of interests or assets, with the approval by the TJPA.

**35. Non-Waiver of Rights**

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

**36. Omitted**

**37. Conflict of Interest**

Through its execution of this Agreement, the Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and further agrees promptly to notify the TJPA if it becomes aware of any such fact during the term of this Agreement.

The Contractor's duties and services under this Agreement shall not include preparing or assisting the TJPA with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the TJPA. The TJPA shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of the project. The Contractor's participation, if any, in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. The Contractor shall cooperate with the TJPA to ensure that all bidders for a subsequent contract on any subsequent phase of the project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by the Contractor, if any, pursuant to this agreement.

### **38. San Francisco Limitations on Contributions**

Through execution of this Agreement, the Contractor acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elected official if the Agreement must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such Agreement or twelve months after the date the Agreement is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. The Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the TJPA.

### **39. San Francisco Prohibition on Political Activity with TJPA Funds**

In performing the services, the Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the TJPA for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

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

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

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

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

b. Subcontracts

Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

c. Nondiscrimination in Benefits

The Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

d. Omitted

e. Omitted

f. Consideration of Salary History

The Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." The Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141.

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

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

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

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

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of zero percent (0%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

## **43. Prompt Payment to Subcontractors**

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

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

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

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

administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE/SBE and non-DBE/SBE subcontractors.

#### **44. San Francisco Minimum Compensation Ordinance**

a. If San Francisco Labor and Employment Code Article 111 applies to this Agreement, the Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111. '

#### **45. San Francisco Healthcare Accountability Ordinance**

a. If San Francisco Labor and Employment Code Article 121 applies to this Agreement, the Contractor shall comply with the requirements of Article 121. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the Health Care Accountability Ordinance (HCAO). If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

#### **46. San Francisco First Source Hiring Program - Omitted**

#### **47. San Francisco Consideration of Criminal History in Hiring and Employment Decisions**

The Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated herein by reference and made a part of this Agreement as though fully set forth. The requirements of Article 142 shall only apply to the Contractor's or subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City and County of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

#### **48. MacBride Principles – Northern Ireland**

The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to



resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles. .

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

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

#### **50. Omitted**

#### **51. San Francisco Tropical Hardwood/Virgin Redwood Ban**

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

#### **52. Omitted**

#### **53. San Francisco Food Service Waste Reduction Requirements**

The Contractor shall comply with the San Francisco Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

#### **54. Omitted**

#### **55. Modification of Agreement**

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

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

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

#### **57. 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.

#### **58. Construction**

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

## **59. Entire Agreement**

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 55, “Modification of Agreement.”

## **60. Severability**

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

## **61. USDOT Requirements**

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

## **62. Compliance With Laws**

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

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

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

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

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

Unless otherwise prohibited by law or TJPA policy, the parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the

Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA.

## **65. Compliance with Naming Rights Agreement**

The TJPA has executed an agreement with salesforce.com providing salesforce the right to name the new transit center the “Salesforce Transit Center” and the right to receive certain other benefits. The Naming Rights Agreement imposes requirements and obligations relative to the name of, references to, and logos associated with the transit center. The Contractor will comply with the procedures, restrictions, and requirements developed by the TJPA related to implementation of its obligations under the Naming Rights Agreement, and the terms for the Contractor’s use of the name and logos associated with the transit center.

## **65. Cooperative Drafting**

This Agreement has been drafted through a cooperative effort of TJPA and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

\_\_\_\_\_  
Adam Van de Water, Executive Director

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

Transbay Joint Powers Authority

Board of Directors

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

Adopted: \_\_\_\_\_

Attest:

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

CONTRACTOR

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Title

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

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

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

## APPENDIX A

### SCOPE OF SERVICES

#### Scope of the Engagement

Contractor shall provide the Services annually for each fiscal year covered by the Agreement for the TJPA's Basic Financial Statements, Management's Discussion and Analysis, and the Single Audit.

The TJPA reports as an enterprise fund and issues the following Basic Financial Statements according to the financial reporting requirements of the Governmental Accounting Standards Board Statement No. 34:

- Statement of Net Position
- Statement of Revenues, Expenses and Changes in Fund Net Position
- Statement of Cash Flows
- Notes to the Basic Financial Statements

TJPA's Required Supplementary Information consists of:

- Schedule of Proportionate Share of Net Pension Liability
- Schedule of Pension Contributions
- Schedule of Changes in Net OPEB Liability and Related Ratios
- Schedule of OPEB Contributions
- Schedule of Expenditures of Federal Awards
- Notes to Schedule of Expenditures of Federal Awards
- Auditing Financial Statement including GASB Reports

The TJPA Financial Statements are posted on the TJPA website at [https://www.tjpa.org/about-tjpa/documents?combine=&field\\_category\\_target\\_id=20&page=0](https://www.tjpa.org/about-tjpa/documents?combine=&field_category_target_id=20&page=0)

Contractor shall conduct an audit of the Basic Financial Statements of the TJPA for each fiscal year of the term for the purpose of expressing an opinion on these financial statements and issuing an independent auditor's report. The audits are to be performed in accordance with all applicable Generally Accepted Auditing Standards (GAAS), including but not limited to auditing standards set forth by the American Institute of Certified Public Accountants (AICPA), the standards for financial audits set forth in the U.S. Government Accountability Office's *Government Auditing Standards*, the provisions of the *Single Audit Act of 1984* and amendments, and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and applicable State of California audit guidelines.

Contractor will, in planning and performing their audit, consider the TJPA's internal control over financial reporting in order to determine their auditing procedures for the purpose of expressing their opinion on the financial statements. Also, Contractor, as part of obtaining reasonable assurance about whether the TJPA's financial statements are free of material misstatement, will perform tests of the TJPA's compliance with certain provisions of laws, regulations, contracts, and grant agreements. Contractor will issue an independent report on internal control over financial reporting and on compliance and other matters based on their audit of the financial statements performed in accordance with the *Government Auditing Standards*. The purpose of this report will be to describe the scope of the

Contractor's testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance.

Contractor will apply certain limited procedures to Management's Discussion and Analysis (MD&A) supplementary information regarding the methods of measurement and presentation.

If applicable for the year, Contractor will perform a Single Audit of TJPA's expenditures of federal grants, and audit the compliance of the TJPA with the types of compliance requirements described in the Circular A-133 Compliance Supplement that are applicable to each of its major federal programs identified in the Schedule of Expenditures of Federal Awards for the purpose of expressing an opinion as to whether the TJPA complied, in all material respects, with the requirements referred to above that are applicable to each of its major Federal programs. The supplemental Schedule of Expenditures of Federal Awards is to be subjected to the auditing procedures applied in the audit of the Basic Financial Statements to determine if the Schedule is fairly stated, in all material respects, in relation to the Basic Financial Statements taken as a whole.

Final audited financial reports must be presented to the TJPA Board at its December meeting following the close of the fiscal year. (Please note that TJPA Board meetings are regularly scheduled for the second Thursday of each month). Changes to this date are subject to mutual agreement of Contractor and the TJPA.

***Deliverables:*** 10 bound copies of independent auditor's reports, MD&A, Basic Financial Statements and other supplementary information, including the Single Audit Report (Financial Report) Secured and unsecured electronic copies of the Financial Report. Submission of the Single Audit Report electronically to the Federal Audit Clearinghouse.

## **1 Audit Plan**

Contractor shall hold an entrance conference with all key finance personnel. The purpose of this meeting is to discuss prior audit issues or concerns and to coordinate the efforts of the Contractor, TJPA staff, and the TJPA financial consultant. Contractor will be asked to present a detailed audit plan and to present a list of all schedules to be prepared by the TJPA. The detailed audit plan shall include the audit of the TJPA's MD&A, Basic Financial Statements, Schedule of Federal Expenditures, and internal control procedures and identify key preliminary interim and final audit, deliverable, and status meeting dates. Throughout the engagement, the TJPA proposes to make appropriate staff available to provide assistance to the audit team. Such assistance includes coordinating the audit field work, identifying locations of required records and documentation, preparing and/or obtaining listings of account balances/transactions, providing reasonable detailed analysis and reconciliation of various accounts being audited, and other such tasks which will serve to speed the conduct of the engagement. The TJPA will arrange for appropriate office space.

***Deliverables:*** Detailed Audit Plan  
List of required schedules to be prepared by TJPA

## **2 Management Letter**

Contractor shall issue reports to management (management letters), which discuss required communications and reportable conditions or material weaknesses related to the TJPA in accordance with GAAS and the *Government Auditing Standards*. The management letter shall address the systems of internal control, accounting and financial systems, functions, procedures, and processes, especially with regard to cost effectiveness, and compliance with laws, regulations, contracts, and grants. Contractor shall

discuss all findings and recommendations with the TJPA's Executive Director, Chief Financial Officer, and Accounting Supervisor prior to inclusion in its report. In addition to communicating reportable conditions and material weaknesses in accounting and administrative controls, the primary objective of the management letter shall be to provide suggestions for improvements to fiscal operations.

The final management letter shall include the following:

1. Findings and recommendations of improvements in internal controls and accounting systems based upon the review of the internal control structure and assessment of control risk performed as part of the audit
2. Findings of noncompliance with laws, rules, regulations, and charter requirements that came to Contractor's attention during the course of the audit
3. Any other material items in the course of the audit that the Contractor feels should be brought to the attention of management and the TJPA's Board of Directors
4. Recommendations for improvements in administrative efficiency
5. If requested by the Chief Financial Officer and/or Accounting Supervisor, a summary listing of nonmaterial items that were communicated to management
6. Status of all management letter comments from prior years
7. Management's response to findings and recommendations

***Deliverables:*** 10 bound copies of the management letter  
Secured and unsecured electronic copies of the management letter

### **3 Additional Requirements**

#### **3.1.1 Communication and Presentations**

Contractor shall meet with the TJPA's Chief Financial Officer and/or Accounting Supervisor on a regular basis to report the progress of its audit and any preliminary findings. Upon completion and issuance of both the financial statements and the management letter, Contractor will make a presentation to the TJPA's Board of Directors. Content of the presentation must be approved by the TJPA's Chief Financial Officer and/or Accounting Supervisor and Executive Director prior to the Board meeting date.

#### **3.1.2 Perform Procedures for Public Debt Issuance**

Contractor shall follow procedures necessary to ensure that the TJPA may use the Contractor's opinion on the TJPA's financial statements in connection with any official statements (OS) for public debt issuance. The TJPA will have the right to reproduce the audited financial statements with the related auditor's report and include such report in an Official Statement without the Contractor's involvement or association as defined by the professional auditing standards.

#### **3.1.3 Update on New Accounting & Auditing Requirements**

During the period under contract, the TJPA may be required to implement new accounting standards, comply with additional auditing requirements, or new federal or state legislation and rules. Contractor shall keep the TJPA informed of such requirements.

#### **3.1.4 Working Paper Retention and Access to Working Papers**

All working papers and reports must be retained, at Contractor's expense, for a minimum of seven (7) years after the ending date of the fiscal year audited, unless Contractor is notified to extend the retention period. In addition, Contractor shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance subject to execution of appropriate consent and access letters.

#### 4 Staff Assigned

Staff	Role
Wendi Unger, CPA – Principal	Engagement Principal
Amanda Blomberg, CPA – Managing Director	Single Audit Director
Michelle Walter, CPA – Senior Manager	Audit Senior Manager
Aaron Worthman, CPA – Principal	Engagement Quality Reviewer
Tony Ollman, CPA, CCA - Principal	Construction Specialist
Mike Kamienski, CPA – Principal	Real Estate Specialist

#### 5 Services and Related Report

Contractor will audit the financial statements of the TJPA as of and for the years ending June 30, 2025, 2026, 2027, 2028 and 2029, and the related notes to the financial statements. Upon completion of Contractor's audit, Contractor will provide the TJPA with Contractor's audit report on the financial statements. If, for any reasons caused by or relating to the affairs or management of the TJPA, Contractor is unable to complete the audit or is unable to or have not formed an opinion, or if Contractor determines in Contractor's professional judgment the circumstances necessitate, Contractor may withdraw and decline to issue a report as a result of this Agreement.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI) to supplement the TJPA's financial statements. Such information, although not a part of the financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic or historical context. As part of Contractor's engagement, Contractor will apply certain limited procedures to the TJPA's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of the TJPA management regarding the methods of preparing the information and comparing the information for consistency with the TJPA management's response to Contractor's inquiries, the financial statements, and other knowledge Contractor obtained during Contractor's audit of the financial statements. Contractor will not express an opinion or provide any assurance on the information because the limited procedures do not provide Contractor with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Management's Discussion and Analysis
- Pension and OPEB Schedules

Contractor's report does not include reporting on key audit matters.

#### 6 Contractor's Responsibilities and Limitations

The objective of a financial statement audit is the expression of an opinion on the financial statements. The objective also includes reporting on:



- Internal control related to the financial statements and compliance with laws, regulations and the provisions of contracts or grant agreements, noncompliance with which could have a direct and material effect on the financial statements in accordance with Government Auditing Standards.
- Internal control related to major federal programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance).

The Government Auditing Standards report on internal control over financial reporting and on compliance and other matters will include a paragraph that states (i) that the purpose of the report is solely to describe the scope of testing of internal control and compliance, and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (ii) that the report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the entity's internal control and compliance. The report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance will state that the report is not suitable for any other purpose.

Contractor will be responsible for performing the audit in accordance with auditing standards generally accepted in the United States of America (GAAS); the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures Contractor considers necessary to enable Contractor to express such opinions and to render the required reports.

As part of an audit in accordance with GAAS and Government Auditing Standards, Contractor exercises professional judgment and maintains professional skepticism throughout the audit. Contractor will also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for Contractor's opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the TJPA's internal control. However, Contractor will communicate to the TJPA in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that Contractor has identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by the TJPA management, as well as evaluate the overall presentation of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the TJPA's ability to continue as a going concern for a reasonable period of time.

Because of the inherent limitations of an audit, together with the inherent limitations of internal controls, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS and Government Auditing Standards. Because the determination of waste and abuse is subjective, Government Auditing Standards do not expect auditors to provide reasonable assurance of detecting waste or abuse. Contractor's audit will include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing accounting principles used and significant estimates made by the TJPA management, and evaluating the overall financial statements presentation. Contractor's audit does not relieve the TJPA management or those charged with governance of their responsibilities. Contractor's audit is limited to the period covered by their audit and does not extend to any later periods during which Contractor is not engaged as auditor.

The audit will include obtaining an understanding of the TJPA and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to determine the nature, timing and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, Contractor will communicate to the TJPA management or those charged with governance internal control matters that are required to be communicated under professional standards. Contractor will also inform the TJPA of any other matters involving internal control, if any, as required by Government Auditing Standards and the Uniform Guidance.

Tests of controls may be performed to test the effectiveness of certain controls that Contractor considers relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Contractor's tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in Contractor's report on internal control issued pursuant to Government Auditing Standards.

As required by the Uniform Guidance, Contractor will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that Contractor considers relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, Contractor tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in Contractor's report on internal control over compliance issued pursuant to the Uniform Guidance.

Also, if required by Government Auditing Standards, Contractor will report known or likely fraud, illegal acts, violations or provisions of contracts or grant agreements, or abuse directly to parties outside of the TJPA.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, Contractor will perform tests of the TJPA's compliance with the provisions of applicable laws, regulations, contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and Contractor will not express such an opinion in Contractor's report on compliance issued pursuant to Government Auditing Standards.

The Uniform Guidance requires that Contractor also plans and performs the audit to obtain reasonable assurance about whether the TJPA has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Contractor's procedures will consist of test of transactions and other applicable procedures described in the OMB Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of the TJPA's

major programs. The purpose of those procedures will be to express an opinion on the TJPA's compliance with requirements applicable to each of the TJPA's major programs in Contractor's report on compliance issued pursuant to the Uniform Guidance.

Contractor is also responsible for determining that those charged with governance are informed about certain other matters related to the conduct of the audit, including (i) Contractor's responsibility under GAAS, Government Auditing Standards and Uniform Guidance, (ii) an overview of the planned scope and timing of the audit, and (iii) significant findings from the audit, which include (a) Contractor's views about the qualitative aspects of the TJPA's significant accounting practices, accounting estimates, and financial statement disclosures; (b) difficulties encountered in performing the audit; (c) uncorrected misstatements and material corrected misstatements that were brought to the attention of TJPA management as a result of auditing procedures; and (d) other significant and relevant findings or issues (e.g., any disagreements with TJPA management about matters that could be significant to the TJPA's financial statements or Contractor's report thereon, consultations with other independent accountants, issues discussed prior to Contractor's retention as independent auditors, fraud and illegal acts, and all significant deficiencies and material weaknesses identified during the audit). Lastly, Contractor is responsible for ensuring that those charged with governance receive copies of certain written communications between Contractor and TJPA management including written communications on accounting, auditing, internal controls or operational matters and representations that Contractor is requesting from TJPA management.

The audit will not be planned or conducted in contemplation of reliance of any specific third party or with respect to any specific transaction. Therefore, items of possible interest to a third party will not be specifically addressed and matters may exist that would be addressed differently by a third party, possibly in connection with a specific transaction.

## **7 TJPA Management's Responsibilities**

Contractor's audit will be conducted on the basis that the TJPA's management and, when appropriate, those charged with governance, acknowledge and understand that they have responsibility:

- For identifying all federal awards received and understanding and complying with the compliance requirements;
- For the preparation and fair presentation of the financial statements in accordance accounting principles generally accepted in the United States of America;
- For the design, implementation, establishment, and maintenance of effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; and
- For the design, implementation, and maintenance of effective internal controls over compliance that provides reasonable assurance that the TJPA administers federal awards in compliance with the compliance requirements; and
- To provide Contractor with:
  - o Access to all information of which the TJPA management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;
  - o Additional information that Contractor may request from the TJPA management for the purpose of the audit; and
  - o Unrestricted access to persons within the TJPA from whom Contractor determines it necessary to obtain audit evidence

TJPA management is responsible for identifying and ensuring that the TJPA complies with applicable laws, regulations, contracts, agreements, and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations contracts or grant agreements, or abuse that Contractor reports.

Additionally, as required by the Uniform Guidance, it is the TJPA management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for Contractor's review before Contractor begins fieldwork.

TJPA management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. TJPA management is also responsible for identifying for Contractor previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed above. This responsibility includes relaying to Contractor corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits or studies. The TJPA is also responsible for providing management's views on Contractor's current findings, conclusions and recommendations, as well as the TJPA's planned corrective actions for the report, and for the timing and format for providing that information.

The TJPA is responsible for the preparation of the supplementary information in conformity with GAAP. The TJPA agrees to include Contractor's report on the supplementary information in any document that contains, and indicates that Contractor has reported on, the supplementary information. The TJPA also agrees to include the audited financial statements with any presentation of the supplementary information that includes Contractor's report thereon. The TJPA's responsibilities include acknowledging to Contractor in the representation letter that (a) the TJPA is responsible for presentation of the supplementary information in accordance with GAAP; (b) that the TJPA believes the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (c) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (d) the TJPA has disclosed to Contractor any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

The TJPA is responsible for preparation of the schedule of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. The TJPA agrees to include Contractor's report on the schedule of expenditures of federal awards in any document that contains and indicates that Contractor has reported on the schedule of expenditures of federal awards. The TJPA also agrees to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes Contractor's report thereon. The TJPA's responsibilities include acknowledging to Contractor in a written representation letter that (a) the TJPA is responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (b) that the TJPA believes the schedule of expenditures of federal awards including its form and content, is fairly presented in accordance with the Uniform Guidance; (c) that the methods of measurement or presentation have not changed from those used in the prior year (or, if they have changed, the reasons for such changes); and (d) the TJPA has disclosed to Contractor any significant assumptions or interpretations underlying the measurement or presentation of the schedule of federal awards.

TJPA management is responsible for (i) adjusting the financial statements to correct material misstatements and for affirming to Contractor in a management representation letter that the effects of any uncorrected misstatements aggregated by Contractor during the current engagement and pertaining to the latest period under audit are immaterial, both individually and in the aggregate, to the financial statements taken as a whole, and (ii) notifying Contractor of all material weaknesses, including other

significant deficiencies, in the design or operation of the TJPA's internal control over financial reporting that are reasonably likely to adversely affect the TJPA's ability to record, process, summarize and report external financial data reliably in accordance with GAAP. TJPA management is also responsible for identifying and ensuring that the TJPA complies with the laws and regulations applicable to its activities.

As part of Contractor's audit process, Contractor will request from TJPA management and, when appropriate, those charged with governance written confirmation concerning representations made to Contractor in connection with the audit.

TJPA management is responsible for informing Contractor on a timely basis of the name of any single investor in the TJPA that owns 20% or more of the TJPA's equity at any point in time. TJPA management is also responsible for informing Contractor on a timely basis of any investments held by the TJPA which constitutes 20% or more of the equity/capital of the investee entity at any point in time.

## **8 Nonattest Services**

Prior to or as part of Contractor's audit engagement, it may be necessary for either Baker Tilly US, LLP or Baker Tilly Advisory Group, LP to perform certain nonattest services. For purposes of this letter, nonattest services include services that Government Auditing Standards refers to as nonaudit services.

Nonattest services that Contractor or Baker Tilly Advisory Group, LP will be providing are as follows:

- Financial statement preparation assistance (if applicable)
- Proposed audit adjustments (if applicable)
- Schedule of federal awards preparation assistance (if applicable)
- Data entry of the auditee section of the data collection form (if applicable)

None of these nonattest services constitute an audit under generally accepted auditing standards including Government Auditing Standards.

Baker Tilly US, LLP and Baker Tilly Advisory Group, LP will not perform any management functions or make management decisions on the TJPA's behalf with respect to any nonattest services Contractor provides.

In connection with Baker Tilly US, LLP's or Baker Tilly Advisory Group, LP's performance of any nonattest services, the TJPA agrees that the TJPA will:

- Continue to make all management decisions and perform all management functions, including approving all journal entries and general ledger classifications when they are submitted to the TJPA.
- Designate an employee with suitable skill, knowledge and/or experience, preferably within senior management, to oversee the services performed.
- Evaluate the adequacy and results of the nonattest services performed.
- Accept responsibility for the results of the nonattest services.
- Establish and maintain internal controls, including monitoring ongoing activities related to the nonattest function.

On a periodic basis, as needed, Contractor will meet with the TJPA to discuss the TJPA's accounting records and the management implications of the TJPA's financial statements. Contractor will notify the TJPA, in writing, of any matters that Contractor believes the TJPA should be aware of and will meet with the TJPA upon request.

## 9 Other Documents

GAAS requires that Contractor reads any annual report that contains Contractor's audit report. The purpose of this procedure is to consider whether other information in the annual report, including the manner of its presentation, is materially inconsistent with information appearing in the financial statements. Contractor assumes no obligation to perform procedures to corroborate such other information as part of Contractor's audit.

If the TJPA intends to reproduce or publish the financial statements, and make reference to Contractor's firm name in connection therewith, the TJPA agrees to publish the financial statements in their entirety. In addition, the TJPA agrees to provide Contractor, for Contractor's approval and consent, proofs before printing and final materials before distribution.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on the TJPA's Internet website, the TJPA understands that electronic sites are a means to distribute information and, therefore, Contractor is not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

The TJPA may wish to include Contractor's report on these financial statements in a securities offering. The TJPA agrees that the aforementioned audit report, or reference to Baker Tilly will not be included in such offering without Contractor's prior written permission or consent. Any agreement to perform work in connection with an offering, including an agreement to provide permission or consent, will be a separate agreement.

At the conclusion of Contractor's engagement, Contractor will complete the appropriate sections of the Data Collection Form that summarizes Contractor's audit findings. It is the TJPA management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior year audit findings, auditors' reports and corrective action plan) along with the Data Collection Form to the Federal Audit Clearinghouse. Contractor will coordinate with the TJPA the electronic submission and certification. If applicable, Contractor will provide copies of Contractor's report for the TJPA to include within the reporting package the TJPA will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of thirty (30) days after receipt of the auditors' reports or nine (9) months after the end of the audit period.

Contractor will provide copies of Contractor's reports to the TJPA, however, the TJPA management is responsible for distribution of the reports and the financial statements. Copies of Contractor's reports are to be made available for public inspection unless restricted by law or regulation or if they contain privileged and confidential information.

The documentation for this engagement, including the workpapers, is the property of Contractor and constitutes confidential information. However, pursuant to authority given by law or regulation, Contractor may be requested to make certain audit documentation available to federal or state agencies for purposes of a quality review of the audit, to resolve audit findings or to carry out oversight responsibilities. Contractor will notify the TJPA of any such request. If requested, access to such audit documentation will be provided under the supervision of Contractor personnel. Furthermore, upon request, Contractor may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

Contractor may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. Contractor does not retain any original client records; so Contractor will return such records to the TJPA at the completion of the services rendered under this engagement. When such records are returned to the TJPA, it is the TJPA's responsibility to retain and protect its accounting and other business records for future use, including potential review by any government or other regulatory agencies. By the TJPA's signature below, the TJPA acknowledges and agrees that, upon the expiration of the documentation retention period, Contractor shall be free to destroy Contractor's workpapers related to this engagement. If Contractor is required by law, regulation or professional standards to make certain documentation available to regulators, the TJPA hereby authorizes Contractor to do so.

Government Auditing Standards require that Contractor provides the TJPA with a copy of Contractor's most recent external peer review report and any subsequent peer review reports received during the period of the contract.

With prior written approval from TJPA's Chief Financial Officer, Contractor may use temporary contract staff to perform certain tasks on the TJPA's engagement. Upon request, Contractor will provide details on training, supervision and billing arrangements Contractor uses in connection with these professionals. Additionally, and with prior written approval from TJPA's Chief Financial Officer, Contractor may from time to time, and depending on the circumstances, use service providers (e.g., to act as a specialist or audit an element of the financial statements) in serving the TJPA.. Contractor may share confidential information about the TJPA with these contract staff and service providers, but remain committed to maintaining the confidentiality and security of the TJPA's information. Accordingly, Contractor maintains internal policies, procedures and safeguards to protect the confidentiality of the TJPA's personal information. In addition, Contractor will secure confidentiality agreements with all contract staff and service providers to maintain the confidentiality of the TJPA's information and Contractor will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of the TJPA's confidential information to others. In the event that Contractor is unable to secure an appropriate confidentiality agreement, the TJPA will be asked to provide the TJPA's consent prior to the sharing of the TJPA's confidential information with the contract staff or third-party service provider. Furthermore, Contractor will remain responsible for the work provided by any such contract staff or third-party service providers.

Contractor may be required to disclose confidential information to federal, state and international regulatory bodies or a court in criminal or other civil litigation. In the event that Contractor receives a request from a third party (including a subpoena, summons or discovery demand in litigation) calling for the production of information, Contractor will promptly notify the TJPA, unless otherwise prohibited. In the event Contractor is requested by the TJPA or required by government regulation, subpoena or other legal process to produce Contractor's engagement working papers or Contractor's personnel as witnesses with respect to services rendered to the TJPA, so long as Contractor is not a party to the proceeding in which the information is sought, Contractor may seek reimbursement for Contractor's professional time and expenses, as well as the fees and legal expenses, incurred in responding to such a request.

Contractor may be required to disclose confidential information with respect to complying with certain professional obligations, such as peer review programs. All participants in such peer review programs are bound by the same confidentiality requirements as Contractor and its employees. Contractor will not be required to notify the TJPA if disclosure of confidential information is necessary for peer review purposes.

## **10 Other Matters**

The services performed under this Agreement do not include the provision of legal advice and Contractor makes no representations regarding questions of legal interpretation. The TJPA shall consult with its attorneys with respect to any legal matters or items that require legal interpretation under federal, state or other type of law or regulation.

Baker Tilly US, LLP and Baker Tilly Advisory Group, LP and its subsidiary entities provide professional services through an alternative practice structure in accordance with the AICPA Code of Professional Conduct and applicable laws, regulations and professional standards. Baker Tilly US, LLP is a licensed independent CPA firm that provides attest services to clients. Baker Tilly Advisory Group, LP and its subsidiary entities provide tax and business advisory services to their clients. Baker Tilly Advisory Group, LP and its subsidiary entities are not licensed CPA firms.



## APPENDIX B

### Calculation of Charges

There shall be no mark up by the Contractor for the cost of subcontractors retained by the Contractor in the performance of the Services.

The below fixed fees per service shall include all incidental expenses of the Contractor, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in - and out-of-house photocopying, charges for sending facsimiles, transportation, travel, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Contractor or the Contractor's subcontractors.

Other Direct (Out-of-pocket) costs actually incurred by the Contractor in performing the Services are subject to reimbursement if such costs are pre-approved by TJPA in writing. Contractor will not mark up such allowable costs and a receipt or invoice must be submitted documenting allowable costs. Any allowable travel costs must be consistent with TJPA's Travel Policy.

**Project Cost.** In accordance with Section 6 of this Agreement, Contractor's total compensation under this Agreement is detailed below, inclusive of all costs required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Section 6, of this Agreement.

<b>Services for TJPA</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>	<b>FY2028</b>	<b>FY2029</b>
Annual Audit	\$46,250	\$48,560	\$50,990	\$53,540	\$56,220
Single Audit	\$6,250	\$6,560	\$6,890	\$7,235	\$7,660
Estimated Out-of-pocket Costs	\$500	\$500	\$500	\$500	\$500
<b>Cost</b>	<b>\$53,000</b>	<b>\$55,620</b>	<b>\$58,380</b>	<b>\$61,275</b>	<b>\$64,320</b>
<b>Technology Fee:</b>	<b>5% of total fee amount (\$14,630);</b>				
<b>Total Cost:</b>	<b>\$307,225</b>				

**Project Costs, including technology fee, shall be invoiced monthly based on actual fees incurred per month.**

#### **Price Adjustments.**

Contractor's fees are to be firm for the term of the Agreement, from start date through the end of the term, including extensions.

Contractor's fee estimate is based on certain assumptions. Certain circumstances may arise during the course of Contractor's audit that could significantly affect the targeted completion date or Contractor's fee estimate, and additional fees may be necessary as a result. Such circumstances include but are not limited to the following:

- Changes to the timing of the engagement initiated by the TJPA, which may require the reassignment of Contractor's personnel.

- The TJPA's failure to provide all information requested by Contractor (i) on the date requested, (ii) in the form acceptable to Contractor, (iii) with no mathematical errors, and (iv) in agreement with the appropriate TJPA records.
- Significant delays in responding to inquiries made of TJPA personnel, or significant changes in TJPA accounting policies or practices, or in the TJPA's accounting personnel, their responsibilities, or their availability.
- Significant delays or errors in the draft financial statements and necessary schedules prepared by the TJPA's personnel.
- Implementation of new general ledger software or a new chart of accounts by the TJPA.
- Significant changes in the TJPA's business operations, including business combinations, the creation of new entities, divisions, or subsidiaries within the TJPA, significant new employment or equity agreements, or significant subsequent events. Certain business transactions or changes in business operations or conditions, financial reporting, and/or auditing standards may require Controller to utilize the services of internal or external valuation or tax specialists.
- New financing arrangements or modifications to existing financing arrangements, or significant new federal or state funding.
- Significant deficiencies or material weaknesses in the design or operating effectiveness of the TJPA's internal control over financial reporting identified during the audit.
- A significant level of proposed audit adjustments.
- Issuance of additional accounting or auditing standards subsequent to or effective for the periods covered by this Agreement.
- In addition, if Contractor discovers compliance issues that require Contractor to perform additional procedures and/or provide assistance with these matters..
- No significant SAS's are outstanding. No significant FASB's are outstanding.

While Contractor has completed certain client acceptance procedures, Contractor has not yet completed Contractor's preacceptance inquiries of Maze & Associates. These inquiries are required by GAAS. Accordingly, Contractor's final acceptance of this engagement remains subject to the TJPA authorizing Maze & Associates to respond fully to Contractor's inquiries regarding matters that will assist Contractor in determining whether to accept this engagement, and Contractor's evaluation of the results of those inquiries. Contractor will inform the TJPA promptly in the event Contractor determines Contractor cannot accept this engagement.

The TJPA agrees to authorize Maze & Associates to allow a review of their audit documentation and respond to additional inquiries Contractor considers relevant to Contractor's planning and performing of this engagement.

Any fees charged by Maze & Associates in connection with the preceding paragraphs are the TJPA's responsibility.

For new business transactions or changes in business operations or conditions, financial reporting and/or auditing standards may require Contractor to utilize the services of internal or external valuation or tax specialists. This includes matters such as business combinations, impairment evaluations, and going concern evaluation, among other potential needs for specialists. The time and cost of such services are not included in the fee estimate provided.

## **APPENDIX C**

### **ADDITIONAL INSURED**

Transbay Joint Powers Authority

The Member Agencies of the TJPA:

Alameda-Contra Costa Transit District  
California High-Speed Rail Authority  
City and County of San Francisco  
Peninsula Corridor Joint Powers Board – Caltrain  
State of California, Department of Transportation

The following entities involved in the naming rights for the transit center:

Salesforce.com and all legal entities controlling, controlled by, or under common control with,  
directly or indirectly, salesforce.com

And all of the officers, directors, agents, permitted assigns, and employees of each of the above.

The Additional Insureds listed in this Appendix shall also include such other parties as the TJPA may request from time to time.

***The USDOT's requirements for agreements between the TJPA and a third party are summarized below. Certain USDOT provisions described below may not be applicable to all agreements with the TJPA***

## **APPENDIX D**

### **USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA**

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

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

**The following provisions (1-25) apply to all Agreements.**

#### **1. DEFINITIONS**

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

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

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

## 2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

The TJPA and 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.

**66.**

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

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

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

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

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

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

*\*\*This requirement applies to all Agreements. FRA requires the inclusion of these requirements in Subcontracts over \$150,000.*

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

- a) Where the TJPA is considered a “local government” and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the TJPA, the FTA or FRA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement (“Documents”) for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA or FRA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor's Documents and construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.
- b) Where the TJPA is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the TJPA, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.
- c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. (If applicable)
- d) 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.

- e) The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the TJPA, the FTA or FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

## **5. FEDERAL CHANGES**

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

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

## **6. CIVIL RIGHTS REQUIREMENT**

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

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

- a) Under this Contract, the Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations: i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135 ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996 iii. 49 U.S.C. § 5325 (k). iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
- b) Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to the Agency programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other

implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.

- c) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the Agreement:

- 1) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- 2) **Nondiscrimination on Basis of Age** - In accordance with section 4 of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3) **Americans with Disabilities** - In 12112, accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 4) **Americans with Disabilities Act (ADA)** - The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 et seq. The Contractor acknowledges that pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state, and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Contractor, its employees, agents, or assigns will constitute a material breach of this Agreement. The ADA Access requirements apply to all contracts. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.



- 5) **Special DOL EEO Clause** – Applies to construction contracts >\$10,000; Contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit against all individuals based on their race color, religion, age, sex, sexual orientation, gender identity, status as a parent, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, age, sex, sexual orientation, gender identity, national origin, disability, status as a parent, or veteran status.
- d) Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- e) During the performance of this contract, the contractor agrees as follows:
- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or other action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
  - 4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - 5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - 6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by the contracting

agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

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

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

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

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

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

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

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

d) DBE Contract Assurance (49 CFR 26.13)

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is no limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

The non-Federal entity must take all necessary affirmative steps to assure that contracting with small and minority business, women's business enterprises, and labor surplus area firms are used when possible. (2 CFR 200.321)

Affirmative steps must include:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.
- 7) Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

e) DBE Prompt Payment (49 CFR 26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract:

- 1) Not later than ten (10) days after receipt of each progress payment from the Agency, the successful Proposer shall pay to any sub-contractor performing any work, the respective amounts allowed to the successful Proposer for work performed by the sub-contractor, to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Proposer's receipt of released retention from the Agency upon completion of the project as defined in California Public Contract Code section 7107 the successful Proposer shall pay each of its sub-contractors from whom retention has been withheld, each sub-contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by the Agency, the successful Proposer shall pay each of its sub-contractors from whom

retention has been withheld, each sub-contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-contractors.

- 2) Failure to comply with these provisions or delay in payment without prior written approval from the Agency will constitute noncompliance, which may result in appropriate administrative sanctions.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract 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 Agency.

The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

#### Payment Deductions – Noncompliance with DBE Requirements

- 1) For Federally funded contracts that exceed \$150,000 and to which the Disadvantage Business Enterprise (DBE) Requirements apply, the failure to perform in accordance with requirements may result in a partial or full suspension of payment, including progress payments, if applicable.
  - 2) If the Contractor is found to be in noncompliance with the DBE requirements of the progress of the work shall also be deemed to be unsatisfactory, and an amount equal to the DBE participation in the Contract shall be retained from payment (or progress payments, if any) made to the Contractor.
  - 3) If the contract value is over \$150,000, the prime contractor may be responsible for submitting a monthly report on the status of its DBE subcontractors as outlined by the Contracting Officer.
  - 4) If the Contractor fails to submit the required monthly DBE reports, the Contracting Officer may suspend payment (or progress payments) until such time as the monthly reports are submitted and accepted by the Agency.
- f) Civil Rights Policy Statements: It is the policy of the Department of Transportation and the Agency that Disadvantaged Business Enterprises (“DBE”) as defined in 49 CFR part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirement of 49 CFR applies to this Agreement.

## 8. AMERICANS WITH DISABILITIES ACT

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

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 et seq. The Contractor acknowledges that pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state, and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Contractor, its employees, agents, or assigns will constitute a material breach of this Agreement. The ADA Access requirements apply to all contracts. The ADA Access requirements flow down to all third-party contractors and their contracts at every tier. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, Department of Justice, U.S. General Services Administration, U.S. Equal Employment Opportunity

Commission, U.S. Federal Communications Commission, any subsequent amendments thereto, and any other nondiscrimination statute(s) that may apply to the Project.

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

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

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

## **10. FLY AMERICA REQUIREMENTS**

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

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

## **11. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

- a) use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;
- b) furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for

shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the TJPA (through the Contractor in the case of a subcontractor's bill-of-landing).

## **12. ENERGY CONSERVATION REQUIREMENTS**

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

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6201 et seq. The Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

## **13. ASSIGNABILITY CLAUSE**

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

Procurements through assignments: Neither Agency nor the contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.

## **14. SEVERABILITY**

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

The Contractor agrees that if any provision of these Federal Requirements is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## **15. FEDERAL STANDARDS**

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

The Contractor agrees to comply with FTA Circular 4220.1G, “Third Party Contracting Requirements,” including any revision or replacement thereof, and applicable Federal regulations or requirements, including FTA third party contracting regulations when promulgated. The FTA Best Practices Procurement Lessons Learned Manual provides additional procurement guidance. Nevertheless, successful Proposer should be aware that the FTA Best Practices Procurement Lessons Learned Manual is focused on procurement processes and may omit certain Federal requirements applicable to the work to be performed.

## **16. NOTICE TO THIRD PARTY PARTICIPANTS**

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

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient’s Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **17. TRAFFICKING IN PERSONS**

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

The contractor agrees that it and its employees that participate in the Recipient’s Award, may not: Engage in severe forms of trafficking in persons during the period of time that the Recipient’s Award is in effect; Procure a commercial sex act during the period of time that the Recipient’s Award is in effect; or Use forced labor in the performance of the Recipient’s Award or sub agreements thereunder.

## **18. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

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

The contractor certifies that it: (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. The Contractor shall flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

## **19. SUBSTANCE ABUSE REQUIREMENTS (SAFETY SENSITIVE FUNCTION)**

*\*\* This provision applies to all contractors who perform a safety-sensitive function.*

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to the Agency. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

a) Drug-Free Workplace. The Recipient agrees to:

- 1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.
- 2) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32.
- 3) Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

b) Alcohol Misuse and Prohibited Drug Use.

- 1) The Recipient agrees to comply and assures that its Third Party Participants will comply with:
  - a. Federal transit laws, specifically 49 U.S.C. § 5331;
  - b. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655; and
  - c. Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR Part 40.
- 2) Remedies for Non-Compliance: The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

## **20. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

*\*\* This provision applies to all Contracts Involving Federal Privacy Act Requirements. When the Contractor maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply.*

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract: (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor, or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

## **21. INDIRECT RATES**

*\*\* This provision applies to all Architect and Engineering Contracts.*

The Architect and Engineering Contractor will only be reimbursed for indirect rates that comply with Federal Acquisition Regulations (FAR) Part 31.2. The Agency will accept approved rates by the Defense Contract Audit Agency (DCAA) or another approved governmental entity. Said proposed indirect rates will be subject to audit. The Agency reserves the right to audit the proposed rates and make an appropriate adjustment to the prior billings at any time prior to final payment of the Contractor.

## **22. SAFE OPERATION OF MOTOR VEHICLES**

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

Contractor agrees to comply with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402

The Contractor agrees to comply with the following:

Seat Belt Use. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **23. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT**

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

The Contractor is prohibited from using federal funds to:

- a) Procure or obtain
- b) Extend or renew a contract to procure or obtain; or
- c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services, described in Public Law 115-232, section 889, as a substantial or essential component of any system, or as critical technology as part of any system.

The Contractor or subcontractor shall not provide covered telecommunications equipment or services, as described in Public Law 115-232, in the performance of this contract.

## **24. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS**

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



The Contractor agrees to conform to the national ITS architecture and standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 66 C.F.R. 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

## **25. PATENT AND RIGHTS IN DATA**

*\*\* This provision applies to all Agreements involving experimental, developmental or research work.*

*\*\*This provision does not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.*

### **a) Rights in Data**

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

The following restrictions apply to all subject data first produced in the performance of the contract:

- 1) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
- 2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
- 3) Unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- 4) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract.

Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- 5) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 6) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- 7) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

b) Patent Rights

- 1) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- 2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- 3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**The following provision (26-27) applies to Agreements exceeding \$10,000.**

## **26. RECYCLED PRODUCTS**

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

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

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

## **27. TERMINATION**

*\*\* This provision applies to all Agreements in excess of \$10,000.*

Pursuant to 2 C.F.R. § 200.340 The federal award may be terminated in whole or in part:

- a) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
- b) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- c) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- d) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
- e) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner the Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract 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 be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency 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 Agency, 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.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency

setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Waiver of Remedies for any Breach** In the event that the Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**Termination for Convenience (Professional or Transit Service Contracts)**

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**Termination for Default (Supplies and Service)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract 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 Agency.

**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 contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency 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 contract 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 Agency.

**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 contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency 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 Agency 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 Agency in completing the work. The Contractor's right to proceed shall not be terminated nor shall the Contractor be 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 Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10]

days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 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 Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials. If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract 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 Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, 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 Agency 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 contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract 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 Agency and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract 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 Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

**The following provision (28-29) applies to Agreements exceeding \$25,000.**

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

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

- a) This Agreement is a "covered transaction" for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180, and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its "principals," and its

“affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.

- b) The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

## **29. NOTICE TO FTA AND U.S. INSPECTOR GENERAL OF FRAUD, WASTE, OR ABUSE, OR OTHER LEGAL MATTERS**

*\*\* 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.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Agency, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Agency is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and the Agency, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

### Additional Notice to U.S. DOT Inspector General

The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

**The following provisions (30-31) apply to Agreements exceeding \$150,000.**

## **30. CLEAN AIR**

*\*\* This provision applies to all Agreements greater than \$150,000 and to Subcontracts greater than \$150,000.*

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

- b) The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000.

### **31. CLEAN WATER REQUIREMENTS**

*\*\* This provision applies to all Agreements greater than \$150,000.*

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

**The following provisions (32-35) apply to Agreements exceeding \$150,000.**

### **32. BUY AMERICA REQUIREMENTS**

*\*\* This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods or rolling stock of any value if funded by FRA, and valued at more than \$150,000 if funded by FTA.*

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

### **33. BREACHES AND DISPUTE RESOLUTION**

*\*\* This requirement applies to all Agreements in excess of \$250,000.*

- 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) **Breach of Contract**—The successful bidder shall be deemed in breach of contract if it fails to comply with any terms of the contract, fails to cure such noncompliance from the date of written

notice from the Agency, or fails to submit a written response to the notification from the Agency within the amount of time specified from the Agency.

- d) **Force Majeure** - The successful bidder shall not be in breach of the contract as long as its default was due to causes beyond reasonable control (force majeure) and occurred without any fault or negligence on the part of both the successful bidder and its subcontractors.
- e) **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- f) **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the successful Proposer arising out of or relating to the Agreement or any breach thereof, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction.
- g) **Rights and Remedies of the Agency** - The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract:
  - 1) The right to take over and complete the work or any part thereof and at the expense of the Contractor, either directly or through other contractors;
  - 2) The right to cancel this Contract as to any or all of the work yet to be performed;
  - 3) The right to specific performance, an injunction or any other appropriate equitable remedy; and
  - 4) The right to money damages.
- h) **Rights and Remedies** - The duties and obligations imposed by the Contract 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 Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, 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.
- i) **Fees** - All costs, expenses and attorney fees incurred by the Contractor in connection with any appeal, suit or claim regarding a dispute that is brought by the Contractor shall be paid by the Contractor.

### 34. LOBBYING

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

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

- a) The contractor shall submit the “New Restrictions on Lobbying Certification” if the regulation is applicable to the particular agreement.



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

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

*\*\* This requirement applies to all 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.

**The following provisions (36-39) apply to Construction Agreements.**

### **36. BUILD AMERICA, BUY AMERICA ACT**

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

The Contractor agrees that the Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

### **37. 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.

### **38. BONDING REQUIREMENTS**

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

- a) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The “bid guarantees” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b) A performance bond on the part of the 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 cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

*TJPA requirements regarding payment bonds are more stringent than USDOT amounts stated below. The TJPA requires a payment bond on the part of the Contractor for 100 percent of the Agreement price.*

#### **a) Bid Bond Requirements (Construction)**

##### **1) 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.

##### **2) 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.

**b) Performance and Payment Bonding Requirements (Construction)**

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

**1) Performance Bonds**

- a. 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.
- b. 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.

**2) Payment Bonds**

- a. 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.
- b. 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.

**c) 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.

**1) The following situations may warrant a performance bond:**

- a. 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).

- b. 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.
  - c. Substantial progress payments are made before delivery of end items starts.
  - d. Agreements are for dismantling, demolition, or removal of improvements.
- 2) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  - a. 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.
  - b. 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.
- 3) 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.
- 4) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  - a. 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.

**d) 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.

**e) 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.

**f) Warranty of the Work and Maintenance Bonds**

- 1) 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.
- 2) 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).

### **39. 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 with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(b). **Withholding** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the 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 USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The 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 USDOT 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 USDOT 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.

## FLY AMERICA CERTIFICATION

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

### *Certificate of Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

### *Certificate of Non-Compliance*

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## BUY AMERICA CERTIFICATION

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

#### *Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

***OR***

#### *Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

***OR***

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

## NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

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

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

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

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

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

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

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

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