

PROFFESIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the ___ day of ____ 2025, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Broker Name ("Broker").

Recitals

A. The TJPA requires commercial retail brokerage services for the Transbay Program ("Property").

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 Broker to be the highest-ranked respondent to the RFP and the TJPA invited the Broker for exclusive negotiations. This Agreement is the product of those negotiations.

C. The Broker 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 Broker 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 _____, 2025, the TJPA Board of Directors adopted Resolution No. _____ authorizing the TJPA's Executive Director to execute this Agreement with the Broker.

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 (NTP). 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 Property costs. The TJPA's budget decisions are subject to the discretion of the TJPA Board of Directors. The Broker'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 three (3) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that the TJPA shall have the right to extend this Agreement for one (1) additional term of two (2) years each at the identical terms set forth in this Agreement, except for any terms that are modified by the mutual agreement of the parties. The TJPA may exercise an extension option at the TJPA's sole and absolute discretion by providing to the Broker written notice of such extension on or before the expiration date of this Agreement.

3. Effective Date of Agreement

This 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 Broker Agrees to Perform

The Broker 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 Broker 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. **Fees.** Broker shall receive compensation as set forth in this Section 6 and Appendix B (Broker's Commission), attached to this Agreement as full compensation for the work performed hereunder, payable as set forth in Appendix B and in accordance with the terms of this Agreement. The amount set forth in Appendix B includes all of Broker's allowable costs and profits for the work to be performed hereunder. The amount also includes consultations before and during the preparation of the reports and a final consultation upon completion of work as agreed with TJPA's point of contact. There shall be no additional amounts payable and no additional reimbursements under this Agreement.

If the TJPA and, if applicable, the TJPA Board of Directors approves a lease of the Property, in their sole discretion, from a lessee identified, vetted, and signed, by the TJPA during the Broker's services under this Agreement ("**Approved Contract**"), Broker shall be compensated in accordance with the terms set forth in Appendix B.

If this Agreement is terminated prior to lease of the Property through an Approved Contract for any reason, then within ten (10) business days after the effective date of the Agreement termination ("**Termination Date**"), Broker shall provide the TJPA with a list of all the prospective lessees who have expressed interest in the Property through Broker's efforts for the Property ("**Lessee List**"). In the event

that TJPA enters into an Approved Contract within one hundred twenty (120) days of the Termination Date to lease the Property to one of the entities on the Lessee List, then Broker shall be entitled to the fees listed under the second paragraph of this Section 6(e), payable in accordance with the terms set forth in Appendix B.

The above amounts include all of Broker's allowable costs and profits for the work to be performed hereunder, and any subcontractor costs, and except as otherwise identified herein, there shall be no additional amounts payable and no additional reimbursements under this Agreement. In no event shall the TJPA be liable for the amounts payable under the second paragraph of this Section 6(e) if a lease arising through Broker's services under this Agreement does not occur for any reason whatsoever, including but not limited to any default by TJPA under this Agreement, failure of any potential tenant to execute a lease, or any decision of the TJPA or the TJPA Board of Directors to reject a proposed lease of the Property for any reason. Broker understands that it shall perform the work at its sole risk, without guaranty of payment under the second paragraph of this Section 6(e).

b. **Approval of Work.** The TJPA shall not incur any charges under this Agreement for the work, nor shall any payments become due to Broker for the work, until the TJPA receives and approves appropriate monthly invoicing with support documentation, and the TJPA confirms that the work performed by Broker for such period satisfies all of the requirements of this Agreement.

c. **No Interest or Late Charges.** In no event shall the TJPA be liable for interest or late charges for any late payments.

d. **Independent Opinion.** The compensation to be paid to Broker for the performance of the work contemplated under this Agreement is not in any way contingent upon the opinions or value conclusions of Broker. Furthermore, Broker is specifically directed by the TJPA not to deliver any opinion of value other than its own independently determined opinions produced by its own investigation, using acceptable professional standards.

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 Broker relating to fees earned under Section 6 under this Agreement must be in a form acceptable to the TJPA and must include a unique invoice number and only submitted after the TJPA confirms that the work performed by Broker for such period satisfies all of the requirements of this Agreement. 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. Compensation shall be made for services identified in the invoice that the TJPA Chief Financial Officer, 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 Broker without delay at no cost to the TJPA. If the Broker fails to provide the services in accordance with the Broker's obligations under this Agreement, the TJPA may withhold any and all payments due the Broker until such failure to perform is cured, and the Broker shall not stop work as a result of the TJPA's withholding of payments as provided herein. All amounts paid to the Broker shall be subject to audit by the TJPA.

The TJPA shall make payment to the Broker 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 and 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 Broker 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 Broker under this Agreement or any other Agreement.

By executing this Agreement, the Broker certifies that the Broker is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The Broker 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 Broker to the TJPA, the Broker 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 Broker, shall in no way lessen the liability of the Broker 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 Broker warrants 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 so as to ensure that all services performed are correct and appropriate for the purposes contemplated in this Agreement. The Broker represents and warrants to the TJPA that the Broker is qualified to perform the services as contemplated by this Agreement. The Broker further represents and warrants to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Broker. 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 Broker 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 Broker. The Broker 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 Broker, or by any of its employees, even though such equipment be furnished, rented or loaned to the Broker by the TJPA.

15. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

The Broker or any agent or employee of the Broker 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 Broker or any agent or employee of the Broker 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 Broker or any agent or employee of the Broker is liable for the acts and omissions of itself, its employees and its agents. The Broker 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 Broker's performing services and work, or any agent or employee of the Broker providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Broker.

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 Broker'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 Broker 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 Broker 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 Broker 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 Broker for the TJPA, upon notification of such fact by the TJPA, the Broker shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to the Broker under this Agreement (again, offsetting any amounts already paid by the Broker 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 Broker shall not be considered an employee of the TJPA. Notwithstanding the foregoing, the Broker agrees to indemnify and save harmless the TJPA and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Agreement.

16. Insurance

a. Without in any way limiting the Broker's other indemnification obligations under this Agreement, the Broker 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 and Advertising Injury, Products and Completed Operations; 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 \$2,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

(5) NOT APPLICABLE. Umbrella Liability Insurance with limits not less than \$10,000,000 each occurrence and \$10,000,000 aggregate, which coverage shall respond in excess of the coverage described in Section 16(a)(2) and Section 16(a)(3) above.

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 Broker 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 Broker 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 Broker 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 Broker, its employees, agents and subcontractors.

i. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Broker under this Agreement. If the Broker maintains broader coverage and/or higher limits than the minimums shown above, the TJPA requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Broker. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

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

17. Indemnification

a. General Indemnity

To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the TJPA, its members, directors, officers, and employees (collectively “Indemnitees”), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, “Liabilities”), subject to the provisions set forth herein. In the case of personal injury or property damage, the Contractor and its subconsultants’ indemnification obligation shall apply to all losses arising out of the services performed under this Agreement.

b. Copyright Infringement

The Broker shall also indemnify, defend and hold harmless from all loss and liability, including attorneys’ fees, court costs, and all other litigation expenses, all Indemnitees for infringement of the patent rights, copyright, trade secret, or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by the TJPA, or any of its officers or agents, of the Broker’s services.

18. Incidental and Consequential Damages

The Broker shall be responsible for incidental and consequential damages to the TJPA resulting in whole or in part from the Broker’s acts or omissions.

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. Omitted. Liquidated Damages

By entering into this Agreement, the Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, the Contractor agrees that the sum of _____ Dollars (\$_____) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that the TJPA will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. The TJPA may deduct a sum representing the liquidated damages from any money due to the Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of the Contractor’s failure to deliver to the TJPA within the time fixed or such extensions of time permitted in writing by the TJPA.

21. Termination for Default; Remedies

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

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

(3) The Broker (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 Broker or of any substantial part of the Broker'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 Broker or with respect to any substantial part of the Broker'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 Broker.

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

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

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 and upon thirty (30) days written notice, 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 Broker written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, the Broker shall commence and perform, with diligence, all actions necessary on the part of the Broker to effect the termination of this Agreement on the date

specified by the TJPA and to minimize the liability of the Broker and the TJPA to third parties as a result of termination. All such actions shall be subject to the prior approval of the TJPA. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the TJPA.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At the TJPA's direction, assigning to the TJPA any or all of the Broker's right, title and interest under the orders and subcontracts terminated. Upon such assignment, the TJPA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (5) Subject to the TJPA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that the TJPA designates to be completed prior to the date of termination specified by the TJPA.
 - (7) Taking such action as may be necessary, or as the TJPA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of the Broker and in which the TJPA has or may acquire an interest.
 - (8) With respect to transaction management or brokerage work provided pursuant to this Agreement, if any, Broker shall be entitled to complete all projects or transactions in process, in accordance with Section 6(a), above, which shall be defined as having active negotiations as of the specified termination date. Broker shall provide, within ten (10) days after the specified termination date, written notification as to what specific transactions it was involved with on the termination date. Broker and TJPA shall mutually agree in writing, acting in good faith, to the list of transaction or projects that were in process as of the effective date of termination.
- c. In no event shall the TJPA be liable for costs incurred by the Broker 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).
- d. In arriving at the amount due to the Broker under this Section, the TJPA may deduct
- (1) all payments previously made by the TJPA for work or other services covered by the Broker's final invoice;
 - (2) any claim which the TJPA may have against the Broker in connection with this Agreement;
 - (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and
 - (4) in instances in which, in the opinion of the TJPA, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and the TJPA's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the

requirements of this Agreement.

e. 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. The Broker shall transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the TJPA. This subsection shall survive termination of this Agreement.

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
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To Broker:	Name of Contact Broker Name Address Phone number Email address
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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 Broker agrees that all information disclosed by the TJPA to the Broker 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 Broker 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 Broker within the meaning of San Francisco Administrative Code Chapter 12M, the Broker 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 Broker is subject to the enforcement and penalty provisions in Chapter 12M.

27. News Releases/Interviews

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

28. Ownership of Results

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

29. Works for Hire

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

30. Audit and Inspection of Records

The Broker agrees to maintain and make available to the TJPA, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Broker will permit the TJPA to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Broker 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 Broker shall include the same audit and inspection rights and record retention requirements in all subcontracts.

31. Omitted

32. Omitted

33. Subcontracting

The Broker will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Broker throughout the performance of the Services under this Agreement. Assignment by the Broker of work to subcontractors shall not relieve the Broker 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 Broker are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Broker unless first approved by the TJPA by written instrument executed and approved in the same manner as this Agreement.

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 Broker 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 Broker'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 Broker'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 Broker 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 Broker, if any, pursuant to this agreement.

38. San Francisco Limitations on Contributions

Through execution of this Agreement, the Broker 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 Broker's board of directors; the Broker's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Broker; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Broker. The Broker 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 Broker 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 Broker is subject to the enforcement and penalty provisions in Chapter 12G.

40. Equal Employment Opportunity/Nondiscrimination; Penalties

a. The Broker Shall Not Discriminate

In the performance of this Agreement, the Broker agrees not to discriminate against any TJPA or City employee working with the Broker or subcontractor, applicant for employment with the Broker 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 Broker further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Broker 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 Broker's employment practices.

b. Subcontracts

Broker shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Broker 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. Broker is subject to the enforcement and penalty provisions in Articles 131 and 132.

c. Nondiscrimination in Benefits

The Broker 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 Broker shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." The Broker 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. Broker is subject to the enforcement and penalty provisions in Article 141.

41. Disadvantaged Business Enterprise (DBE) Requirements

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

All TJPA contractors must place the above clause in any subcontract. Additionally, the contractor must provide TJPA a copy of each subcontract within 10 days of contractor receipt of a Notice To Proceed.

Pursuant to the monitoring requirements outlined in Section XIII of the TJPA's DBE Program (49 CFR 26.37), the Broker 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 Broker shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subcontractor Payment Declaration"

within five days of each Broker payment to a subcontractor, and a “Final Expenditure Report” with the completion of the Agreement.

42. Small Business Enterprise (SBE) Requirements

The Broker 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 Broker in its Proposal of ____ percent (____%). Failure of the Broker 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 Broker 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 Broker shall submit the TJPA’s “Progress Payment Report” with every invoice, the “Subcontractor Payment Declaration” within five days of each Broker 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 Broker 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. Broker is subject to the enforcement and penalty provisions in Article 111. Broker 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, Broker 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 Broker shall comply with the requirements of Article 121. For each Covered Employee, the Broker shall provide the appropriate health benefit set forth in Article 121.3 of the Health Care Accountability Ordinance (HCAO). If Broker chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Broker is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Broker 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

If applicable to this Agreement, the Broker must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and the Broker is subject to the enforcement and penalty provisions in Chapter 83.

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

The Broker 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 Broker’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, Broker confirms that Broker 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 Broker 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 Broker agrees that any violation of this prohibition by the Broker, 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 Broker 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 Broker 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 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 Broker 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 Broker agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT terms and conditions and any other terms and conditions of this Agreement, in the TJPA’s sole determination, the USDOT terms and conditions shall take precedence.

62. Compliance With Laws

The Broker 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 Broker 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 Broker 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 Broker 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 Broker, 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 Broker 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 Broker’s use of the name and logos associated with the transit center.

66. Cooperative Drafting

This Agreement has been drafted through a cooperative effort of TJPA and Broker, 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

BROKER

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone Number

Broker Name

Federal Employer ID Number

APPENDIX A

SCOPE OF SERVICES

Broker agrees to provide the following services:

A. Due Diligence

1. Perform initial and ongoing analysis of the market. Review and assess San Francisco retail market context including similar and competitive properties, asking rents, vacancies, and recent transactions, among other information.
2. Perform asset assessment including all review that a broker will typically conduct to understand the physical, economic, and legal characteristics of each of the subject properties it has been requested to market for lease, including personal inspection of the Property and its environs.
3. Obtain and organize due diligence materials after reviewing available information including TJPA files relating to the Property and for the marketing and leasing of the Property.

B. Analysis – Use methodologies generally recognized by Brokers as necessary to find qualified and capable tenants in leasing comparable properties in San Francisco and which methodology is designed to meet TJPA’s objectives for leasing the Property, considering TJPA’s requirements as communicated by the TJPA to Respondent, as well as any conditions and restrictions benefiting or burdening the Property and any unusual characteristics of the Property. Perform market analysis to inform broker’s financial analysis and assessment of the financial returns to the TJPA for leasing the Property with a focus on maximizing revenue to TJPA.

C. Marketing Materials – Prepare a marketing or leasing plan for the Property for TJPA review and approval. Prepare offering or leasing memoranda and all essential marketing materials to canvass for tenants directly, through the brokerage community or via networking at industry events.

D. Investor or Developer/Tenant Solicitation – Solicit suitable investors, developers, or tenants about these leasing opportunities and, upon TJPA’s approval, share them, possibly with TJPA’s assistance, via outreach to stakeholders as defined by TJPA (which may include but are not limited to neighborhood advisory committees and TJPA Tenants) and navigating the approval process.

E. Property Tours – Tour prospective investors, developer/tenants through the Property with TJPA’s consent as to times and conditions as necessary.

F. Solicit Proposals – Gather and prepare written analyses of the offers received, including letters of intent, and assessing potential lessee’s financial strength and capacity, experience, proposal terms, etc.

G. Monthly Reports – Provide monthly reports to the TJPA on leasing efforts/status, relevant market conditions, and a summary of highlights and key issues.

H. Status Meetings – Participate in meetings with designated TJPA staff to review leasing efforts/status, discuss highlights and key issues, and identify viable tenants.

I. Prepare Proposal Summary for Presentations – Prepare summary of offers and recommendations regarding same. Assist TJPA staff with evaluation of recommended prospects on as-needed basis. Assist in the presentation of information to the vested parties as directed by TJPA.

J. Assist with Lease Negotiation – Negotiate draft lease terms and conditions including but not limited to Basic Leasing Information, as defined by TJPA.

K. Tenant Due Diligence and Closing – Coordinate and assist TJPA in addressing potential tenants' due diligence, transaction document negotiations, lease execution, delivery of space, tenant building permitting and tenant opening for business.

APPENDIX B BROKER'S COMMISSION

1. Fees

(a) **(TO BE INCLUDED AS APPLICABLE)** A non-refundable Fee of _____ Dollars (\$_____), due within thirty (30) days of TJPA's approval of **(describe deliverables here)** submitted by Broker for **(describe use of/need for work product here)**. By way of example, (work product) may include, but not be limited to, **(list examples of work product scope, work product materials, use of work product, etc.)**.

(b) Leasing commissions due to Broker for the initial lease term in a transaction with cooperating broker (transactions with a broker other than Broker's San Francisco-based brokers):

(i) _____ % of the total base rent for lease years ____ – ____;

(ii) _____ % of the total base rent for lease years ____ – ____;

(iii) _____ % of the total base rent for lease years ____ – ____.

(c) Leasing commissions due to Broker for the initial lease term in a transaction without cooperating broker (transactions with a broker within the Broker's San Francisco based brokers):

(i) _____ % of the total base rent for lease years ____ – ____;

(ii) _____ % of the total base rent for lease years ____ – ____.

(d) Leasing commissions due to Broker for any extension to the original lease term:

(i) _____ % of the total base rent for lease years ____ – ____;

(ii) _____ % of the total base rent for lease years ____ – ____.

The above fees shall be based on the base rent for the initial lease term on the date the lease is fully executed. Fees due to Broker for any extension to the original lease term shall be calculated on the base rent for the extension term on the date the lease extension is effective. The above fees shall include all incidental expenses of the Broker, 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 Broker or the Broker's subcontractors.

TJPA is not responsible for leasing commissions for an expansion of space leased by tenant, except as described above.

2. Renewal or Extension Option; Tenant Early Termination

Except as otherwise provided herein, Broker shall be paid a fee calculated on the full base rent, including a portion of any rents calculated but not charged as part of any leasing incentive provided by TJPA, including free rent periods, for the initial term. The initial lease term excludes any renewal or any extension option, whether or not actually exercised by Tenant.

If a tenant has a right to cancel the lease or other early termination after the term has commenced (excluding reasons related to casualty, condemnation, force majeure, tenant or landlord default and similar), the fee will be calculated only on the term prior to the time when the lease may be canceled or terminated. Notwithstanding, if such early termination involves the payment of an early termination fee that includes an unamortized portion of a brokerage commission, Broker will be paid the negotiated commission.

3. Computation of Fees

Subject to the provisions hereof, rents shall be calculated based on the fixed portion of the base rent. If any rent is subject to increase based upon the consumer price index or other index, then (a) if there is a minimum increase set forth in the lease, the calculation of the fees shall be based on such minimum increase, and (b) if there is no minimum increase amount, then such increase shall be calculated at a base rent increase of three (3) percent per year.

4. Net Lease

Fees shall only be calculated on the fixed base rent due and shall not include expenses such as property taxes, operating expenses, insurance and other costs.

5. Percentage Rents

Broker shall not be entitled to any fees based on any percentage rent provisions. In the event of a percentage rent only lease, the Broker fee shall be computed and paid as if the lease contained a minimum base rent equal to the fair market rental rate per square foot for the duration of initial lease term, as described above. The fair market rental rate per square foot shall be defined by TJPA in its reasonable discretion in light of the then-current parameter rate schedule applicable to the Property and such other relevant information as identified by Broker.

F. Time of Payment

Commissions shall be deemed earned and paid as follows:

- (a) 25% of the total fees due upon lease execution.
- (b) 25% of the total fees due upon tenant taking physical possession of the premises.
- (c) 50% of the total fees due upon the later of rent commencement and tenant opening the leased premises for business, including any incentive period.

In the event a tenant does not take possession after lease execution, for retail space – open for business to the public, or for non-retail use – open for business as the commencement of tenant operations as reasonably determined by the TJPA, and there is no recourse in the lease for landlord to pursue reimbursement of paid fees from tenant, then Broker shall market the space and credit to the new transaction any payment previously made to Broker.

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.

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 (1-12) apply to all Agreements (excluding micropurchases—purchases of \$3,000.00 or less).

1. DEFINITIONS

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

- (a). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by 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.

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

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

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

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

4. ACCESS TO DOCUMENTS

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

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

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

5. FEDERAL CHANGES

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

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

6. CIVIL RIGHTS REQUIREMENT

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

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

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

- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

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

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

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

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

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

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

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

the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

8. AMERICANS WITH DISABILITIES ACT

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

The Consultant agrees that all facilities constructed under this Agreement will be designed to meet the applicable Accessibility Guidelines for Transportation Facilities set out as appendix A to 49 CFR Part 37.

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 particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

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 leading 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 following provision (13) applies to Agreements exceeding \$10,000.

13. RECYCLED PRODUCTS

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

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

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

The following provision (14) applies to Agreements exceeding \$25,000.

14. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

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

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

particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.

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

The following provisions (15-16) apply to Agreements exceeding \$50,000.

15. CLEAN AIR

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

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

16. CLEAN WATER REQUIREMENTS

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

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

The following provisions (17-20) apply to Agreements exceeding \$100,000.

17. BUY AMERICA REQUIREMENTS

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

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

18. BREACHES AND DISPUTE RESOLUTION

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

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

19. LOBBYING

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

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

- (a). The contractor shall submit the "New Restrictions on Lobbying Certification" if the regulation is applicable to the particular agreement.
- (b). (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

- (2). If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form- LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. Such forms are forwarded from tier to tier up to the TJPA.

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: _____