

STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: October 17, 2025

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute an Amended and Restated Professional Services Agreement with AECOM Technical Services, Inc. for Program Management and Construction Management services to better clarify responsibilities and align the implementation of the contract with the requirement of TJPA procurement policies and procedures, update contractor's key personnel and subcontractor list, and replace Appendix D in its entirety to conform with current federal guidelines, without changing the scope or compensation of the Agreement.

EXPLANATION:

On June 13, 2024, the TJPA Board of Directors adopted Resolution No. 24-025, authorizing the Executive Director to execute a Professional Services Agreement (Agreement) with AECOM Technical Services, Inc. to provide Program Management and Construction Management services for The Portal. The Agreement has a five-year base term with two optional two-year extensions and a maximum not-to-exceed amount of \$297,335,420.

Certain terms and conditions of the original agreement would benefit from clarification, such as the process for seeking approval from the TJPA on certain cost elements and personnel changes. The TJPA and contractor determined it was best to amend these sections to add clarity on roles and responsibilities and to align implementation of the Agreement with the most recent TJPA policies and procedures, update the contractor's key personnel and subcontractor list, and replace Appendix D in its entirety to conform with current federal guidelines, without changing the scope or compensation of the Agreement.

RECOMMENDATION:

Staff recommends that the TJPA Board of Directors authorize the Executive Director to execute an Amended and Restated Professional Services Agreement with AECOM Technical Services, Inc. to better clarify responsibilities and align the implementation of the contract with the requirement of TJPA procurement policies and procedures, update contractor's key personnel and subcontractor list, and replace Appendix D in its entirety to conform with current federal guidelines, without changing the scope or compensation of the Agreement.

ENCLOSURES:

1. Resolution
2. Amended and Restated Agreement, clean and redline versions

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires Program Management and Construction Management (PMCM) services for The Portal; and

WHEREAS, On June 26, 2023, the TJPA issued Request for Proposals (RFP) No. 23-03 for PMCM services; and

WHEREAS, On June 13, 2024, the TJPA Board adopted Resolution No. 24-025 authorizing the Executive Director to enter into a Professional Services Agreement (Agreement) for PMCM services with AECOM Technical Services, Inc.; and

WHEREAS, Staff recommends amending and restating the terms of the Agreement to better clarify responsibilities and align the implementation of the contract with the requirement of TJPA procurement policies and procedures, update contractor's key personnel and subcontractor list, and replace Appendix D in its entirety to conform with current federal guidelines, without changing the scope or compensation of the Agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Amended and Restated Agreement with AECOM Technical Services, Inc. in the form presented.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting on October 17, 2025.

Secretary, Transbay Joint Powers Authority

**Amended and Restated
Professional Services Agreement between
the Transbay Joint Powers Authority and
AECOM Technical Services, Inc.**

THIS Amended and Restated Professional Services Agreement to provide Program Management and Construction Management services is entered into as of the 17th day of October 2025, in San Francisco, California, by and between the Transbay Joint Powers Authority (“TJPA”) and AECOM Technical Services, Inc., a California corporation (“Contractor”).

Recitals

A. The TJPA requires Program Management and Construction Management Services (“Services”) for the Transbay Program (“Program”).

B. The Contractor submitted a written proposal (“Proposal”) in response to the TJPA’s Request for Proposals (“RFP”). Based on that Proposal, the TJPA’s selection committee determined the Contractor to be the highest-ranked respondent to the RFP and the TJPA invited the Contractor for exclusive negotiations. On June 13, 2024, the TJPA Board of Directors adopted Resolution No. 24-025, authorizing the TJPA’s Executive Director to execute an agreement with the Contractor for the Services; the original agreement was dated July 1, 2024.

C. The TJPA and Contractor wish to amend certain terms of the July 1, 2024 agreement to better clarify responsibilities and align the implementation of the contract with the requirement of the TJPA procurement policies and procedures, update the Contractor’s key personnel and subcontractor list, and replace Appendix D in its entirety to conform with current federal guidelines, without changing the scope or compensation of the agreement. On October 17, 2025, the TJPA Board of Directors adopted Resolution No. _____, authorizing the TJPA’s Executive Director to execute this amended and restated form of agreement with the Contractor for the Services (as amended and restated, “Agreement”).

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

E. The Contractor acknowledges and agrees that the TJPA does not expressly or impliedly guarantee that any or all of the total contract will be funded or will be authorized to the Contractor. The Contractor acknowledges and agrees that funding may occur in phases. The Contractor further acknowledges and agrees that the nature of the work under this Agreement and the limitations of the TJPA’s funding require that the TJPA authorize the Contractor to perform only limited scopes of work based on the immediate needs of the Program. Finally, the Contractor acknowledges and agrees that due to the above-described funding uncertainties, the Contractor shall only provide Services and receive compensation if and when such funding is authorized and that the determination regarding if and when the Contractor will provide Services is within the sole discretion of the TJPA.

F. The TJPA and the Contractor intend that this Agreement comply with the regulations of the United States Department of Transportation (“USDOT”) and certain contracting requirements of the City and County of San Francisco (the “City”).

Now, THEREFORE, the parties agree as follows:

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

a. Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Chief Financial Officer, and Services under contract shall not commence prior to the Chief Financial Officer's issuance of a Notice to Proceed. The amount of the TJPA's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

b. This Agreement will terminate without penalty, liability or expense of any kind to the TJPA at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the fiscal year for which funds are appropriated.

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for five (5) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that the TJPA shall have the right to extend this Agreement for two (2) additional consecutive terms 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 the Contractor written notice of such extension on or before the expiration date of this Agreement. The TJPA's exercise of any such extension option shall be subject to and conditioned upon the approval of such extension by the TJPA in the manner required by its policies.

3. Effective Date of Agreement

The Effective Date of this Agreement shall be July 1, 2024.

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. Issuance of a NTP constitutes certification of available funds and authorization to commence work, but shall not, in itself, establish or authorize billing rates, which shall be governed exclusively by Appendix B and the applicable Rate Agreement.

5. Services the Contractor Agrees to Perform

a. Procedure for Developing Scope of Services

The Contractor agrees to perform the Services listed in Appendix A (Scope of Services), attached hereto and incorporated by reference as though fully set forth within.

The Services consists of a series of tasks that the TJPA may authorize under Annual Work Plans/NTPs or a combination of these documents. The following process shall be used to implement the Annual Work Plans/NTPs:

(i) The TJPA will initiate each Annual Work Plan/NTP by requesting an Annual Work Plan/NTP proposal. The proposal request will describe the actual tasks to be performed by the Contractor based on the scope of work in Appendix A (Scope of Services), the schedule for performance of these tasks, and the required deliverables.

(ii) The Contractor will prepare and submit to the TJPA an Annual Work Plan/NTP proposal, outlining in detail its approach to performing the requested work. The proposal will include, at a minimum, the following:

- (a) A detailed description of the work to be performed by task (including any subtasks), and the means and methods that will be used to perform the work;
- (b) A work breakdown structure for performing the required tasks;
- (c) A schedule (in both electronic and written format) including milestones for completion for each task (including any subtask) and deliverables;
- (d) A management plan that lists personnel (including any subcontractors) assigned to each part of the work, along with a rationale for the proposed staffing plan;
- (e) A budget plan, including the following information for the Contractor and all subcontractors included in the proposal:
 - 1. A detailed cost estimate for each task (and any subtask);
 - 2. Estimated hours and hourly rates (as described in Appendix B) by assigned personnel;
 - 3. Estimated other direct costs (including subcontractors) (as described in Appendix B); and
 - 4. Cash flow plan
- (f) List of work products that will be delivered as part of the Annual Work Plan/NTP, and the work products that may span multiple Annual Work Plans/NTPs.

(iii) The TJPA will review the proposal and promptly negotiate with the Contractor the scope, approach to completing the work (including staffing plan and estimated hours), deliverables and schedule requirements.

(iv) Upon completion of negotiation and meeting all Annual Work Plan/NTP prerequisites, the TJPA Chief Financial Officer will certify the maximum amount, purpose, and period of work in an Annual Work Plan/NTP. The Contractor may not commence any work without this written authorization from the TJPA to proceed.

(v) In the event that the TJPA and the Contractor cannot reach agreement on the terms of any Annual Work Plan/NTP, the TJPA may either cancel the request or have the work accomplished through other available resources. In the alternative, if the TJPA desires the Contractor to undertake and/or complete certain work, the TJPA Chief Financial Officer may direct the Contractor to proceed with the work under such conditions as the TJPA may require to meet the schedule, budget, or other Program requirements. Under no circumstances may the Contractor refuse to undertake work that the Contractor is qualified to perform and which is consistent with the Services if so directed in writing. The TJPA and the Contractor shall continue to negotiate any outstanding terms while the work is being performed. The TJPA shall not deny the Contractor reasonable compensation for such approved work performed.

(vi) If the Contractor proceeds to do work that is out of scope of approved Annual Work Plans/NTPs without first obtaining the TJPAs written approval in accordance with Section 5(i), regardless of the amount or value of the work, the TJPA shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the TJPA's comments or concerns, expediency, schedule constraints, or other considerations will not be acceptable reasons to proceed with unauthorized work without the TJPA's prior written approval.

The following shall not be considered out-of-scope work, but shall be considered incidental to the Services outlined in Appendix A and any Annual Work Plan/NTP: (1) All work required to comply with local, state and federal codes, regulations and standards, as interpreted by local, state or federal agencies having approval or sign-off authority for this Program; and (2) All work required to correct deficiencies and errors, including work related to resubmittals of work product that are evaluated reasonably by the TJPA to be incomplete or inadequate.

(vii) The TJPA's decision to authorize any work under Annual Work Plans/NTP will be at the TJPA's sole discretion and largely depend on (1) the TJPA's evaluation of the Contractor's services and work products previously authorized and completed or in-progress (i.e., whether the Services and products are of satisfactory quality to the TJPA and whether such Services and products were completed within the agreed-upon budget and within a reasonable schedule); (2) approval from and/or compliance with requirements of the FTA and other funding agencies; and (3) the availability of funding.

b. Key Personnel and Staffing

Work under this Agreement shall be performed only by competent personnel and staffing under the supervision of and/or in the employment of the Contractor.

The Contractor's Key Personnel are specified in Appendix A-1 (Key Personnel). The Contractor agrees to commit and assign the Program Contract Manager to manage this Program for the Contractor and to serve as the single official contact on behalf of the Contractor in all matters related to the Program for the duration of the Contract. The Contractor agrees that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract.

The Contractor shall advise the TJPA immediately any time one of the Key Personnel deviates from its committed role to the Program. The TJPA may in turn require the Contractor to provide a remedy and/or corrective actions for such deviations.

If the Contractor proposes substitutions for any of the Key Personnel who are listed in Appendix A-1, the Contractor shall propose a replacement in writing to the TJPA's Executive Director or designee for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company). If the performance of any person assigned to a Key Personnel position or staffing is determined to be unsatisfactory by the TJPA, the TJPA reserves the right to direct the Contractor to replace that person and/or take any other appropriate remedial action without prejudice to the TJPA or the Services Contractor is obligated to perform under this Agreement.

The Contractor shall replace any Key Personnel departing from the Program or departing from their assigned role in the Program with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days after the departure. Failure to replace Key Personnel shall be cause for the TJPA to suspend invoice payments. Furthermore, the Contractor shall not be relieved of its obligation for full performance of the Services as a result of any unfilled position. The Contractor shall bear any costs related to and be held fully responsible for any training, re-training, duplicate staffing, inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Program or departing from their assigned role in the Program before the end of the term of the Agreement. The Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training, re-training, duplicate staffing and learning on the job, etc.

c. Current Workload and Available Resources

The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work immediately upon receipt of Annual Work Plan/NTP. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of Annual Work Plan/NTP.

d. Information and Data

The Contractor shall request in writing any information and data it will require from the TJPA for its work. The Contractor shall identify the timing and priority for which this information and data will be required in its response to a request for proposal for an Annual Work Plan/NTP. The Contractor and the TJPA shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Annual Work Plan/NTP.

e. Contractor's Performance

The Contractor shall meet with the TJPA Project Director (or designee) and Procurement and Contract Compliance Manager on a quarterly basis to evaluate the Contractor's performance under the Agreement with respect to the following:

- (i) Contractor's adherence to this Agreement.
- (ii) Quality of performance of Key Personnel and other staff assigned to the Program by the Contractor and its subcontractors.
- (iii) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the TJPA's

staff and other contractors, including design, grant management, financial, construction management and other professionals.

- (iv) Management of authorized budget for Annual Work Plans/NTPs.
- (v) Adherence to agreed schedule.
- (vi) Quality of deliverables.
- (vii) Monitoring, reporting and updating of progress of assigned work.
- (viii) Timeliness in resolving issues, including issues arising from performance evaluations.
- (ix) Working relationship between Contractor's team and other stakeholders.

Should the TJPA be dissatisfied with any of the above categories of Contractor performance, the TJPA will render a negative evaluation on the Contractor's performance for the quarter preceding the evaluation. In such cases, the Contractor shall be required to formulate and deliver to the TJPA Project Director (or designee) within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to the TJPA on a monthly basis until the problem areas have been resolved or brought under control. The Contractor's receipt of more than two negative quarterly performance evaluations during the term of this Agreement will be considered by the TJPA when determining whether to authorize the Contractor to proceed with future phases of the Agreement.

For each category of Services undertaken by Contractor (e.g., scheduling, reporting, accounting), Contractor shall perform such Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in California on large, complex regional transportation projects.

f. Transmittal of Products

At a time when requested by the TJPA's Executive Director or their designee, and after completion of each task and subtask, the Contractor shall transmit to the TJPA all documents and work product (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Program. Documents and work product include, but are not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the Services performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work product for recordkeeping purposes.

The Contractor's Key Personnel shall have thoroughly reviewed and approved all documents and work product and signed off as such prior to transmitting to the TJPA.

g. Reproduction of Products

The Contractor shall arrange and provide for all printing (or other required reproduction) of all documents and work product produced in the course of its and its subcontractor's work. The TJPA shall determine the documents and work product to be reproduced and the type, quality, and quantity of the reproduction. The cost of reproduction shall be treated as a reimbursable expense under this Agreement. The Contractor shall make its best efforts to obtain competitive quotations for any reproduction cost exceeding \$500.

h. Design

Except where the TJPA expressly authorizes the Contractor to perform design services in an Annual Work Plan/NTP, the Contractor shall not be obligated to assume the responsibilities, duties, or services of Architect(s), Engineer(s), or Construction Contractor(s) employed by, or associated with, the TJPA in relation to this Program. The Contractor shall, however, perform construction management services as defined in Government Code §4525(e) and 4529.5, including but not limited to constructability review, value engineering, verification of existing conditions, hazard analysis, safety analysis, and cost effectiveness review. In providing these services, the Contractor shall exercise the professional skill and judgment and provide advice and recommendations to the TJPA. Notwithstanding the foregoing, the Contractor does not undertake to perform any design work nor does it assume responsibility for any of the design features or design of the Program.

i. Safety

(i) Contractor's Responsibility for Safety of its Employees. The Contractor is responsible for the safety of the Contractor's employees and the employees of the Contractor's subcontractors.

(ii) Contractor's Monitoring of the Work of Construction Contractors for Contract Compliance. Contractor shall be required to monitor and document the work of construction contractors, including their subcontractors, suppliers of any tier (collectively, the "Construction Contractor"), as identified in Appendix A (Scope of Services) and subsequent amendments, for compliance with applicable contract documents (including without limitation, plans, drawings and specifications, quality, and health and safety plans), federal, state and local laws, rules and regulations pertaining to health and safety, including federal and/or state OSHA rules and regulations. Contractor shall perform such responsibilities for the sole purpose of monitoring contract and regulatory compliance on behalf of the TJPA. Contractor shall not supervise, direct, have control over, or have responsibility for construction means, methods, sequences, techniques of the Construction Contractor. In no event shall such monitoring responsibilities be construed as imposing on Contractor any duties or responsibilities to employees of Construction Contractor.

(iii) Indemnification. The TJPA will include Contractor in the scope of the general indemnity of original construction contractor under contract to the TJPA. Due to Contractor's unique project management role, the risk of inadvertent omission of such indemnification requirements rests with Contractor.

j. Hazardous Materials

Nothing in this Agreement shall be construed or interpreted as requiring the Contractor to be or assume the status of an owner, operator, generator, transporter, storer, or any other potentially responsible party as defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state, or local statute, regulations, order or administrative finding for the enforcement of such act or statute, governing the treatment, storage, transportation, reporting and disposal of hazardous substances.

For purposes of this Agreement, the term "hazardous substance" shall mean and include, but shall not be limited to, any element, constituent, chemical substance, compound, or mixture, which are defined in or induced under or regulated by any federal, state or local statute, regulation, order or administrative

finding for enforcement of such statute, regulation, or order pertaining to environmental regulation, contamination, clean-up or disclosure, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Toxic Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational Safety and Health Act, and the Superfund Amendments and Reauthorization Act of 1986.

k. Third Party Litigation

As part of its scope of work, the Contractor agrees to testify at the TJPA's request if litigation is brought by a third party against the TJPA in connection with the Program. Unless the action is brought by the Contractor, or is based upon the Contractor's negligence, the TJPA will compensate the Contractor for the preparation and the testimony at the Contractor's standard hourly rates.

l. Program Direction

The work to be performed by the Contractor under this Agreement shall be subject to the direction of the Project Director of the TJPA. As used in this Agreement, the term "program direction" shall include but not be limited to the following:

(i) Directions to the Contractor, which shift work emphasis between tasks, require pursuit of certain activities, or otherwise provide information and program guidance to the Contractor in order to accomplish the Services described in Appendix A, and in the current Annual Work Plan/NTP.

(ii) Review and, where required, approval or acceptance of submittals or other products prepared by the Contractor in the performance of its Services.

The Contractor acknowledges and agrees that it shall direct any request for clarification or other communication concerning program direction first to the Project Director. The Project Director is the designated TJPA employee to provide direction to all Key Personnel and staffing assigned to the Program.

m. Submittals and Responses

The TJPA and the Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Annual Work Plan/NTP.

The TJPA's review and comments on the Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the TJPA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state, and federal codes, regulations, and standards.

If the Contractor considers certain review comments or directives, either written or oral, by the TJPA to require work efforts not included in approved Annual Work Plans/NTPs, the Contractor shall provide the TJPA Project Director and Chief Financial Officer with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures elsewhere in this

Agreement. The Chief Financial Officer must certify any additional funding in excess of amount approved in the Annual Work Plan/NTP.

n. Intern Mentoring Program

The Contractor shall cooperate with the TJPA to either expand its adopted intern mentoring program through a professional architect/engineering/management organization's intern mentoring program, or the Contractor shall create an intern mentoring program specifically for this Program. The purpose of the intern mentoring program shall be to involve local youth or residents interested in exploring professional careers in architecture, engineering, construction management, or related professional services, into the professional services work of the Contractor on the Program. The intern mentoring program will be designed to engage, inform, and challenge youth, and to enlighten and motivate students toward professional careers in architecture, engineering, construction management, and related professional services. The program will include opportunities throughout the period of the Program for local high school youth or local residents to participate as a volunteer or paid intern in the conduct of substantive professional services work of the Contractor on the Program. The Contractor will contact and seek intern applicants from local schools and community-based organizations. The Contractor shall report to the TJPA those individuals participating in the intern mentoring program, and their activities on the Program.

6. Compensation

a. Generally

All compensation due to the Contractor for all Services performed under this Agreement shall be computed in conformance with the provisions of Appendix B attached hereto.

The maximum amount payable under this Agreement ("Contract Limit" or "Ceiling Price") shall not exceed two hundred ninety-seven million three hundred thirty-five thousand four hundred twenty Dollars (\$297,335,420) (\$158,165,635 over the base term and \$139,169,785 over the option periods if exercised).

Billing and reimbursement under this Agreement shall be consistent with Appendix B to this Agreement

Notwithstanding any contrary provision of this Agreement, the Contractor is not obligated to perform any Services once the Contract Limit has been reached unless authorized by a mutually agreed upon modification to this Agreement, and the TJPA is not obligated to compensate the Contractor for Services performed after the Contract Limit is reached unless authorized by modification to this Agreement.

The hourly rates (including wages, indirect costs, general and administrative expenses, and profit) and other direct costs associated with this Agreement shall be subject to the rate requirements set forth below and in Appendix B. The hourly rates and other direct costs shall be estimated in each Annual Work Plan/NTP and negotiated and established in the Rate Agreement upon approval of the TJPA Chief Financial Officer.

b. Actual Compensation

Actual compensation under this Agreement shall be determined as set forth in an Annual Work Plan/NTP and Appendix B.

No charges shall be incurred under this Agreement, nor shall any payments become due to the Contractor until reports, services, or both, required under this Agreement or under a specific Annual Work Plan/NTP are received from the Contractor and approved by the Project Director as being in accordance with this Agreement. The TJPA, in its sole discretion, may withhold payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

Compensation shall be further subject to the following requirements:

(i) Conform with (a) the work to be performed pursuant to an accepted Annual Work Plan/NTP or approved by the TJPA as compensable out of scope work or ordered by the TJPA pursuant to this Section 5; (b) any compensation limits or sublimits set forth in such Annual Work Plan/NTP or written approvals, and this Agreement; and (c) all other terms of this Agreement.

(ii) Be necessary in order to accomplish the work.

(iii) Be reasonable for the services to be performed.

(iv) Be actual net costs or prices to the Contractor or its subcontractors at any tier, (e.g., the cost or price less any refunds, rebates, or other items of value received by Contractor or its subcontractors at any tier, that have the effect of reducing the cost or price actually incurred). As used herein, the term “costs” shall include the following:

(a) Those Program costs recorded by the Contractor that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.

(b) Those Program costs incurred in conformance with Appendix B, but not necessarily paid, but only if the Contractor is not delinquent in its payment of such costs which it is obligated to pay in providing Services on this Program.

(c) The amount of reimbursement that has been paid by the Contractor for subcontracted services under similar cost standards.

c. Rates

Within thirty (30) days after award of this Agreement, the Contractor will submit information necessary to establish rates for the performance of Services under this Agreement. The TJPA shall not approve any invoice or make any payment under this Agreement until such time as the rates are established. The parties will negotiate in good faith and enter into a Payment Terms and Rate Agreement in substantially the form attached as Appendix B (herein called “Rate Agreement”) on an annual or multi-year basis for the work to be performed for each of the Contractor’s fiscal year(s). At the end of the Contractor’s fiscal year(s), should the parties fail to negotiate a new Rate Agreement, the Contractor agrees to accept the provisions of the previous Rate Agreement until such time as a new Rate Agreement is accepted. Any invoices submitted prior to the execution of the Rate Agreement will be subject to the existing previously negotiated rates.

d. Disallowed Or Otherwise Not Recognized Costs

The Contractor understands and agrees to the following:

(i) That any compensation or reimbursement received under this Agreement does not constitute a final decision by the TJPA as to the allowability of such compensation or reimbursement, and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement or of the Contractor's obligations under the Agreement (including, but not limited to, requirements of the Agreement to be included in the Contractor's subcontracts).

(ii) That unless approved otherwise by the Executive Director or their designee, the TJPA will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed. Any audit by the TJPA must be commenced within three (3) years after the termination, completion or expiration of this Agreement. Once commenced, any audit performed by the TJPA shall be completed in a reasonable amount of time.

(iii) If the TJPA determines that the Contractor or its subcontractor(s) is not entitled to either the compensation or reimbursement requested or received, the TJPA will notify the Contractor stating the reasons therefore.

(iv) Completion of the work under this Agreement will not alter the Contractor's or its subcontractors' obligation to return any funds due the TJPA as a result of later refunds, corrections, or other transactions, nor alter the TJPA's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

(v) If the Contractor claims or receives payment from the TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Contractor shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement.

e. Reimbursable Expenses

The TJPA shall reimburse the Contractor only for those authorized expenses identified in Appendix B to this Agreement, or as modified by an approved Rate Agreement, provided such expenses are incurred in performance of and within the funding limits of an approved Annual WorkPlan/NTP.

f. Payment; Invoice Format

The Contractor shall be compensated and reimbursed by the TJPA on the basis of invoices submitted every month for Services performed during the preceding month. Invoices shall be submitted within approximately thirty (30) days after the end of said calendar month. For the end of the fiscal year, monthly invoices shall include up to the last day of the calendar month ending June 30th; invoices starting the next fiscal year beginning July 1st shall be included in the next calendar month invoice cycle. The Contractor must submit required DBE/SBE Progress Payment Reports with every invoice. All amounts paid to the Contractor shall be subject to audit by the TJPA.

The charges for each individual assigned under this Agreement shall be listed separately. Further, Invoices furnished by the Contractor under this Agreement shall be in a form acceptable to the TJPA and each invoice shall include:

- ☐ Contract number
- ☐ A unique invoice number
- ☐ Annual Work Plan/NTP Number
- ☐ Name and position of employee
- ☐ Description of the work performed by employee in accordance with the Annual WorkPlan/NTP tasks and budget
- ☐ Hours worked by employee
- ☐ Fully Burdened Rate per employee, including hourly rate, overhead, and fee
- ☐ Cost by employee
- ☐ Other Direct Costs (OCDs)
- ☐ Subcontractor costs supported by itemization in the same format described above
- ☐ Contractor markup on subcontractor cost
- ☐ Total costs by each of the above cost elements for the current invoice period, and total cost paid to date
- ☐ Percent of schedule completed and budget expended
- ☐ DBE/SBE Progress Payment Report (as an attachment)

g. Invoice Disputes

Should the TJPA contest any portion of an invoice, the disputed portion shall be held for resolution, but the uncontested balance shall be processed for payment (less any retention withheld pursuant to this Agreement). The TJPA shall furnish an explanation for each contested cost item. The TJPA may, at any time, conduct an audit of any and all records kept by the Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices, or alternatively, will be refunded by the Contractor.

h. No Late Charges

The TJPA shall make payment to the Contractor at the address specified in the section entitled "Notices to the Parties." The TJPA shall promptly route to the TJPA funding agencies all proper invoices submitted by the Contractor. The TJPA shall make a good faith effort to pay undisputed amounts in such invoices within thirty (30) days after their approval by the necessary and appropriate TJPA funding agencies. However, in no event shall the TJPA be liable for interest or late charges for any late payments. The Contractor acknowledges that the provisions of Civil Code § 3320 and Public Contract Code § 7107 do not apply to the Contractor or this Agreement, and to the extent they apply, the Contractor waives the protections of these and similar statutes to the greatest extent permitted by law.

i. Changes To Scope or Annual Work Plans/NTP

The TJPA reserves the right to order modifications to the Services (as set forth in Appendix A), or the Annual Work Plans/NTPs. Modifications may consist of additions, deletions, or other changes. Modifications shall specify the changes ordered and the adjustment of compensation and completion time required, if any, for the modified scope. All modifications shall be incorporated in an amended Annual Work Plan/NTP. The TJPA and the Contractor shall negotiate and execute all such modifications. The

Chief Financial Officer must certify any additional funding in excess of amount approved in the Annual Work Plan/NTP.

The Contractor understands and agrees that Contractor will not receive additional compensation or reimbursement for costs incurred prior to the effective date of a duly executed modification or for any costs associated with negotiating the modification. The Contractor's execution of the modification shall constitute a waiver of claims for additional compensation or extension of time for the specified scope or work, except as set forth in the modification.

When time does not allow for a modification to be negotiated, or in the event that the TJPA and the Contractor cannot reach agreement on such modification, the TJPA may issue a unilateral modification instructing the Contractor to proceed with a change in the Annual Work Plan/NTP based on the TJPA's estimate of cost and time to perform the change in the work. Upon receipt of a unilateral modification, the Contractor shall proceed with the ordered work. However, under no circumstances shall the Contractor be required to perform work that is not consistent with the Services on a unilateral basis.

Should the Contractor disagree with any terms or conditions set forth in a unilateral modification, the Contractor shall submit a modification request within seven (7) days after receipt of the unilateral modification. If such a request is not submitted as required, the Contractor waives all rights to additional compensation for such work, and payment constituting full compensation for work included in the unilateral modification will be made as set forth in the unilateral modification. If the Contractor timely submitted a modification request as set forth above following receipt of a unilateral modification within ninety (90) days after completion of the unilateral modification work, the parties will meet informally in an effort to resolve any outstanding compensation issues.

In addition to the requirements set forth in the preceding paragraph, the Contractor waives all costs exceeding the TJPA's estimate for the unilateral modification work unless the Contractor submits a written notice of a dispute within seven (7) days after one of the following, whichever occurs first: (1) the Contractor submits an invoice for completion of the work under the unilateral modification; or (2) the Contractor's receipt of written notice from the TJPA that the TJPA accepts or otherwise considers the unilateral modification work completed.

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 Annual Work Plan/NTP with respect to the work covered under that Annual Work Plan/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 Annual Work Plan/NTP and in excess of the Contract Limit under this Agreement as stated in Section 6, unless the changed scope is authorized by written amendment and approved as required by law and this Agreement.

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 Agreement or Annual Work Plan/NTP is certified without certification of the additional amount by the Chief Financial Officer through written modification of the Annual Work Plan/NTP.

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

8. Intentionally Omitted

9. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for statutory penalties set forth in the code. 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. Suspension and Debarment

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

11. Taxes

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor.

12. Payment Does Not Imply Acceptance of Work

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

13. Qualified Personnel

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the Services as contemplated by this Agreement. The Contractor 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 Contractor. All personnel engaged in the work shall be fully qualified and

shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. All personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

14. Responsibility for Equipment

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the TJPA.

15. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses

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

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement. The Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the TJPA's financial liability so that the TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determine that the Contractor was not an employee.

16. Insurance

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

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

(2) Commercial General Liability Insurance on an occurrence basis, with limits not less than \$2,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal 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 \$10,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

(1) Name as Additional Insured the 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. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the TJPA 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, (1) the retroactive date must be shown, and must be before the date of the Agreement or the beginning of contract work, (2) the insurance must be maintained continuously throughout the term of this Agreement, and without lapse, for a period of at least five (5) 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, and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of

five (5) years beyond the expiration of this Agreement.

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 Services under this Agreement, the Contractor shall do the following: (1) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with a current rating comparable to A.M. Best's rating of no less than A: VII, that are authorized to conduct business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (2) for the Professional Liability Insurance, make available for the TJPA's inspection a complete, certified copy of the declarations and applicable policy language, including all applicable conditions, exclusions, definitions, terms, endorsements and any other applicable language, effecting coverage required by this Article 15, which copy may be redacted to exclude proprietary information. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. The Contractor hereby grants to the TJPA a waiver of any right to subrogation which any insurer of the Contractor may acquire against the TJPA by virtue of the payment of any loss under such insurance. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TJPA has received a waiver of subrogation endorsement from the insurer.

i. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Contractor under this Agreement. If the Contractor 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

j. The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

k. The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein; provided, however, that subcontractors shall maintain Professional Liability Insurance limits appropriate to their scope of work, subject to TJPA approval, and

the Contractor shall ensure that the TJPA is an additional insured on insurance required from subcontractors.

17. Indemnification

a. General Indemnity

To the fullest extent permitted by law, and consistent with California Civil Code § 2782.8(a), 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 subcontractors) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages (collectively, “claims”) to the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.

Consistent with California Civil Code § 2782.8(e), if there is subsequently procured a project-specific general liability policy that insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis, then Contractor’s duty and cost to defend the TJPA shall not be limited by “the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.”

b. Limitations

(1) No insurance policy covering the Contractor’s performance under this Agreement shall operate to limit the Contractor’s liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. Copyright Infringement

The Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its members, directors, officers, or employees of articles or Services to be supplied in the performance of the Contractor’s Services under this Agreement.

18. Liability of Contractor

Contractor’s liability to the TJPA for all damages that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, shall first be satisfied by the proceeds of any Project-wide liability insurance coverage procured by the TJPA, and, if such coverage is not procured or is insufficient or otherwise inapplicable, then from the proceeds of any applicable insurance required by Article 15 of this Agreement. Contractor’s aggregate liability to the TJPA that is not satisfied by the proceeds of any Project-wide liability insurance coverage, however, shall not exceed the sum of \$20,000,000.00, inclusive of any amounts paid by Contractor’s insurance required by Article 15 of this Agreement.

19. Liability of TJPA

The TJPA's monetary 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. Delays and Extensions of Time

The Contractor acknowledges and agrees that its delay in prosecuting the work may result in monetary damages to the TJPA. The Contractor acknowledges and agrees that the TJPA will hold the Contractor responsible and liable for any delay costs to the extent caused by the Contractor.

In the event the Contractor is delayed in the timely prosecution of this Agreement by the TJPA's vendors, suppliers, officers, or employees, or by Uncontrollable Forces through no fault or lack of diligence on the part of the Contractor, the Contractor shall present a written request to the TJPA Executive Director for an extension of time of the performance of the work, together with supporting documents, within thirty (30) calendar days of commencement of the delay of the work. The Contractor shall be deemed to have waived the right to request a time extension if not requested within this period, and shall not have a cause to make a claim of the same TJPA-caused delay at a later date. Approval of such extension of time by the TJPA Executive Director shall not be unreasonably withheld and shall be added to the time for completion of the work.

Any such extensions of time shall be the exclusive remedy to the Contractor for TJPA-caused delays, with the exception of TJPA-caused delays in excess of one hundred twenty (120) days, in which case the Contractor may propose an equitable adjustment.

Neither the TJPA nor the Contractor shall be considered to be in default in the performance of any obligation under this Agreement (other than an obligation to make payment for invoices rendered pursuant to this Agreement) when a failure of performance is the result of Uncontrollable Forces. The term "Uncontrollable Forces" means any cause or causes beyond the control of the TJPA or the Contractor which renders either party unable to perform such obligation. These causes include, but are not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, drought, fire, pestilence, lightning and other natural catastrophes; epidemic, war, riot, civil disturbance or disobedience, sabotage strike, lockout, labor disturbances, and restraint by court order or public authority. Nothing contained in this Section shall be construed as requiring the TJPA or the Contractor to settle any strike, lockout or labor of dispute in which it may be involved, or to accept any permit, certificate or other authorization, or to enter into other contracts or commit to a financing arrangement, which contain conditions or terms which the TJPA or the Contractor determines are unduly burdensome. However, to the extent the Contractor is or becomes aware of Uncontrollable Forces that could or will impact the Program, the Contractor is required to use all reasonable effort to mitigate the harm and damages which would be caused to the Program by such Uncontrollable Forces.

21. Default; Remedies

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

(1) The Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: Payment; Submitting False Claims, Monetary Penalties; Taxes; Insurance; Indemnification; Proprietary or Confidential Information of the TJPA; Protection of Private Information; Assignment; Drug-Free Workplace Policy; Compliance With Laws; USDOT Requirements.

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

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

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

b. On and after any Event of Default, the TJPA shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement 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 Contractor any Event of Default; the Contractor shall pay to the TJPA on demand all costs and expenses incurred by the TJPA in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The TJPA shall have the right to offset from any amounts due to the Contractor under this Agreement or any other agreement between the TJPA and the Contractor all damages, losses, costs or expenses incurred by the TJPA as a result of such Event of Default and any liquidated damages due from the Contractor pursuant to the terms of this Agreement or any other agreement.

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

22. Termination for Convenience

a. The TJPA shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience when it is in the TJPA's best interest, which best interest shall be determined at the TJPA's sole discretion. The TJPA shall exercise this option by giving the Contractor written notice of termination. The notice shall specify the date on which termination shall become effective, but in no case shall termination become effective less than fourteen (14) days from the date of the notice.

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

- (1) Halting the performance of all Services and other work under this Agreement on the date(s) and in the manner specified by the TJPA.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At the TJPA's direction, assigning to the TJPA any or all of the Contractor's right, title and interest under the orders and subcontracts terminated. Upon such assignment, the TJPA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to the TJPA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any Services or work that the TJPA designates to be completed prior to the date of termination specified by the TJPA.
- (7) Taking such action as may be necessary, or as the TJPA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of the Contractor and in which the TJPA has or may acquire an interest.

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

d. In no event shall the TJPA be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the TJPA, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries,

post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to the Contractor under this Section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by the Contractor's final invoice; (2) any claim which the TJPA may have against the Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the TJPA, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and the TJPA's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

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

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
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info@tjpa.org

To Contractor: Andrew Liu
AECOM Technical Services, Inc
150 California Street, Suite 200
San Francisco, CA 94111
925.260.7027
andrew.liu@aecom.com

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

25. Proprietary or Confidential Information of the TJPA

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

26. San Francisco Protection of Private Information

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

27. News Releases/Interviews

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

28. Ownership of Results

Any interest of the Contractor 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 Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the TJPA. However, the Contractor 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 Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the TJPA. If it is ever determined that any works created

by the Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, the Contractor hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA Executive Director, the Contractor 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 Contractor agrees to maintain and make available to the TJPA, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Contractor will permit the TJPA to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon the TJPA by this Section. The Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

31. Intentionally Omitted

32. Intentionally Omitted

33. Subcontracting

Subject to specific direction in any Annual Work Plan/NTP, the Contractor is permitted to subcontract portions of this work under this Agreement as set forth in Appendix A-2 (Subcontractors). The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of the Services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed. The TJPA shall be provided with a copy of each subcontract promptly upon execution.

Any intended substitution of subcontractors listed in Appendix A-2 to this Agreement shall be submitted to the TJPA's Executive Director or their designee prior to the substitution of any subcontractor performing any work under the terms of this Agreement. In the event that a DBE/SBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original DBE/SBE subcontractor with another DBE/SBE subcontractor. No substitution of subcontractors shall be made at any time without the prior written approval of the TJPA Board of Directors.

34. Assignment

The Services to be performed by the Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by the TJPA by written instrument executed and approved in the same manner as this

Agreement. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

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. Services Provided by Attorneys

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

37. Conflict of Interest

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA pursuant to which the Contractor and any subcontractors may be required to prepare filings under state law; 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 certifies that it does not know of any facts which constitute a violation of said provisions.

38. San Francisco Limitations on Contributions

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

39. San Francisco Prohibition on Political Activity with TJPA Funds

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

40. Equal Employment Opportunity/Nondiscrimination; Penalties

a. The Contractor Shall Not Discriminate

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

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

b. Subcontracts

The Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 131C.3 of the San Francisco Labor and Employment Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. The Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

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

d. Condition to Contract

As a condition to this Agreement, the Contractor shall execute the appropriate "San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits"

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form (Form HRC-12B-101, HRC-12B-102, or HRC-12B-103) with supporting documentation and file the form with the TJPA.

e. Intentionally Omitted

f. Consideration of Salary History

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

41. Disadvantaged Business Enterprise (DBE) Requirements

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

Contractor must place the above clause in any subcontract agreement. Additionally, Contractor must provide the TJPA a copy of each subcontract agreement within 10 days of contractor receipt of a Notice to Proceed. The Contractor shall comply with the requirements of TJPA Board Policy No. 010 – Disadvantaged Business Enterprise Program Plan which can be found on TJPA's website.

The Contractor shall comply with the requirements of Appendix D, USDOT Requirements for Agreements with the TJPA, Section 7. Disadvantaged Business Enterprise (DBE), d) DBE Contract Assurance (49 CFR 26.13), which are incorporated by reference in this Agreement.

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

42. Small Business Enterprise (SBE) Requirements

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of twenty-five percent (25%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

The Contractor shall comply with the requirements of TJPA Board Policy No. 015 – Small Business Enterprise Program Plan which can be found on TJPA's website.

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.

c. The reference to Section 7108.5 of the California Business and Professions Code in Subsections (a) and (b) applies to the extent said provision is ever determined to apply.

44. San Francisco Minimum Compensation

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

45. San Francisco Healthcare Accountability Ordinance

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

46. San Francisco First Source Hiring Program

If applicable to this Agreement, the Contractor 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 Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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

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

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48. MacBride Principles – Northern Ireland

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

49. Drug-Free Workplace Policy

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

50. Intentionally Omitted

51. San Francisco Tropical Hardwood/Virgin Redwood Ban

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

52. Intentionally Omitted

53. San Francisco Food Service Waste Reduction Requirements

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

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

57. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

58. Construction

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

59. Entire Agreement

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

60. Severability

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

61. USDOT Requirements

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

62. Compliance With Laws

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

63. Compliance with Americans with Disabilities Act

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

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

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement

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is binding on such party in accordance with its terms. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Unless otherwise prohibited by law or TJPA policy, the parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA.

65. Compliance with Naming Rights Agreement

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

65. Cooperative Drafting

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

The Agreement is amended only to the extent expressly provided herein; all other provisions of the Agreement shall remain in full force and effect.

The individuals executing this Amended and Restated Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated as of the day first mentioned above.

**TRANSBAY JOINT POWERS
AUTHORITY**

CONTRACTOR
AECOM Technical Inc.

Adam Van de Water
Executive Director

Andrew Liu
Sr. Vice President, Transportation West Coast
AECOM Technical Services Inc.
150 California Street, Suite 200
San Francisco, CA 94111
Andrew.liu@aecom.com
(925) 260-7027
Federal Employer ID Number: 95-2661922

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest: _____

Approved as to Form by:

TJPA Legal Counsel

Secretary, TJPA Board

Appendix A: Scope of Services
Appendix A-1: Key Personnel
Appendix A-2: Subcontractors
Appendix B: Form of Payment Terms and Rate Agreement
Appendix C: Additional Insureds
Appendix D: USDOT Requirements for Agreements with the TJPA

APPENDIX A

SCOPE OF SERVICES

Contractor is responsible for assisting and supporting TJPA with the general responsibilities described below. TJPA will contract separately to support work that is not included in Contractor's scope. Potential organizational conflict of interest will be reviewed on a case-by-case basis after specific tasks are defined. TJPA will determine at its sole discretion if an organizational conflict of interest exists.

This Appendix highlights the functions of Contractor that are required to support the project. Additional ancillary duties, assignments, and activities may be required and, if determined to be necessary, will be defined, documented, negotiated, and approved by TJPA.

1 Program Management

- a. Development of a Contract Management Plan (CMP) that supports an effective commencement of services by Contractor and management of the Construction Management (CM) Services Bench. The CMP shall be submitted to TJPA within 45 days of Annual Work Plan/NTP for review and approval. All Contractor work shall be performed in accordance with the approved CMP. A separate CMP specific to the construction management support services shall be submitted to TJPA for review and approval prior to the commencement of any work specific to the construction management support services scope.
- b. Development and implementation of a Program Management Plan (PMP) which shall include clearly defined roles and responsibilities for internal and external stakeholders and shall include documented procedures to manage following:
 - i. Project management
 - ii. Project schedules
 - iii. Project budgets
 - iv. Communication and decision-making protocols
 - v. Information management
- c. Effective coordination with FTA, Caltrain, external agencies having jurisdiction (AHJs), utility agencies and owners and several other applicable governmental entities in the life cycle of projects.
- d. Update and completion of the necessary documents required for federal and state funding approvals and oversight.
- e. Coordination with all parts of TJPA in the development and/or implementation of required plans and procedures to effectively manage the program during design, construction, and establishment of operations.
 - i. Provide writing, preparing, and maintaining program and project management plans, agreements, permits and administration with particular emphasis on meeting FTA and Caltrain requirements.
 - ii. Utilize industry best knowledge and experience in managing the implementation

- of highway design, utility interaction and relocations, construction, equipment, and materials.
- iii. Maintain and foster relationships with agencies, local governments, community stakeholders, and other consultants/contractors.
- iv. Organize peer reviews and industry reviews, executive partnering, and other strategic.
- v. Provide expertise in design, procurement and construction management of electrified commuter rail systems and transit tunnel construction.

2 Project Management

- a. Lead and support management and delivery of projects on time and within budget.
- b. Support developing, managing, and administering The Portal from inception to close-out.
- c. Support the management of all aspects of engineering and construction, utility coordination and relocation, technical support, schedules, budget, funding, grants management, staffing, agency reporting, and prioritization of work.
- d. Establish, maintain, implement, and audit cost and schedule management activities to ensure compliance with contract documents, and applicable policies, procedures, and plans.
- e. Identify problems and recommend resolutions to scope, budget, cost, and schedule- related activities.
- f. Participate with TJPA and its engineering consultants, other stakeholders, and contractors in the evaluation of value engineering analysis.
- g. Provide on-going project management and coordination.
- h. Support activities as required to close-out; this may include but is not limited to constructability reviews, feasibility and engineering reviews, design reviews, risk assessments; evaluation of utility relocations, preparing meeting minutes, establish agreements with stakeholders and utility owners, and right-of-way certification.

3 Construction Management and Construction Support Services

- a. Assist with oversight of the contractor(s) by providing construction management and support services for The Portal.
- b. Assist TJPA in the development and management of a visible safety and quality culture.
- c. Assist TJPA with fully enforcing any safety or quality related notices.
- d. Perform constructability analysis at various stages of the project. The analysis shall be performed in accordance with industry standards for cost estimating, construction techniques, value engineering, lean construction, and project management best practices.

- e. Assist in preparing and/or reviewing the scope of work and tasks, the contract documents and solicitation documents for construction contract.
- f. Provide geotechnical coordination services to advise and assist in the review of subsurface investigative reports/data to support the project. If requested, provide geotechnical field inspection services for earthwork and foundation construction to verify compliance with design criteria, standards, and contract specification.
- g. Perform or assist TJPAs in pre-construction survey activities and verify the preconstruction survey performed by the project contractor(s).
- h. Review, for compliance, all contractor submitted documents in accordance with TJPAs approved plans and procedures; process in a timely manner, verify all open issues are addressed, and following review by Caltrans, TJPAs, or TJPAs's engineering consultant, return the submittal back to the contractor. Contractor staff shall follow all Caltrans's related guidelines and documentation requirements as it pertains to submittal review for communication, track and systems items.
- i. Provide independent field survey verification checks on contractor provided survey. For all structure and Right of Way work, assist and support the verification check of contractor benchmarks and ensure contractor adheres to all applicable requirements of the Caltrans Surveys Manual. Coordinate construction activities as directed by TJPAs. Support TJPAs in the enforcement and ongoing management of construction contract terms and conditions. Provide timely and pertinent review and input on all correspondence. Support TJPAs in maintaining cost and schedule goals and commitments on projects. Implement project controls measures that provide real-time assessments of projects budget and schedule.
- j. Support and assist by providing timely and pertinent review of all changes, claims, Time Impact Analysis submittals, and other contract modifications and interpretations.
- k. Provide coordination and management of third-party work including and not limited to agreements, variances, permits, and utility relocations.
- l. Cooperate with TJPAs's Contract Compliance staff in the administration of Disadvantaged Business Enterprise (DBE) / Small Business Enterprise (SBE) requirements.
- m. Receive, review, and recommend for acceptance all operations and maintenance manuals prepared and submitted by contractors and/or suppliers and coordinate any required reviews by TJPAs Engineering or TJPAs engineering consultant.
- n. Ensure that operational and start-up tests of equipment are performed by the contractor to verify the proper operation, functioning of individual equipment, and compatibility of related systems.
- o. Assist TJPAs's Environmental Compliance and Sustainability Department in regulatory compliance.
- p. Assist with project and construction close-out processes, including but not limited to the transfer of key records and documents, the final inspections, testing, review of the as-built plans and resolution of outstanding contractual issues; all close-out activities shall be performed in accordance with the Quality Management Plan (QMP), as applicable.

- q. Support and assist TJPA with the implementation of the Quality Management Program (QMP). The QMP includes the following activities:
 - i. Design assessments (as applicable during construction)
 - ii. Construction assessments
 - iii. Management plan assessments
 - iv. Process assessments
 - v. Management System Audits
 - vi. Corrective action requests
 - vii. Quarterly Management Reviews
 - viii. Final Acceptance data monitoring
- r. Assist TJPA in the investigation and resolution of quality-related issues as directed by the Project Director or Project Quality Manager.
- s. Perform materials verification testing, if necessary, per TJPA and Caltrain procedures.
- t. Provide health and safety management to oversee the contractor's compliance with environmental health and safety regulations and requirements. Contractor shall review and monitor contractor compliance with environmental health and safety requirements. Contractor will develop, implement, and manage the approved Environmental Health and Safety Plan which includes the following activities:
 - i. Hazardous material monitoring
 - ii. Health and Safety compliance and reporting
 - iii. Safety and security training
 - iv. Safety Hazards Analysis
 - v. Safety and Security Verification Certification
- u. Implement the materials testing program by observing and reporting on the contractor's compliance with materials testing requirements. Review and comment on the contractors' testing plans and submittals. Manage on-site tests and witness factory tests. Activities include:
 - i. Performing quality assurance and validation tests.
 - ii. Develop materials testing plans and reporting procedures.
 - iii. Review contractor materials testing submittals
 - iv. Report on results of materials testing by independent laboratories.
- v. Provide Start up Testing and Commissioning and Pre-revenue Services. Prepare Rail Activation Plan to include as a complete Caltrain operating system. Define an integrated test plan that includes TPSS, OCS, SCADA, train control, communications, LRT vehicles, PA system, VMS system, and CCTV system. Prepare integrated training plan based on Caltrain requirements. Activities include:
 - i. Rail activation plan including procedures, test, exercises, approvals and training
 - ii. Acceptance plan, test program and schedule (including integration test, readiness drills, pre-revenue service tests), approvals schedule, fallback planning and mitigation plans, training plan, procedures and schedule in compliance with Caltrain requirements.
 - iii. Documentation required for the safety and security certification under CPUC and FRA requirements.

- w. Provide field offices and supplies necessary to support all field operations and for the daily upkeep of offices, whether established by TJPA, Contractor, or a third party. Field supplies includes but is not limited to survey supplies, safety equipment and supplies, and small tools. Office supplies includes but is not limited to computer or Information Technology equipment and communication devices, janitorial supplies, office furniture, and daily use office items.
- x. Manage project vehicles, parking validation, and parking costs necessary to support projects. Project vehicles may be requested by TJPA and may be assigned by TJPA to any TJPA employee or Contractor staff.

4 Project Delivery and Contract Development/Compliance

- a. Advise on various project delivery methods including contract terms and conditions, procurement reviews, and state and federal transportation grant legislation and program requirements to support delivery of The Portal.
- b. Perform tasks to support project delivery and contract development/compliance, which include but are not limited to:
 - i. Support review of proposals and bids, especially in areas such as past performance, claims and litigation history, financial responsibility, and business ethics.
 - ii. Assist in the review, development, and implementation of overall project delivery and procurement strategy, document, plan, and schedules, including industry review process, key contract terms and conditions.
 - iii. Advise on proposer/bidder comments and requests for changes to solicitation requirements.
 - iv. Assist in reconciling contract documents and preparation of final contract terms and review of conformed Contract Documents.
 - v. Provide contract administration support under the direction of TJPA's Procurement/Contract Management.
 - vi. Provide DBE/SBE program requirements and Equal Employment Opportunity (EEO) workforce provisions compliance review and monitoring under the direction of TJPA requirements.
 - vii. Develop specifications, solicitation technical packages, and intergovernmental agreements.
- c. In addition to Design-Bid-Build (DBB) for the enabling works program, TJPA will be utilizing a Progressive Design-Build (PDB) for the Heavy Civil and Tunneling contract and Construction Manager/General Contractor (CMGC) for the implementation of Systems, Trackwork and Station Fit-out contracts. Contractor shall perform tasks to support TJPA for these Alternative Project Delivery processes including but not limited to:
 - i. Work with the engineering consultant(s), construction contractor(s), and TJPA staff to develop the approach to cost estimating method and the development of the Opinion of Probable Construction Cost (OPCC).
 - ii. Provide Independent Value Assessment capability to assist with contractor cost negotiations.
 - iii. Review the estimating methodology report submittal from the construction contractor(s).

- iv. Provide technical leadership and support team to:
 - 1. Develop an independent cost estimate at the designated milestones of the CMGC or PDB contract.
 - 2. Assist TJPA in reconciliation of cost estimates with the CMGC or PDB and documentation.
 - 3. Assist TJPA by leading and/supporting negotiations with the CMGC or PDB to establish the guaranteed maximum price or lump sum.
 - 4. Provide other cost estimating support as needed between development of the final estimate and issued for construction documents in support of the CMGC and PDB contract.
 - 5. Develop independent cost estimates for early works packages and additional field work.
 - 6. Review the cost estimates/OPCC provided by the construction contractor(s) and participate in quantity and estimate reconciliation meetings.
 - 7. Assist TJPA to negotiate with the construction contractor(s) to reach the final project construction value.

5 Configuration Management

Configuration Management encompasses a range of activities related to establishing and maintaining consistency across project lifespan, from project definition and preliminary engineering to closeout. This could include everything from a systems-level approach for requirements and contract interface management, to document management, including equipment/materials inventory (provided by the contractor), which involves managing most documents for project files, as well as change control for all contracts related to a project.

Contractor shall provide staffing, technical resources, knowledge, and expertise to manage TJPA Configuration Management tasks, which include but are not limited to:

- a. Manage project records through workflow process, including submittals, RFIs, correspondence, and similar.
- b. Maintain design standards related to specific projects.
- c. Maintain a record of baseline configuration and requirements and track changes across contract interfaces.
- d. Maintain the requirements checklist to assist in managing the program to verify that design and construction complies with all requirements and commitments established during the planning and environmental clearance phase and the requirements of the various entities whose funds will be used to deliver the Program have been met.
- e. Verify that physical and schedule interfaces are coordinated between the contracts and other components, projects and subprojects and contract packages within the program.
- f. Track changes to and maintain system-wide standards documents.

- g. Maintain TJPA Program Management Plan and Procedures documents.
- h. Manage the document exchange between TJPA and the contractor and other consultants.
- i. Track contract change activities related to projects, whether for contractors, consultants, engineers, designers, and similar.
- j. Work closely with projects Manager, Construction Manager, Resident; Engineer, Vendor/Contract Management, Project Controls, and Cost Estimating to track contract changes.
- k. Gather information regarding the cost estimate, scope of change, and issues to facilitate the procurement process to resolution and potentially contract issuance.
- l. Secure and manage equipment/materials inventory to be provided by the contractor as prescribed in Federal Acquisition Regulations (FAR).

6 Project Controls

Coordinate and support TJPA Program Controls for cost, scheduling, estimating, and risk management for environmental, engineering, construction, and maintenance/operations phases of The Portal project. Manage and maintain baseline reports to establish cost, budget, and schedule objectives for The Portal project, against which project controls report on the status and progress of the work; actual and projected costs; schedule progress; and trends.

Contractor shall provide technical staffing and resources, knowledge, and expertise to provide support for TJPA Program Controls tasks, which include but are not limited to:

- a. Project control support throughout all phases of a project that include scheduling, estimating, cost control, change control, document controls and records management.
- b. Utilize state-of-the-art knowledge of information technology and information systems practices as it relates to project controls. IT Architecture to be revisited every three years to revise or adjust as necessary.
- c. Review dispute avoidance claims mitigation and risk analysis.
- d. Identify, develop, and implement project and program controls practices, standards, procedures and tools for project controls-related reporting, and program controls.
- e. Provide BIM management, and support, to oversee the digital delivery through design, construction, and closeout. This includes supporting TJPA in developing a Building Information Modeling (BIM) and Digital Construction strategy, and the accompanying systems and standards, for effective communication, data driven decision making, and records management across the project.
- f. Track, monitor, and verify cost and schedule to ensure timely and cost-effective project execution.

- g. Advise and provide daily support on financial strategies and mechanisms related to cost, source of funding, cash flow, and long-term project implementation, operations, and maintenance under a cost-effective, cost of ownership, and life cycle framework.
- h. Refine, innovate, and implement project control practices, standards, procedures, and tools for project-wide reporting.
 - i. Perform the following project control tasks, which include but are not limited to: Analyze cost, scheduling, and risk issues.
 - ii. Conduct cost and schedule reviews and provide reporting.
 - iii. Support payment application and invoicing review.
 - iv. Review and comment on the contents of RFP(s) and IFB(s) for the design and construction.
 - v. Maintain, enhance, and enforce all document control and record management plans, policies, and procedures.
 - vi. Maintain Program Management subplans as needed, and when applicable create new project controls related subplans.
 - vii. Maintain an integrated Master Program Schedule for all activities including Real Estate Acquisitions, Design and Engineering Milestones, Third Party Agreements, Utility Relocations, Stakeholder Coordination, Procurements, Approvals and Inspections, and all Construction Schedules.
 - viii. Prepare Fiscal Year project budgets and make incremental adjustments as needed.
 - ix. Conduct internal risk assessments for the project.
 - x. Verify cost estimates are in line with risk assessments.
 - xi. Assist in conducting quality assurance of the financial data and analyzing the data for financial reconciliation.

7 Estimating Cost

Estimating develops and prepares cost estimates to support TJPA procurement activities for professional services planning, environmental, construction, maintenance, and operations contracts; develops TJPA design and construction (capital cost) budgets, and during the planning and design phases of projects for design optimization and value engineering studies, life-cycle cost analyses, and risk assessments.

Contractor shall provide technical staffing, resources, knowledge, and expertise to coordinate and support TJPA estimating tasks, which include but are not limited to:

- a. Develop and implement cost estimation practices, standards, procedures, and tools to support development of TJPA's design and construction (capital cost) budgets and to support economic optimization of TJPA project designs.
- b. Prepare Independent Cost Estimates for professional services, construction, maintenance, and operations contracts, changes, and claims.
- c. Furnish cost and price analyses of proposals from consultants and contractors.
- d. Prepare estimates to establish project budgets for planning, construction and procurement, value engineering studies, real estate and joint development purchase and exchange

decisions.

- e. Provide estimates and economic analyses to support design optimization, constructability, and project feasibility decisions.
- f. Review and provide comments on estimates prepared by other consultants for planning and construction.
- g. Prepare estimates to validate funding requests from other government agencies and third-party utilities.
- h. Provide design and construction technical analyses and support to TJPA Management Audit Services.
- i. Conduct construction market analysis by reviewing cost and bidding trends and evaluating factors that may influence construction bidding; and j. Design, develop, and deploy industry best practices, standards, procedures, and tools to continually improve the cost estimating function.

8 Community Outreach and Construction Relations

Contractor will support TJPA on project communication management and implementation of The Portal, which includes, but is not limited to, industry, public, and stakeholder communications and outreach, along with crisis and construction impact mitigation. In coordination with TJPA Communications, Contractor will coordinate programs to minimize and help address field construction issues and inquiries, make provisions to accommodate TJPA approved tours of the various project sites, and refer all media inquiries or requests for project related information to TJPA Communications. Contractor will assign a dedicated outreach professional to support TJPA with these requirements.

9 Other Activities

In the performance of the scope above, TJPA may require Contractor to provide the following equipment and services, not all inclusive:

- a. Project Office Space and Furniture
- b. Communications Equipment and Services
- c. Computer & Network Equipment and Services
- d. Software and Software Support
- e. Field Supplies
- f. Cameras
- g. Office Supplies
- h. Graphic Services
- i. Courier Services
- j. Copiers, Plotters and Scanners
- k. Signage/Banner Services
- l. Housekeeping/Custodial
- m. Safety Equipment & Training
- n. Survey Equipment and Supplies
- o. Preconstruction Survey Services

- p. Obtaining and maintaining permits, as required.
- q. Vehicles for TJPA and Consultant staff
- r. Code Books and Reference Manuals
- s. Professional Training & Seminars t. Such other services as are related or ancillary to the services described above and/or to accomplish the purpose of the Program Management/Construction Management services.

END OF SCOPE OF SERVICES

APPENDIX A-1
KEY PERSONNEL

	Position	Person
1	Construction Manager	Carter Rohan
2	Program Contract Manager	Stephen Polechronis
3	Engineering Manager	Meghan Murphy
4	Chief Tunneling Engineer	Derek Penrice
5	Project Controls Manager	Rizwan Gill
6	Progressive Design Build (PDB)/Construction Manager/General Contractor (CMGC) Procurement Lead	TBD
7	Interface and Integration Lead	Joe Bayat

APPENDIX A-2

SUBCONTRACTORS

	Company	General Summary of Scope
1	Auriga Corporation*	Transit Systems Support; Construction Management Services
2	Civic Edge Consulting*	Communications Strategies, Community Outreach and Communications
3	Conсор PMCM, Inc.	Construction Management Services
4	Edgar Lopez & Associates*	Contract Devel. & Admin.; Contractor Relationship/ Negotiation; Strategic Advisory
5	Hollins Consulting, Inc.*	Doc. Control/ Admin. Support; Utility Relocation; ROW Support; Scheduling; Program Controls/Cost Support; Design Mgmt. (Stations); PMCM Staff Support
6	Intueor Consulting Inc.*	PMCM Support., Controls, Procure. Supp.; Rail & Comm. Sys. & Asset Mgt.; Org. Change Mgt.
7	ISI Inspection Services, Inc.	Inspection, Materials Testing, Other tasks to be determined
8	JRU Enterprises	Right-of-Way Support
9	KMC Construction Consulting*	Cost Estimating
10	Luster National, Inc.*	Program Management and Construction Management Support
11	M Lee Corporation*	Scheduling, Estimating and Other Project Controls Tasks
12	Mott MacDonald Group, Inc.	PMCM & Proj. Mgt; Sub. matter expertise - Tunnel, Geotech, Rail; Procure. Docs Development; Construct. & Risk Mgt.; Requirements Mgt., Safety Assurance, Digital Delivery
13	Pendergast Consulting Group*	S/L/DBE Support; Workforce Development and Community Outreach
14	Risk International (Albert Risk)	Strategic Advisory Services, Insurance
15	Saylor Consulting, Inc.*	Estimating & Scheduling Services; Construction Management Support
16	Towill, Inc.*	Surveying
17	WSP USA Inc.	Program Management and Construction Management Support

* Indicates SBE.

APPENDIX B

FORM OF COST REIMBURSEMENT AND RATE AGREEMENT

Pursuant to the Amended and Restated Professional Services Agreement between the Transbay Joint Powers Authority (hereinafter referred to as "TJPA") and AECOM Technical Services, Inc., a California corporation (hereinafter referred to as "Contractor") for Program Management and Construction Management Services ("Agreement"), TJPA and Contractor hereby agree to enter into this Time and Materials Payment Terms and Rate Agreement ("Rate Agreement") as follows:

TJPA will pay the Contractor as follows upon the submission of invoices approved by the TJPA Chief Financial Officer ("CFO") (or their designee):

(a) *Hourly rate.*

(1) *Hourly rate* means the rate(s) attached hereto as Attachment 1 for payment for labor that meets the labor category qualifications of a labor category specified in the Agreement that are-

(i) Performed by the Contractor;

(ii) Performed by the subcontractors; or

(iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under common control.

(iv) Hourly rates for Contractor and subcontractors are established in Attachment 1 and may be negotiated for adjustment in an amended Rate Agreement.. If the average hourly rate adjustment submitted by Contractor exceeds the annual escalation factor used to determine the Contract Limit, the Contractor shall submit sufficient justification to the TJPA CFO, Project Director and Project Controls Manager in support of the request. The justification shall also indicate, in sufficient detail, adjustments to the staffing plan subtask category used to determine the Contract Limit in a manner acceptable to TJPA resulting in no increase within the subtask category. Upon review and approval of the TJPA CFO, the new rates shall be incorporated into an amended Rate Agreement to reflect the Contractor's and subcontractors' annual salary adjustments, effective with their upcoming accounting period. In addition to compliance with the Agreement Section 4(b) relative to Key Personnel and Section 32 relative to subcontractors, staff additions, substitutions, or replacements must be submitted to TJPA CFO, Project Director, and Project Controls Manager (or their designees) for approval and inclusion in Annual Work Plan/NTP accompanied by the updated work breakdown schedule that shows no changes to the scope and cost upon

completion.

- (2) The appropriate hourly rates shall be multiplied by the number of direct labor hours performed.
- (3) The hourly rates shall be paid for all labor performed on the Agreement and Annual Work Plan/NTP that meets the labor qualifications specified in the Agreement or Annual Work Plan/NTP. Labor hours incurred to perform tasks for which labor qualifications were specified in the PSA will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Agreement and Annual Work Plan/NTP , unless specifically authorized by the TJPACFO (or their designee).
- (4) The hourly rates shall include wages, indirect costs, general and administrative expenses, and profit (at the rate of nine percent). The invoice shall reflect the approved mark-up (described below) on agreed to subcontracted effort. Fractional parts of an hour shall be payable on a prorated basis.
- (5) Invoices may not be submitted more than monthly to the TJPACFO (or their designee). The Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate) by evidence of actual payment of non-labor costs and by-
 - (i) Individual daily job timekeeping records;
 - (ii) Records that verify the employees meet the qualifications for the labor categories specified in the Agreement and Annual Work Plan/NTP; or
 - (iii) Other substantiation approved by the TJPACFO (or their designee).
- (6) Promptly after receipt of each substantiated invoice, TJPACFO shall, except as otherwise provided in the Agreement or this Rate Agreement, and subject to the terms of paragraph (d) of this Rate Agreement, pay the invoice as approved by the TJPACFO (or their designee).
- (7) Unless otherwise prescribed in the Agreement, the TJPACFO (or their designee) may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the TJPACFO (or their designee) considers necessary to protect TJPACFO's interests. The TJPACFO (or their designee) may require a withhold of 5 percent of the amounts due under paragraph (a) of this Rate Agreement, but the total amount withheld for the contract shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this Rate Agreement.
- (8) Unless this Rate Agreement prescribes otherwise, the hourly rates shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the hourly rates and overtime work is approved in

advance by the TJPA CFO (or their designee), overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under paragraph (k) of this Rate Agreement. If the hourly rates provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved in advance by the TJPA CFO (or their designee).

(b) Other Direct Costs.

(1) For the purposes of this clause-

(i) *Direct materials* mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Other Direct Costs* ("ODC") means-

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the Agreement ; and

(C) Other direct cost categories attached hereto as Attachment 2. Except for those ODCs fitting within the categories specified in Attachment 2, no other ODCs are permitted without the advanced written approval of the TJPA CFO and TJPA Project Director (or their designees). Planned ODC costs will be initially reviewed and authorized in the Contractor's detailed Annual Work Plan/NTP proposal. All costs incurred are subject to determination by TJPA that are allocable, allowable, and reasonable.

(2) If the Contractor furnishes its own materials, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, TJPA will reimburse the Contractor for allowable ODCs provided the Contractor-

(i) Has made payments for ODCs in accordance with the terms and conditions of the agreement or invoice for the ODCs; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to TJPA and such payment is in accordance with the terms and conditions of the agreement or invoice for the ODC.

- (4) The ODC categories included in Attachment 2 (or otherwise have received advanced written approval from the TJPA) are allowable if determined to be reasonable and allocable. The TJPA CFO (or their designee) will determine allowable costs in accordance with FAR subpart 31.2 and 2 CFR 403-406 and any other applicable federal law or regulation in effect on the date of this contract.
- (5) The Contractor may include allocable indirect costs and ODCs to the extent they are-
- (i) Comprised only of costs that are clearly excluded from the hourly rate and overhead;
 - (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
 - (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.
- (6) To the extent able, the Contractor shall-
- (i) Obtain ODCs at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the TJPA CFO (or their designee) and give the reasons. The Contractor shall give credit to TJPA for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor or lost through fault of TJPA.
- (7) TJPA will not pay profit or fee to the Contractor on materials or other ODCs. Contractor may apply a mark-up of 1.5% on agreed to subcontracted effort.
- (8) If the Contractor enters any subcontract that requires TJPA consent, TJPA is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of TJPA.
- (9) Contractor must receive the TJPA CFO's (or their designee's) prior written approval before incurring any ODC that exceeds \$5,000.
- (10) Travel Reimbursement. Travel will be reimbursed based on TJPA Travel, Business Expense, and Relocation Policy: Standard Practices and Guidelines for TJPA Consultants and Subconsultants, and requires TJPA Project Director and CFO preapproval.

(c) Total cost.

It is estimated that the total cost to TJPA for the performance of the Agreement and each Annual Work Plan/NTP shall not exceed the Ceiling Price set forth in the Agreement and sublimits set forth in an Annual Work Plan/NTP, and the Contractor agrees to use its best efforts to perform the work specified in the Agreement and each Annual Work Plan/NTP and all obligations under the Agreement within such Ceiling Price and sublimits.

If at any time the Contractor has reason to believe that the hourly rate payments and Other Direct Costs that will accrue in performing the Agreement in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the Ceiling Price in the Agreement, the Contractor shall notify the TJPA CFO giving a revised estimate of the total price to TJPA for performing the Agreement with supporting reasons and documentation. If at any time during performing the Agreement, the Contractor has reason to believe that the total price to TJPA for performing the Agreement will be substantially greater or less than the then stated Ceiling Price, the Contractor shall so notify the TJPA CFO, giving a revised estimate of the total price for performing the Agreement with supporting reasons and documentation. If at any time during performing this contract, TJPA has reason to believe that the work to be required in performing this Agreement will be substantially greater or less than the stated Ceiling Price, the TJPA CFO (or their designee) will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the Agreement.

(d) Ceiling Price. TJPA will not be obligated to pay the Contractor any amount more than the Ceiling Price in the Agreement. The Contractor exceeds the Ceiling Price at its own risk and expense.

(e) Audit. At any time before final payment under the Agreement, the TJPA CFO (or their designee) may request audit of the invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the TJPA CFO (or their designee) not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of the Agreement and this Rate Agreement (including, without limitation, the terms of paragraph (f) of this Rate Agreement), TJPA shall promptly pay any balance due the Contractor. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under the Agreement, but in no event later than 120 days (or such longer period as the TJPA CFO (or their designee) may approve in writing) from the date of completion.

(f) Assignment and Release of Claims. The Contractor, and each assignee under an assignment entered into under the Agreement and in effect at the time of final payment under the Agreement, shall execute and deliver, at the time of and as a condition precedent to final payment under the Agreement, a release discharging TJPA, its members, directors, officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the Agreement and this Rate Agreement, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing the Agreement, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the TJPA CFO (or their designee) not more than 6 years after the date of the release or the date of any notice to the Contractor that TJPA is prepared to make final payment, whichever is earlier.

(g) Invoice Reimbursement.

- (1) Allowable Costs – Costs will only be allowed if the proposed costs are consistent with cost principles of the Federal Acquisition Regulation (FAR) as set forth in 48 C.F.R. Part 31 and any other applicable federal law or regulation. TJPA will perform and audit the Agreement and any subcontracts for compliance with these requirements.
- (2) Agency will accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods if those rates are not currently under dispute.
- (3) "Billing rates." Until final annual indirect cost rates are established for any period, TJPA will reimburse Contractor at billing rates established in the Contractor's proposal and audited by the Proposer's Certified Public Accountant, attached as Attachment 3, subject to adjustment when the final indirect cost rates are established. Final indirect cost rates must be established by an audit performed by the federal government or other governmental agency for every period.

These indirect cost rates—

- Shall be the anticipated final rates; and
 - May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (4) Final Payment. Until Contractor's compliance with all terms of the Agreement, TJPA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (5) During the term of the PSA and for a period of five (5) years after final payment under the agreement, or until after a final audit has been resolved, whichever is later, Contractor shall:
 - Keep and maintain, in their original form, all records, books, papers, or documents related to Proposer's performance; and
 - Permit TJPA or its authorized representative, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to Contractor's performance of the PSA including, but not limited to: direct and indirect

charges, and detailed documentation, for work Contractor has performed or will perform under the PSA.

(6) For a period of not less than five years after final payment under the PSA, TJPA may have Contractor's invoices or invoices and statements of cost audited. Any payment may be

- Reduced by amounts found by TJPA not to constitute allowable costs; or
- Adjusted for prior overpayments or underpayments.

The parties have executed this Agreement as of October 17, 2025.

TRANSBAY JOINT POWERS AUTHORITY

AECOM Technical Services, Inc.

Adam Van de Water, Executive Director

Andrew Liu,
Sr. Vice President, Transportation West
Coast

Attachments:

Attachment 1. Hourly Rates

Attachment 2. Other Direct Cost

Attachment 3. Billing Rates

ATTACHMENT 1
HOURLY RATES

[to be attached after establishment of the indirect cost rate for an applicable period]

ATTACHMENT 2

OTHER DIRECT COSTS

Onsite Vehicles exclusively leased for construction management or inspection work in the field in compliance with Travel Policy.

Parking

Office Space Fit-out/Move in

Office Space Rent

InEight Setup

InEight Maintenance

Other Software

Computer equipment approved and tagged as TJPA asset by TJPA IT director

PPE

Printing

Travel *

Living Expenses for temporary duty assignment in compliance with lodging authorized under Travel Policy.

*Note: The Contractor has agreed that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract. Accordingly, TJPA does not expect ODCs to include travel of Key Personnel to/from their home and the Contractor's local offices.

ATTACHMENT 3 BILLING RATES

[applied prior to establishment of the indirect cost rate]

Downtown Transbay Extension Program Management and Construction Management Services 2024 RATES BY FIRM

Firm	Description	Name/Position	2024 Raw Rate	Home/ Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
AECOM	Assistant Contracts Manager	Jimmy Liu	\$56.11	Field	102.64%	0.00%	9.0%	\$123.93
AECOM	Assistant Office Engineer	AjayKanth Satti	\$41.00	Field	102.64%	0.00%	9.0%	\$90.56
AECOM	Assistant Resident Engineer	Armen Avanesian	\$51.45	Field	102.64%	0.00%	9.0%	\$113.64
AECOM	Change & Configuration Manager	Steven Reid	\$111.66	Field	102.64%	0.00%	9.0%	\$246.63
AECOM	Change Control Technician	Marianne Ghobreal	\$60.00	Field	102.64%	0.00%	9.0%	\$132.53
AECOM	Construction Manager **	Carter Rohan	\$205.96	Field	102.64%	0.00%	9.0%	\$454.92
AECOM	Construction Safety - Buildings	Patrick Walz	\$69.91	Field	102.64%	0.00%	9.0%	\$154.42
AECOM	Construction Safety - Tunnel	Mike Kirchanski	\$80.00	Field	102.64%	0.00%	9.0%	\$176.70
AECOM	Construction Safety - Tunnel	Mike McDowell	\$93.04	Field	102.64%	0.00%	9.0%	\$205.50
AECOM	Contracts Compliance - Payroll	Hannah Lee	\$69.75	Field	102.64%	0.00%	9.0%	\$154.06
AECOM	DBB Util Relocation - ACM	Audrey Brook1	\$121.04	Field	102.64%	0.00%	9.0%	\$267.35
AECOM	Engineering Manager **	Meghan Murphy	\$120.50	Field	102.64%	0.00%	9.0%	\$266.16
AECOM	Estimator	Leonard Calianno	\$112.07	Home	123.50%	0.00%	9.0%	\$273.02
AECOM	Health & Safety Manager	Mike Voudouris	\$90.00	Field	102.64%	0.00%	9.0%	\$198.79
AECOM	Information Management Lead	Matt Perna	\$115.94	Home	123.50%	0.00%	9.0%	\$282.45
AECOM	Inspector - Architectural	Bruce Farrell	\$105.93	Field	102.64%	0.00%	9.0%	\$233.98
AECOM	Inspector - Civil	Aaron Jayne	\$76.05	Field	102.64%	0.00%	9.0%	\$167.98
AECOM	Inspector - Civil	Arieto Manalo	\$81.92	Field	102.64%	0.00%	9.0%	\$180.94
AECOM	Inspector - Civil	Dave Vornberger	\$93.94	Field	102.64%	0.00%	9.0%	\$207.49
AECOM	Inspector - Civil	David Akers	\$75.38	Field	102.64%	0.00%	9.0%	\$166.50
AECOM	Inspector - Mechanical	Coleman Bailey (T&S)	\$68.75	Field	102.64%	0.00%	9.0%	\$151.85
AECOM	Inspector - Mechanical	Coleman Bailey (Tun)	\$68.75	Field	102.64%	0.00%	9.0%	\$151.85
AECOM	Inspector - Mechanical	Robert Alfasi	\$81.00	Field	102.64%	0.00%	9.0%	\$178.91
AECOM	Inspector - Plumbing	Vini Shah (Sta)	\$79.33	Field	102.64%	0.00%	9.0%	\$175.22
AECOM	Inspector - Plumbing	Vini Shah (Tun)	\$79.33	Field	102.64%	0.00%	9.0%	\$175.22
AECOM	Inspector - Structural	Carla Aguilar Rivera	\$97.04	Field	102.64%	0.00%	9.0%	\$214.34
AECOM	Inspector - Track	Bob Brosey	\$75.00	Field	102.64%	0.00%	9.0%	\$165.66
AECOM	Inspector - Track	Brian Price	\$75.58	Field	102.64%	0.00%	9.0%	\$166.94
AECOM	Inspector - Tunnel	Vishwam Sheth	\$57.55	Field	102.64%	0.00%	9.0%	\$127.12
AECOM	Lead Inspector	Isnard Estriplet	\$129.32	Field	102.64%	0.00%	9.0%	\$285.64
AECOM	Lead Inspector	Raffaele Aliberti	\$66.11	Field	102.64%	0.00%	9.0%	\$146.02
AECOM	Office Engineer	Ferdie Rodriguez (R Fernando)	\$70.42	Field	102.64%	0.00%	9.0%	\$155.54
AECOM	Office Engineer	Henry Diep	\$65.62	Field	102.64%	0.00%	9.0%	\$144.94
AECOM	Office Engineer	Juan Romero	\$55.96	Field	102.64%	0.00%	9.0%	\$123.60
AECOM	Office Engineer	Muataz Yaseen	\$91.35	Field	102.64%	0.00%	9.0%	\$201.77
AECOM	PDB Main Civil - ACM	Rich Redmond Jr.	\$161.91	Field	102.64%	0.00%	9.0%	\$357.62
AECOM	Principal Level Environmental Specialist	Rodney Jeung	\$127.42	Home	123.50%	0.00%	9.0%	\$310.41
AECOM	Procurement Manager	Ashish Patel	\$168.27	Field	102.64%	0.00%	9.0%	\$371.67
AECOM	Program Contract Manager **	Stephen Polechronis	\$185.57	Field	102.64%	0.00%	9.0%	\$409.88

Downtown Transbay Extension
Program Management and Construction Management Services
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/ Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
AECOM	Project Administrator	TBDd	\$47.50	Home	123.50%	0.00%	9.0%	\$115.71
AECOM	QA/QC	TBDe	\$88.40	Home	123.50%	0.00%	9.0%	\$215.36
AECOM	Senior Level Environmental Specialist	Anne Ferguson	\$62.50	Home	123.50%	0.00%	9.0%	\$152.26
AECOM	SME: Engineering	Osborne Anthony	\$97.77	Home	123.50%	0.00%	9.0%	\$238.18
AECOM	SME: Geotechnical Engineer	Stephen Huang, GE	\$98.57	Home	123.50%	0.00%	9.0%	\$240.13
AECOM	SME: Paleontologist/Archaeologist	Jay Rehor	\$66.84	Home	123.50%	0.00%	9.0%	\$162.83
AECOM	SME: Paleontologist/Archaeologist	Kat Kubal	\$54.65	Home	123.50%	0.00%	9.0%	\$133.14
AECOM	SME: Precast Specialist	Orin Brown	\$97.50	Home	123.50%	0.00%	9.0%	\$237.52
AECOM	SME: Principal Paleontologist	Mark Hale	\$62.44	Home	123.50%	0.00%	9.0%	\$152.11
AECOM	Station Fit-Out - ACM	Audrey Brook2	\$121.04	Field	102.64%	0.00%	9.0%	\$267.35
AECOM	Track & Systems - ACM	Sy Morales	\$127.40	Field	102.64%	0.00%	9.0%	\$281.40
AECOM	Utilities Package Lead	Audrey Brook	\$121.04	Field	102.64%	0.00%	9.0%	\$280.71
Auriga Corp.	Inspector - Communications	Clay McDonald	\$90.00	Field	154.75%	0.00%	9.0%	\$252.69
Auriga Corp.	Inspector - Electrical	Omar Hafud Al-Sudani	\$60.00	Field	154.75%	0.00%	9.0%	\$173.27
Auriga Corp.	Inspector - Signalling	Michael Moyer	\$90.00	Field	154.75%	0.00%	9.0%	\$259.91
Auriga Corp.	Inspector - Systems	Fathi Aljarrah	\$77.10	Field	154.75%	0.00%	9.0%	\$216.59
Civic Edge Consulting	Community Outreach Specialist	Paisley Strellis	\$68.28	Field	195.80%	0.00%	9.0%	\$220.15
Conсор PMCM, Inc.	Inspector - Civil	Corey Funkner	\$86.92	Field	117.59%	0.01%	9.0%	\$206.16
Conсор PMCM, Inc.	Inspector - Communications	Charles Smith	\$86.01	Field	117.59%	0.01%	9.0%	\$204.00
Conсор PMCM, Inc.	Inspector - Electrical	Darren Goodbar	\$90.00	Field	117.59%	0.01%	9.0%	\$213.46
Conсор PMCM, Inc.	Inspector - Electrical	David Taylor	\$93.88	Field	117.59%	0.01%	9.0%	\$222.67
Conсор PMCM, Inc.	Inspector - Electrical	Michael Johnson	\$88.40	Field	117.59%	0.01%	9.0%	\$209.67
Edgar Lopez & Associates	SME: Procurement	Edgar Lopez	\$224.56	Home	47.00%	0.00%	9.0%	\$359.81
Hollins Consulting, Inc.	Admin Support Manager	Laura Patino	\$93.75	Field	113.15%	0.00%	9.0%	\$220.70
Hollins Consulting, Inc.	Administrative Assistant	Megan Wong	\$55.00	Field	113.15%	0.00%	9.0%	\$127.77
Hollins Consulting, Inc.	Assistant Contracts Compliance - Payroll	Tsehai Netsereab	\$46.95	Field	113.15%	0.00%	9.0%	\$110.35
Hollins Consulting, Inc.	Assistant Office Engineer	Leah Rhodes	\$51.40	Field	113.15%	0.00%	9.0%	\$120.81
Hollins Consulting, Inc.	DBB Building Demo - ACM	Jermaine Smith	\$86.54	Field	113.15%	0.00%	9.0%	\$203.28
Hollins Consulting, Inc.	Document Control Technician	Jonathan Valencia	\$60.10	Field	113.15%	0.00%	9.0%	\$144.61
Hollins Consulting, Inc.	Junior Engineers	TBDc	\$81.12	Field	113.15%	0.00%	9.0%	\$188.47
Hollins Consulting, Inc.	Procurement Specialist	Cecilia Luu	\$80.29	Field	113.15%	0.00%	9.0%	\$191.66
Hollins Consulting, Inc.	Project Assistant	Leena Ahmadi	\$49.09	Field	113.15%	0.00%	9.0%	\$116.17
Hollins Consulting, Inc.	Utility Coordination Manager	Jermaine Smith	\$86.54	Field	113.15%	0.00%	9.0%	\$203.28
Hollins Consulting, Inc.	Utility Coordinator	Will Spargur	\$76.24	Field	113.15%	0.00%	9.0%	\$177.14
Intueor	Contracts Administrator	Charles Smith	\$94.61	Field	123.43%	0.00%	9.0%	\$230.41
Intueor	IT Specialist	Tarek Fahmy	\$62.25	Field	123.43%	0.00%	9.0%	\$151.60
Intueor	Project Control Scheduler	Parthiv Varma	\$80.28	Field	123.43%	0.00%	9.0%	\$195.51
Intueor	SME: Project Controls	Steve Lavelle	\$98.12	Home	123.43%	0.00%	9.0%	\$238.96
Intueor	Sr Project Controls Engineer	Jordan Taylor	\$92.25	Field	123.43%	0.00%	9.0%	\$224.66

Downtown Transbay Extension
Program Management and Construction Management Services
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Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
JHU Enterprises	ROW Manager	John Updike	\$215.00	Field	0.00%	0.00%	0.0%	\$215.00
KMC Construction Consulting	Independent Cost Estimator	Kelly McNutt	\$189.00	Home	76.55%	0.00%	9.0%	\$363.71
Luster National, Inc.	Administrative Analyst	John Luster	\$88.94	Field	133.01%	0.04%	9.0%	\$225.92
Luster National, Inc.	Assistant Contracts Administrator	Dan Coffee	\$96.68	Field	133.01%	0.04%	9.0%	\$245.58
Luster National, Inc.	Document Control Manager	Kara Turner	\$82.80	Field	133.01%	0.04%	9.0%	\$210.33
Luster National, Inc.	Quality Assurance Auditor	Bobby Butler	\$54.13	Field	133.01%	0.04%	9.0%	\$137.50
M Lee Corp.	Cost Estimator	Asia Kan	\$87.50	Field	110.60%	0.00%	9.0%	\$200.86
M Lee Corp.	Senior Cost/Schedule Analyst	Martin Lee	\$98.50	Home	128.80%	0.00%	9.0%	\$245.65
Mott MacDonald	4th & King Site Work Package Lead	Scott Waldron	\$59.63	Field	142.51%	0.00%	9.0%	\$157.62
Mott MacDonald	Assistant Resident Engineer	Ali Iqbal	\$125.46	Field	142.51%	0.00%	9.0%	\$331.64
Mott MacDonald	Assistant Resident Engineer	Eleanor Sillerico	\$102.97	Field	142.51%	0.00%	9.0%	\$272.19
Mott MacDonald	Assistant Resident Engineer	Shawna Von Stockhausen	\$89.94	Field	142.51%	0.00%	9.0%	\$237.74
Mott MacDonald	BIM Lead	Abraham Rodriguez	\$80.56	Home	166.49%	0.00%	9.0%	\$234.01
Mott MacDonald	Chief Tunneling Engineer **	Derek Penrice	\$137.69	Field	142.51%	0.00%	9.0%	\$363.96
Mott MacDonald	Digital Delivery Lead	Jay Mezher	\$117.63	Field	142.51%	0.00%	9.0%	\$310.94
Mott MacDonald	Graphics support	Stacy Lehrer	\$45.36	Home	166.49%	0.00%	9.0%	\$131.76
Mott MacDonald	Inspector - Civil	Eduardo Salvador	\$90.00	Field	142.51%	0.00%	9.0%	\$237.90
Mott MacDonald	Inspector - Systems	Bindy Dhillon	\$74.37	Field	142.51%	0.00%	9.0%	\$196.59
Mott MacDonald	Inspector - Tunnel	Carl Gellor	\$83.58	Field	142.51%	0.00%	9.0%	\$220.93
Mott MacDonald	Integration Manager	Dave Hunt	\$115.00	Field	142.51%	0.00%	9.0%	\$303.99
Mott MacDonald	Main Civil BIM Coordinator	Abraham Rodriguez	\$80.56	Home	166.49%	0.00%	9.0%	\$234.01
Mott MacDonald	Requirements Manager	Mandy Boyal	\$93.75	Field	142.51%	0.00%	9.0%	\$247.81
Mott MacDonald	Risk Analyst	David Chesser	\$60.16	Home	166.49%	0.00%	9.0%	\$174.75
Mott MacDonald	Risk Manager	Joe O'Carroll	\$147.14	Home	166.49%	0.00%	9.0%	\$427.40
Mott MacDonald	SME: Construction Claims (Analyst/Admin/Eng)	Paul Hetu	\$103.37	Home	166.49%	0.00%	9.0%	\$300.26
Mott MacDonald	SME: Engineering	Ian Ong	\$125.45	Home	166.49%	0.00%	9.0%	\$364.40
Mott MacDonald	SME: Engineering	Mark Ramsey	\$145.58	Home	166.49%	0.00%	9.0%	\$422.87
Mott MacDonald	SME: Engineering	Martin Walker	\$109.37	Home	166.49%	0.00%	9.0%	\$317.69
Mott MacDonald	SME: Engineering	Noel Vivar	\$82.59	Home	166.49%	0.00%	9.0%	\$239.90
Mott MacDonald	SME: Engineering	Randall Essex	\$188.00	Home	166.49%	0.00%	9.0%	\$546.09
Mott MacDonald	SME: Instrument Specialist	Michael Piepenburg	\$111.81	Home	166.49%	0.00%	9.0%	\$324.78
Mott MacDonald	SME: Procurement	Mary Cay O'Malley	\$144.98	Home	166.49%	0.00%	9.0%	\$421.13
Mott MacDonald	SME: Procurement	Steve Dowell	\$89.97	Home	166.49%	0.00%	9.0%	\$261.34
Mott MacDonald	SME: Project Controls	Michael Gaunt	\$115.39	Home	166.49%	0.00%	9.0%	\$182.94
Mott MacDonald	Systems Integration Lead	Joe Bayat	\$136.90	Field	142.51%	0.00%	9.0%	\$361.88
Mott MacDonald	Systems Integration Manager	Ben Williams	\$96.23	Field	142.51%	0.00%	9.0%	\$254.37
Mott MacDonald	Technical Editor	Karen Saux	\$80.50	Home	166.49%	0.00%	9.0%	\$233.83
Mott MacDonald	Track & Systems Package Lead	Raquel Rhoads	\$79.11	Field	142.51%	0.00%	9.0%	\$209.12
Mott MacDonald	Visualization Lead	Naomi Seto	\$62.56	Home	166.49%	0.00%	9.0%	\$181.72

Downtown Transbay Extension
Program Management and Construction Management Services
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
Pendergast Consulting Group	Community Outreach Specialist	Paul Pendergast	\$89.73	Home	121.00%	0.00%	9.0%	\$216.15
Saylor Consulting	Estimator	Drew Erickson	\$135.00	Home	148.92%	0.00%	9.0%	\$366.29
Saylor Consulting	Independent Cost Estimator	Brad Saylor	\$135.00	Home	148.92%	0.00%	9.0%	\$366.29
Towill	Survey Party (2-man)	Towill	\$159.12	Field	183.45%	0.20%	9.0%	\$491.94
Towill	Surveyor	Towill	\$104.00	Field	183.45%	0.20%	9.0%	\$321.53
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Rita Poon	\$48.44	Field	104.23%	0.22%	9.0%	\$107.94
WSP	Assistant Office Engineer	Frankie Kakar	\$75.09	Field	104.23%	0.22%	9.0%	\$167.32
WSP	Assistant Resident Engineer	Jake Jones	\$107.36	Field	104.23%	0.22%	9.0%	\$239.23
WSP	Construction Safety - Heavy Civil	James Gomez	\$122.87	Field	104.23%	0.22%	9.0%	\$273.78
WSP	Contracts Manager	Cynthia Holt	\$96.52	Field	104.23%	0.22%	9.0%	\$211.00
WSP	Deputy Construction Manager	Andy Klieber	\$142.65	Field	104.23%	0.22%	9.0%	\$314.82
WSP	Deputy Project Control Manager **	Hans Hoppe	\$145.16	Field	104.23%	0.22%	9.0%	\$323.46
WSP	Estimator	Tim Curtain	\$104.28	Home	140.30%	0.32%	9.0%	\$273.47
WSP	Information Management Clerk	TBDf	\$35.00	Field	104.23%	0.22%	9.0%	\$77.99
WSP	Inspector - Civil	Kelsey Littell	\$79.78	Field	104.23%	0.22%	9.0%	\$177.77
WSP	Inspector - Communications	Gino Spadafore	\$108.09	Field	104.23%	0.22%	9.0%	\$240.86
WSP	Inspector - Communications	Taiwo Gray	\$80.74	Field	104.23%	0.22%	9.0%	\$179.91
WSP	Inspector - Electrical	Taiwo Gray	\$80.74	Field	104.23%	0.22%	9.0%	\$179.91
WSP	Inspector - Mechanical	Filip Lyashenko	\$60.23	Field	104.23%	0.22%	9.0%	\$134.21
WSP	Inspector - Mechanical	Filip Lyashenko	\$60.23	Field	104.23%	0.22%	9.0%	\$134.21
WSP	Inspector - Plumbing	Michael Macniven	\$87.80	Field	104.23%	0.22%	9.0%	\$195.64
WSP	Inspector - Plumbing	Michael Macniven	\$87.80	Field	104.23%	0.22%	9.0%	\$195.64
WSP	Inspector - Structural	Brice Ehoff	\$81.39	Field	104.23%	0.22%	9.0%	\$188.62
WSP	Lead Inspector	David Ho	\$75.60	Field	104.23%	0.22%	9.0%	\$175.20
WSP	Main Civil Tunnel Package Lead	Sangmin Kim	\$105.79	Field	104.23%	0.22%	9.0%	\$235.73
WSP	Office Engineer	Chelsey McGrew	\$77.51	Field	104.23%	0.22%	9.0%	\$139.07
WSP	Quality Assurance Manager	Sissel Berntsen-Heber	\$137.01	Field	104.23%	0.22%	9.0%	\$305.30
WSP	Rail Activation Manager	Gary Kennerly	\$132.81	Field	104.23%	0.22%	9.0%	\$295.94
WSP	Rail Coordination Manager	Keith Seymour	\$110.75	Field	104.23%	0.22%	9.0%	\$237.38
WSP	Senior Cost/Schedule Analyst	Ed Rollerson	\$96.90	Home	140.30%	0.32%	9.0%	\$254.12
WSP	SME: Dewatering	Robert Roat	\$90.73	Home	140.30%	0.32%	9.0%	\$237.94
WSP	Stations Fitout Package Lead (and Building Demo Lead)	Douglas Keys	\$98.77	Field	104.23%	0.22%	9.0%	\$217.98
WSP	Third Party Coordinator	Zylah Doria	\$90.04	Field	104.23%	0.22%	9.0%	\$200.64
WSP	Utilities BIM Coordinator	Sergio Arellano	\$86.41	Field	104.23%	0.22%	9.0%	\$192.55

APPENDIX C

ADDITIONAL INSUREDS

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 (1-25) apply to all Agreements.

1. DEFINITIONS

*** The Definitions apply to all Agreements.*

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

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

2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

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

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

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

fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

4. ACCESS TO DOCUMENTS

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

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

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

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

5. FEDERAL CHANGES

*** This requirement applies to all Agreements.*

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

6. CIVIL RIGHTS REQUIREMENT

*** This requirement applies to all Agreements.*

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

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

related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.

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

disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Contractor, its employees, agents, or assigns will constitute a material breach of this Agreement. The ADA Access requirements apply to all contracts. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

- 5) **Special DOL EEO Clause** – Applies to construction contracts >\$10,000; Contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit against all individuals based on their race color, religion, age, sex, sexual orientation, gender identity, status as a parent, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, age, sex, sexual orientation, gender identity, national origin, disability, status as a parent, or veteran status.
- d) **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- e) During the performance of this contract, the contractor agrees as follows:
 - 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or other action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

- b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR

Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR Section 26.13[b]).

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

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

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

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

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

d) DBE Contract Assurance (49 CFR 26.13)

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

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

Affirmative steps must include:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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

e) DBE Prompt Payment (49 CFR 26.29)

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

- 1) Not later than ten (10) days after receipt of each progress payment from the Agency, the successful Proposer shall pay to any sub-contractor performing any work, the respective amounts allowed to the successful Proposer for work performed by the sub-contractor, to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Proposers receipt of released retention from the Agency upon completion of the project as defined in California Public Contract Code section 7107 the successful Proposer shall pay each of its sub-contractors from whom retention has been withheld, each sub-contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by the Agency, the successful Proposer shall pay each of its sub-contractors from whom retention has been withheld, each sub-contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-contractors.
- 2) Failure to comply with these provisions or delay in payment without prior written approval from the Agency will constitute noncompliance, which may result in appropriate administrative sanctions.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency. The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Payment Deductions – Noncompliance with DBE Requirements

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

8. AMERICANS WITH DISABILITIES ACT

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

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

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

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

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA’s agreements, whether or not expressly set forth in the preceding Agreement

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

10. FLY AMERICA REQUIREMENTS

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

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

11. CARGO PREFERENCE REQUIREMENTS

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

The Contractor agrees to:

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

for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

13. ASSIGNABILITY CLAUSE

*** This provision applies to all Agreements.*

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

14. SEVERABILITY

*** This provision applies to all Agreements.*

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

15. FEDERAL STANDARDS

*** This provision applies to all Agreements.*

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

16. NOTICE TO THIRD PARTY PARTICIPANTS

*** This provision applies to all Agreements.*

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

17. TRAFFICKING IN PERSONS

*** This provision applies to all Agreements.*

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

18. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

*** This provision applies to all Agreements.*

The contractor certifies that it: (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (b) Was not convicted of the felony criminal violation under any Federal law within the

preceding 24 months. The Contractor shall flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

19. SUBSTANCE ABUSE REQUIREMENTS (SAFETY SENSITIVE FUNCTION)

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

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

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

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

b) Alcohol Misuse and Prohibited Drug Use.

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

20. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

*** This provision applies to all Contracts Involving Federal Privacy Act Requirements. When the Contractor maintains files on drug and alcohol enforcement activities for FTA, and those files are*

organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply.

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

21. INDIRECT RATES

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

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

22. SAFE OPERATION OF MOTOR VEHICLES

*** This provision applies to all Agreements.*

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

The Contractor agrees to comply with the following:

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

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

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

*** This provision applies to all Agreements.*

The Contractor is prohibited from using federal funds to:

- a) Procure or obtain
- b) Extend or renew a contract to procure or obtain; or

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

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

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

*** This provision applies to all Agreements.*

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

25. PATENT AND RIGHTS IN DATA

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

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

a) Rights in Data

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

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

- 1) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
- 2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- 3) Unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- 4) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 5) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 6) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- 7) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

b) Patent Rights

- 1) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

- 2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- 3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

26. RECYCLED PRODUCTS

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

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

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

27. TERMINATION

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

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

- a) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
- b) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- c) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- d) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal

award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

- e) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

Termination for Convenience (General Provision)

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the

Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in

performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials. If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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

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

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

- a) This Agreement is a "covered transaction" for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180, and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its "principals," and its "affiliates" are not "excluded" or "disqualified," as defined by federal suspension and debarment laws.
- b) The Contractor shall submit the "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

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

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

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Agency, which will promptly notify the FTA Chief Counsel and FTA Regional

Counsel for the Region in which the Agency is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

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

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

Additional Notice to U.S. DOT Inspector General

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

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

30. CLEAN AIR

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

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

31. CLEAN WATER REQUIREMENTS

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

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The

Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.

- b) The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

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

32. BUY AMERICA REQUIREMENTS

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

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

33. BREACHES AND DISPUTE RESOLUTION

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

- a) **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- b) **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- c) **Breach of Contract**—The successful bidder shall be deemed in breach of contract if it fails to comply with any terms of the contract, fails to cure such noncompliance from the date of written notice from the Agency, or fails to submit a written response to the notification from the Agency within the amount of time specified from the Agency.
- d) **Force Majeure** - The successful bidder shall not be in breach of the contract as long as its default was due to causes beyond reasonable control (force majeure) and occurred without any fault or negligence on the part of both the successful bidder and its subcontractors.

- e) **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- f) **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the successful Proposer arising out of or relating to the Agreement or any breach thereof, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction.
- g) **Rights and Remedies of the Agency** - The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract:
 - 1) The right to take over and complete the work or any part thereof and at the expense of the Contractor, either directly or through other contractors;
 - 2) The right to cancel this Contract as to any or all of the work yet to be performed;
 - 3) The right to specific performance, an injunction or any other appropriate equitable remedy; and
 - 4) The right to money damages.
- h) **Rights and Remedies** - The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- i) **Fees** - All costs, expenses and attorney fees incurred by the Contractor in connection with any appeal, suit or claim regarding a dispute that is brought by the Contractor shall be paid by the Contractor.

34. LOBBYING

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

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

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

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

35. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

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

- a) **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c) **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

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

36. BUILD AMERICA, BUY AMERICA ACT

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

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

37. SEISMIC SAFETY REQUIREMENTS

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

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

38. BONDING REQUIREMENTS

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

- a) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b) A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- c) A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

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

a) Bid Bond Requirements (Construction)

1) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.

2) Rights Reserved

In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

It is also understood and agreed that if a bidder should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of the TJPA, shall refuse or be

unable to enter into this Agreement, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or refuse or be unable to furnish adequate and acceptable insurance, it shall forfeit its bid security to the extent of TJPA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

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

b) Performance and Payment Bonding Requirements (Construction)

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

1) Performance Bonds

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

2) Payment Bonds

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

c) Performance and Payment Bonding Requirements (Non-Construction)

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

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



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

d) Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.

e) Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.

f) Warranty of the Work and Maintenance Bonds

- 1) The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 2) The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

39. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

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

a) Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

- 3) Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall

either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- 4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 5) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- b) **Withholding** - The TJPAs shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under

this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c) Payrolls and Basic Records

- 1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 2) (A) The Contractor shall submit weekly for each week in which any Agreement work is performed a copy of all payrolls to the TJPA for transmission to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify the following:
 - (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
 - (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- 3) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

d) Apprentices and Trainees

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

in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 2) **Trainees** - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 3) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- e) **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- f) **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- g) **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor

as provided in 29 CFR Section 5.12.

- h) **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- i) **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j) **Certification of Eligibility**
 - 1) By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
 - 2) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
 - 3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

FLY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

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

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

Date _____

Signature _____

Company Name _____

Title _____

Explanation: _____



BUY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

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

Certificate of Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

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

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

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

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

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

Bidder/Offeror Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date: _____

**Amended and Restated
Professional Services Agreement between
the Transbay Joint Powers Authority and
AECOM Technical Services, Inc.**

THIS Amended and Restated Professional Services Agreement to provide Program Management and Construction Management services is entered into as of the 17th day of October 2025, in San Francisco, California, by and between the Transbay Joint Powers Authority (“TJPA”) and AECOM Technical Services, Inc., a California corporation (“Contractor”).

Recitals

A. The TJPA requires Program Management and Construction Management Services (“Services”) for the Transbay Program (“Program”).

B. The Contractor submitted a written proposal (“Proposal”) in response to the TJPA’s Request for Proposals (“RFP”). Based on that Proposal, the TJPA’s selection committee determined the Contractor to be the highest-ranked respondent to the RFP and the TJPA invited the Contractor for exclusive negotiations. On June 13, 2024, the TJPA Board of Directors adopted Resolution No. 24-025, authorizing the TJPA’s Executive Director to execute an agreement with the Contractor for the Services; the original agreement was dated July 1, 2024.

C. The TJPA and Contractor wish to amend certain terms of the July 1, 2024 agreement to better clarify responsibilities and align the implementation of the contract with the requirement of the TJPA procurement policies and procedures, update the Contractor’s key personnel and subcontractor list, and replace Appendix D in its entirety to conform with current federal guidelines, without changing the scope or compensation of the agreement. On October 17, 2025, the TJPA Board of Directors adopted Resolution No. _____, authorizing the TJPA’s Executive Director to execute this amended and restated form of agreement with the Contractor for the Services (as amended and restated, “Agreement”).

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

E. The Contractor acknowledges and agrees that the TJPA does not expressly or impliedly guarantee that any or all of the total contract will be funded or will be authorized to the Contractor. The Contractor acknowledges and agrees that funding may occur in phases. The Contractor further acknowledges and agrees that the nature of the work under this Agreement and the limitations of the TJPA’s funding require that the TJPA authorize the Contractor to perform only limited scopes of work based on the immediate needs of the Program. Finally, the Contractor acknowledges and agrees that due to the above-described funding uncertainties, the Contractor shall only provide Services and receive compensation if and when such funding is authorized and that the determination regarding if and when the Contractor will provide Services is within the sole discretion of the TJPA.

F. The TJPA and the Contractor intend that this Agreement comply with the regulations of the United States Department of Transportation (“USDOT”) and certain contracting requirements of the City and County of San Francisco (the “City”).

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 s~~Services under contract shall not commence prior to the Chief Financial Officer's issuance of a Notice to Proceed. The amount of the TJPA's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

b. This Agreement will terminate without penalty, liability or expense of any kind to the TJPA at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the fiscal year for which funds are appropriated.

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for five (5) years from the Effective Date of the Agreement, as described in Section 3, "Effective Date of Agreement," provided that the TJPA shall have the right to extend this Agreement for two (2) additional consecutive terms 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 the Contractor written notice of such extension on or before the expiration date of this Agreement. The TJPA's exercise of any such extension option shall be subject to and conditioned upon the approval of such extension by the TJPA in the manner required by its policies.

3. Effective Date of Agreement

~~This Agreement shall become effective when the Chief Financial Officer has certified to the availability of funds for the first Notice to Proceed ("NTP") and the Contractor has been notified in writing via an NTP. The Effective Ddate of this Agreement shall be July 1, 2024.~~

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. Issuance of a NTP constitutes certification of available funds and authorization to commence work, but shall not, in itself, establish or authorize billing rates, which shall be governed exclusively by Appendix B and the applicable Rate Agreement.

Professional Services Agreement Between TJPA and AECOM Technical Services, Inc.

4.5. Services the Contractor Agrees to Perform

a. Procedure for Developing Scope of Services

The Contractor agrees to perform the ~~services~~ Services listed in Appendix A (Scope of Services), attached hereto and incorporated by reference as though fully set forth within.

The ~~Scope of~~ Services consists of a series of tasks that the TJPA may authorize under Annual Work Plans/NTPs or a combination of these documents. The following process shall be used to implement the Annual Work Plans/NTPs:

(i) The TJPA will initiate each Annual Work Plan/NTP by requesting an Annual Work Plan/NTP proposal. The proposal request will describe the actual tasks to be performed by the Contractor based on the scope of work in Appendix A (Scope of Services), the schedule for performance of these tasks, and the required deliverables.

(ii) The Contractor will prepare and submit to the TJPA an Annual Work Plan/NTP proposal, outlining in detail its approach to performing the requested work. The proposal will include, at a minimum, the following:

- (a) A detailed description of the work to be performed by task (including any subtasks), and the means and methods that will be used to perform the work;
- (b) A work breakdown structure for performing the required tasks;
- (c) A schedule (in both electronic and written format) including milestones for completion for each task (including any subtask) and deliverables;
- (d) A management plan that lists personnel (including any subcontractors) assigned to each part of the work, along with a rationale for the proposed staffing plan;
- (e) A budget plan, including the following information for the Contractor and all subcontractors included in the proposal:
 - 1. A detailed cost estimate for each task (and any subtask);
 - 2. Estimated hours and hourly rates (as described in Appendix B) by assigned personnel;
 - 3. Estimated other direct costs (including subcontractors) (as described in Appendix B); and
 - 4. Cash flow plan
- (f) List of work products that will be delivered as part of the Annual Work Plan/NTP, and the work products that may span multiple Annual Work Plans/NTPs.

(iii) The TJPA will review the proposal and promptly negotiate with the Contractor the scope, approach to completing the work (including staffing plan and estimated hours), deliverables and schedule requirements.

(iv) Upon completion of negotiation and meeting all Annual Work Plan/NTP prerequisites, the TJPA ~~will direct the Contractor in writing to proceed with the work after the TJPA obtains appropriate governmental approvals~~ Chief Financial Officer will certify the maximum amount, purpose, and period of work in an Annual Work Plan/NTP. The Contractor may not commence any work without this written authorization from the TJPA to proceed.

Professional Services Agreement Between TJPA and AECOM Technical Services, Inc.

(v) In the event that the TJPA and the Contractor cannot reach agreement on the terms of any Annual Work Plan/NTP, the TJPA may either cancel the request or have the work accomplished through other available resources. In the alternative, if the TJPA desires the Contractor to undertake and/or complete certain work, the TJPA Chief Financial Officer may direct the Contractor to proceed with the work under such conditions as the TJPA may require to meet the schedule, budget, or other Program requirements. Under no circumstances may the Contractor refuse to undertake work that the Contractor is qualified to perform and which is consistent with the Services if so directed in writing. The TJPA and the Contractor shall continue to negotiate any outstanding terms while the work is being performed. The TJPA shall not deny the Contractor reasonable compensation for such approved work performed.

(vi) If the Contractor proceeds to do work that is out of scope of approved Annual Work Plans/NTPs without first obtaining the TJPAs written approval in accordance with ~~the above procedures~~ Section 5(i), regardless of the amount or value of the work, the TJPA shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the TJPA's comments or concerns, expediency, schedule constraints, or other considerations will not be acceptable reasons to proceed with unauthorized work without the TJPA's prior written approval.

The following shall not be considered out-of-scope work, but shall be considered incidental to the ~~Scope of~~ Services outlined in Appendix A and any Annual Work Plan/NTP: (1) All work required to comply with local, state and federal codes, regulations and standards, as interpreted by local, state or federal agencies having approval or sign-off authority for this Program; and (2) All work required to correct deficiencies and errors, including work related to resubmittals of work product that are evaluated reasonably by the TJPA to be incomplete or inadequate.

(vii) The TJPA's decision to authorize any work under Annual Work Plans/NTP will be at the TJPA's sole discretion and largely depend on (1) the TJPA's evaluation of the Contractor's services and work products previously authorized and completed or in-progress (i.e., whether the ~~services~~ Services and products are of satisfactory quality to the TJPA and whether such ~~services~~ Services and products were completed within the agreed-upon budget and within a reasonable schedule); (2) approval from and/or compliance with requirements of the FTA and other funding agencies; and (3) the availability of funding.

b. Key Personnel and Staffing

Work under this Agreement shall be performed only by competent personnel and staffing under the supervision of and/or in the employment of the Contractor.

The Contractor's Key Personnel are specified in Appendix A-1 (Key Personnel). The Contractor agrees to commit and assign the Program Contract Manager to manage this Program for the Contractor and to serve as the single official contact on behalf of the Contractor in all matters related to the Program for the duration of the Contract. The Contractor agrees that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract.

The Contractor shall advise the TJPA immediately any time one of the Key Personnel deviates from its committed role to the Program. The TJPA may in turn require the Contractor to provide a remedy and/or corrective actions for such deviations.

If the Contractor proposes substitutions for any of the Key Personnel who are listed in Appendix A-1, the Contractor shall propose a replacement in writing to the TJPA's Executive Director or designee for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company). If the performance of any person assigned to a Key Personnel position or staffing is determined to be unsatisfactory by the TJPA, the TJPA reserves the right to direct the Contractor to replace that person and/or take any other appropriate remedial action without prejudice to the TJPA or the ~~services~~ Services contractor ~~Contractor~~ is obligated to perform under this Agreement.

The Contractor shall replace any Key Personnel departing from the Program or departing from their assigned role in the Program with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days after the departure. Failure to replace Key Personnel shall be cause for the TJPA to suspend invoice payments. Furthermore, the Contractor shall not be relieved of its obligation for full performance of the ~~Scope of~~ Services as a result of any unfilled position. The Contractor shall bear any costs related to and be held fully responsible for any training, re-training, duplicate staffing, inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Program or departing from their assigned role in the Program before the end of the term of the Agreement. The Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training, re-training, duplicate staffing and learning on the job, etc.

c. Current Workload and Available Resources

The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work immediately upon receipt of Annual Work Plan/NTP. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of Annual Work Plan/NTP.

d. Information and Data

The Contractor shall request in writing any information and data it will require from the TJPA for its work. The Contractor shall identify the timing and priority for which this information and data will be required in its response to a request for proposal for an Annual Work Plan/NTP. The Contractor and the TJPA shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Annual Work Plan/NTP.

e. Contractor's Performance

The Contractor shall meet with the TJPA Project Director (or designee) and Procurement and Contract Compliance Manager on a quarterly basis to evaluate the Contractor's performance under the Agreement with respect to the following:

- (i) Contractor's adherence to this Agreement.
- (ii) Quality of performance of Key Personnel and other staff assigned to the Program by the Contractor and its subcontractors.
- (iii) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the TJPA's

staff and other contractors, including design, grant management, financial, construction management and other professionals.

- (iv) Management of authorized budget for Annual Work Plans/NTPs.
- (v) Adherence to agreed schedule.
- (vi) Quality of deliverables.
- (vii) Monitoring, reporting and updating of progress of assigned work.
- (viii) Timeliness in resolving issues, including issues arising from performance evaluations.
- (ix) Working relationship between Contractor's team and other stakeholders.

Should the TJPA be dissatisfied with any of the above categories of Contractor performance, the TJPA will render a negative evaluation on the Contractor's performance for the quarter preceding the evaluation. In such cases, the Contractor shall be required to formulate and deliver to the TJPA Project Director (or designee) within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to the TJPA on a monthly basis until the problem areas have been resolved or brought under control. The Contractor's receipt of more than two negative quarterly performance evaluations during the term of this Agreement will be considered by the TJPA when determining whether to authorize the Contractor to proceed with future phases of the Agreement.

For each category of Services undertaken by Contractor (e.g., scheduling, reporting, accounting), Contractor shall perform such Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in California on large, complex regional transportation projects.

f. Transmittal of Products

At a time when requested by the TJPA's Executive Director or their designee, and after completion of each task and subtask, the Contractor shall transmit to the TJPA all documents and work product (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Program. Documents and work product include, but are not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services Services performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work product for recordkeeping purposes.

The Contractor's Key Personnel shall have thoroughly reviewed and approved all documents and work product and signed off as such prior to transmitting to the TJPA.

g. Reproduction of Products

The Contractor shall arrange and provide for all printing (or other required reproduction) of all documents and work product produced in the course of its and its subcontractor's work. The TJPA shall determine the documents and work product to be reproduced and the type, quality, and quantity of the reproduction. The cost of reproduction shall be treated as a reimbursable expense under this Agreement. The Contractor shall make its best efforts to obtain competitive quotations for any reproduction cost exceeding \$500.

h. Design

Except where the TJPA expressly ~~requests-authorizes~~ the Contractor to perform design services in an Annual Work Plan/NTP, the ~~Services to be performed by~~ Contractor shall not ~~impose upon it any be obligated obligation~~ to assume ~~any the~~ responsibilities, duties, ~~or~~ services, ~~or activities assumed or required to be rendered or performed by any of~~ Architect(s), Engineer(s), or Construction Contractor(s) employed by, or associated with, the TJPA in relation to this Program. The Contractor shall, however, perform construction management services as defined in Government Code §4525(e) and 4529.5 including but not limited to ~~In performing~~ constructability review, value engineering, verification of existing conditions, hazard analysis, safety analysis, and cost effectiveness ~~review~~. In providing these services, the Contractor shall exercise the professional skill and judgment and provide advice and recommendations to the TJPA. Notwithstanding the foregoing or any other review involving the drawings and/or specifications for the Program, the Contractor does not undertake to perform any design work nor does it ~~accept-assume~~ responsibility for any of the design features or design of the Program, ~~which shall remain the sole responsibility of the Architect, Engineer, or Construction Contractor, as appropriate.~~

i. Safety

(i) Contractor's Responsibility for Safety of its Employees. The Contractor is responsible for the safety of the Contractor's employees and the employees of the Contractor's subcontractors.

(ii) Contractor's Monitoring of the Work of Construction Contractors for Contract Compliance. Contractor shall be required to monitor and document the work of construction contractors, including their subcontractors, suppliers of any tier (collectively, the "Construction Contractor"), as identified in Appendix A (Scope of Services) and subsequent amendments, for compliance with applicable contract documents (including without limitation, plans, drawings and specifications, quality, and health and safety plans), federal, state and local laws, rules and regulations pertaining to health and safety, including federal and/or state OSHA rules and regulations. Contractor shall perform such responsibilities for the sole purpose of monitoring contract and regulatory compliance on behalf of the TJPA. Contractor shall not supervise, direct, have control over, or have responsibility for construction means, methods, sequences, techniques of the Construction Contractor. In no event shall such monitoring responsibilities be construed as imposing on Contractor any duties or responsibilities to employees of Construction Contractor.

(iii) Indemnification. The TJPA will include Contractor in the scope of the general indemnity of original construction contractor under contract to the TJPA. Due to Contractor's unique project management role, the risk of inadvertent omission of such indemnification requirements rests with Contractor.

j. Hazardous Materials

Nothing in this Agreement shall be construed or interpreted as requiring the Contractor to be or assume the status of an owner, operator, generator, transporter, storer, or any other potentially responsible party as defined by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state, or local statute, regulations, order or administrative finding for the enforcement of such act or statute, governing the treatment, storage, transportation, reporting and disposal of hazardous substances.

For purposes of this Agreement, the term "hazardous substance" shall mean and include, but shall not be limited to, any element, constituent, chemical substance, compound, or mixture, which are defined

in or induced under or regulated by any federal, state or local statute, regulation, order or administrative finding for enforcement of such statute, regulation, or order pertaining to environmental regulation, contamination, clean-up or disclosure, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Toxic Control Act, the Clean Water Act, the Clean Air Act, the Marine Protection Research and Sanctuaries Act, the Occupational Safety and Health Act, and the Superfund Amendments and Reauthorization Act of 1986.

k. Third Party Litigation

As part of its scope of work, the Contractor agrees to testify at the TJPA's request if litigation is brought by a third party against the TJPA in connection with the Program. Unless the action is brought by the Contractor, or is based upon the Contractor's negligence, the TJPA will compensate the Contractor for the preparation and the testimony at the Contractor's standard hourly rates.

l. Program Direction

The work to be performed by the Contractor under this Agreement shall be subject to the direction of the ~~Executive Project~~ Director of the TJPA, ~~delegated herein to the Project Director until otherwise modified in writing or their designee.~~ As used in this Agreement, the term "program direction" shall include but not be limited to the following:

(i) Directions to the Contractor, which shift work emphasis between tasks, require pursuit of certain activities, or otherwise provide information and program guidance to the Contractor in order to accomplish the ~~Scope of~~ Services described in Appendix A, and in the current Annual Work Plan/NTP.

(ii) Review and, where required, approval or acceptance of submittals or other products prepared by the Contractor in the performance of its ~~services~~ Services.

The Contractor acknowledges and agrees that it shall direct any request for clarification or other communication concerning program direction first to the ~~Executive Project~~ Director, ~~or their designee.~~ The ~~Executive Project~~ Director ~~or their designee~~ is the designated TJPA employee to provide direction to all Key Personnel and staffing assigned to the Program.

m. Submittals and Responses

The TJPA and the Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Annual Work Plan/NTP.

The TJPA's review and comments on the Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the TJPA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state, and federal codes, regulations, and standards.

If the Contractor considers certain review comments or directives, either written or oral, by the TJPA to require work efforts not included in approved Annual Work Plans/NTPs, the Contractor shall provide the TJPA ~~Project Director and Chief Financial Officer~~ with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days

of discovering the perceived extra work, in strict accordance with procedures elsewhere in this Agreement. The Chief Financial Officer must certify any additional funding in excess of amount approved in the Annual Work Plan/NTP.

n. Intern Mentoring Program

The Contractor shall cooperate with the TJPA to either expand its adopted intern mentoring program through a professional architect/engineering/management organization's intern mentoring program, or the Contractor shall create an intern mentoring program specifically for this Program. The purpose of the intern mentoring program shall be to involve local youth or residents interested in exploring professional careers in architecture, engineering, construction management, or related professional services, into the professional services work of the Contractor on the Program. The intern mentoring program will be designed to engage, inform, and challenge youth, and to enlighten and motivate students toward professional careers in architecture, engineering, construction management, and related professional services. The program will include opportunities throughout the period of the Program for local high school youth or local residents to participate as a volunteer or paid intern in the conduct of substantive professional services work of the Contractor on the Program. The Contractor will contact and seek intern applicants from local schools and community-based organizations. The Contractor shall report to the TJPA those individuals participating in the intern mentoring program, and their activities on the Program.

5.6. Compensation

a. Generally

All compensation due to the Contractor for all ~~services~~ Services performed under this Agreement shall be computed in conformance with the provisions of Appendix B attached hereto.

The maximum amount payable under this Agreement ("Contract Limit" or "Ceiling Price") shall not exceed two hundred ninety-seven million three hundred thirty-five thousand four hundred twenty Dollars (\$297,335,420) (\$158,165,635 over the base term and \$139,169,785 over the option periods if exercised).

Billing and reimbursement under this Agreement shall be consistent with Appendix B to this Agreement

Notwithstanding any contrary provision of this Agreement, the Contractor is not obligated to perform any ~~services~~ Services once the Contract Limit has been reached unless authorized by a mutually agreed upon modification to this Agreement, and the TJPA is not obligated to compensate the Contractor for ~~services~~ Services performed after the Contract Limit is reached unless authorized by modification to this Agreement.

The hourly rates (including wages, indirect costs, general and administrative expenses, and profit) and other direct costs associated with this Agreement shall be subject to the rate requirements set forth below and in Appendix B. The hourly rates and other direct costs shall be ~~negotiated and established~~ estimated in each Annual Work Plan/NTP and negotiated and established in the Rate agreement Agreement upon approval of the TJPA Chief Financial Officer.

b. Actual Compensation

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Actual compensation under this Agreement shall be determined as set forth in an Annual Work Plan/NTP and Appendix B.

No charges shall be incurred under this Agreement, nor shall any payments become due to the Contractor until reports, services, or both, required under this Agreement or under a specific Annual Work Plan/NTP are received from the Contractor and approved by the ~~Executive Project~~ Director as being in accordance with this Agreement. The TJPA, in its sole discretion, may withhold payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

Compensation shall be further subject to the following requirements:

(i) Conform with (a) the work to be performed pursuant to an accepted Annual Work Plan/NTP or approved by the TJPA as compensable out of scope work or ordered by the TJPA pursuant to this Section 5; (b) any compensation limits or sublimits set forth in such Annual Work Plan/NTP or written approvals, and this Agreement; and (c) all other terms of this Agreement.

(ii) Be necessary in order to accomplish the work.

(iii) Be reasonable for the services to be performed.

(iv) Be actual net costs or prices to the Contractor or its subcontractors at any tier, (e.g., the cost or price less any refunds, rebates, or other items of value received by Contractor or its subcontractors at any tier, that have the effect of reducing the cost or price actually incurred). As used herein, the term “costs” shall include the following:

(a) Those Program costs recorded by the Contractor that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.

(b) Those Program costs incurred in conformance with Appendix B, but not necessarily paid, but only if the Contractor is not delinquent in its payment of such costs which it is obligated to pay in providing ~~services~~ Services on this Program.

(c) The amount of reimbursement that has been paid by the Contractor for subcontracted services under similar cost standards.

c. Rates

Within thirty (30) days after award of this Agreement, the Contractor will submit information necessary to establish ~~Rates~~ rates for the performance of ~~services~~ Services under this Agreement. The TJPA shall not approve any invoice or make any payment under this Agreement until such time as the ~~Rates~~ rates are established. The parties will negotiate in good faith and enter into a Payment Terms and Rate Agreement in substantially the form attached as Appendix B (herein called “~~rate~~ Rate ~~agreement~~ Agreement”) on an annual or multi-year basis for the work to be performed for each of the Contractor’s fiscal year(s). At the end of the Contractor’s fiscal year(s), should the parties fail to negotiate a new ~~rate~~ Rate ~~agreement~~ Agreement, the Contractor agrees to accept the provisions of the previous ~~rate~~ Rate ~~agreement~~ Agreement until such time as a new ~~rate~~ Rate ~~agreement~~ Agreement is accepted. Any

Professional Services Agreement Between TJPA and AECOM Technical Services, Inc.

invoices submitted prior to the execution of the ~~rate~~Rate agreement ~~Agreement~~ will be subject to the existing previously negotiated rates.

d. Disallowed Or Otherwise Not Recognized Costs

The Contractor understands and agrees to the following:

(i) That any compensation or reimbursement received under this Agreement does not constitute a final decision by the TJPA as to the allowability of such compensation or reimbursement, and does not constitute a waiver of any violation by the Contractor of the terms of this Agreement or of the Contractor's obligations under the Agreement (including, but not limited to, requirements of the Agreement to be included in the Contractor's subcontracts).

(ii) That unless approved otherwise by the Executive Director or their designee, the TJPA will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed. Any audit by the TJPA must be commenced within three (3) years after the termination, completion or expiration of this Agreement. Once commenced, any audit performed by the TJPA shall be completed in a reasonable amount of time.

(iii) If the TJPA determines that the Contractor or its subcontractor(s) is not entitled to either the compensation or reimbursement requested or received, the TJPA will notify the Contractor stating the reasons therefore.

(iv) Completion of the work under this Agreement will not alter the Contractor's or its subcontractors' obligation to return any funds due the TJPA as a result of later refunds, corrections, or other transactions, nor alter the TJPA's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

(v) If the Contractor claims or receives payment from the TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Contractor shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement.

e. Reimbursable Expenses

The TJPA shall reimburse the Contractor only for those authorized expenses identified in Appendix B to this Agreement, or as modified by an approved Rate Agreement, provided such expenses are incurred in performance of and within the funding limits of an approved Annual WorkPlan/NTP.

f. Payment; Invoice Format

The Contractor shall be compensated and reimbursed by the TJPA on the basis of invoices submitted every month for ~~services~~Services performed during the preceding month. Invoices shall be submitted within approximately thirty (30) days after the end of said calendar month. For the end of the fiscal year, monthly invoices shall include up to the last day of the calendar month ending June 30th; invoices starting the next fiscal year beginning July 1st shall be included in the next calendar month

invoice cycle. The Contractor must submit required DBE/SBE Progress Payment Reports with every invoice. All amounts paid to the Contractor shall be subject to audit by the TJPA.

The charges for each individual assigned under this Agreement shall be listed separately. Further, Invoices furnished by the Contractor under this Agreement shall be in a form acceptable to the TJPA and each invoice shall include:

- ☐ Contract ~~Number~~number
- ☐ A unique invoice number
- ☐ Annual Work Plan/NTP Number
- ☐ Name and position of employee
- ☐ Description of the work performed by employee in accordance with the Annual WorkPlan/NTP tasks and budget
- ☐ Hours worked by employee
- ☐ Fully Burdened Rate per employee, including hourly rate, overhead, and fee
- ☐ Cost by employee
- ☐ Other Direct Costs (OCDs)
- ☐ Subcontractor ~~Costs~~costs supported by itemization in the same format described above
- ☐ Contractor markup on subcontractor cost~~Fixed Fee for current invoice period and Fixed Fee paid to date~~
- ☐ Total ~~Costs~~costs by each of the above cost elements for the current invoice period, and total cost paid to date
- ☐ Percent of ~~Schedule~~schedule ~~Completed~~completed and ~~Budget~~budget Expendedexpended
- ☐ DBE/SBE Progress Payment Report (as an attachment)

g. Invoice Disputes

Should the TJPA contest any portion of an invoice, the disputed portion shall be held for resolution, but the uncontested balance shall be processed for payment (less any retention withheld pursuant to this Agreement). The TJPA shall furnish an explanation for each contested cost item. The TJPA may, at any time, conduct an audit of any and all records kept by the Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices, or alternatively, will be refunded by the Contractor.

h. No Late Charges

The TJPA shall make payment to the Contractor at the address specified in the section entitled "Notices to the Parties." The TJPA shall promptly route to the TJPA funding agencies all proper invoices submitted by the Contractor. The TJPA shall make a good faith effort to pay undisputed amounts in such invoices within thirty (30) days after their approval by the necessary and appropriate TJPA funding agencies. However, in no event shall the TJPA be liable for interest or late charges for any late payments. The Contractor acknowledges that the provisions of Civil Code § 3320 and Public Contract Code § 7107 do not apply to the Contractor or this Agreement, and to the extent they apply, the Contractor waives the protections of these and similar statutes to the greatest extent permitted by law.

i. Changes To Scope or Annual Work Plans/NTP

The TJPA reserves the right to order modifications/~~change orders~~ to the ~~Scope of Services~~ (as set forth in Appendix A), or the Annual Work Plans/NTPs. Modifications/~~change orders~~ may consist of additions, deletions, or other changes ~~in the Contractor's Services~~. Modifications/~~change orders~~ shall specify the changes ordered and the adjustment of compensation and completion time required, if any, for the modified scope. All modifications/~~change orders~~ shall be incorporated in an amended Annual Work Plan/NTP. The TJPA and the Contractor shall negotiate and execute all such modifications/~~change orders~~. The Chief Financial Officer must certify any additional funding in excess of amount approved in the Annual Work Plan/NTP.

The Contractor understands and agrees that Contractor will not receive additional compensation or reimbursement for costs incurred prior to the effective date of a duly executed modification/~~change order~~ or for any costs associated with negotiating the modification/~~change order~~. The Contractor's execution of the modification/~~change order~~ shall constitute a waiver of claims for additional compensation or extension of time for the specified scope or work, except as set forth in the modification/~~change order~~.

When time does not allow for a modification/~~change order~~ to be negotiated, or in the event that the TJPA and the Contractor cannot reach agreement on such modification/~~change order~~, the TJPA may issue a unilateral ~~change order~~modification instructing the Contractor to proceed with a change in the ~~Contractor's Services~~Annual Work Plan/NTP based on the TJPA's estimate of cost and time to perform the change in the work. Upon receipt of a unilateral ~~change order~~modification, the Contractor shall proceed with the ordered work. However under no circumstances shall the Contractor be required to perform work that is not consistent with the Services on a unilateral basis.

Should the Contractor disagree with any terms or conditions set forth in a unilateral ~~change order~~modification, the Contractor shall submit a ~~change order~~modification request within seven (7) days after receipt of the unilateral ~~change order~~modification. If such a request is not submitted as required, the Contractor waives all rights to additional compensation for such work, and payment constituting full compensation for work included in the unilateral ~~change order~~modification will be made as set forth in the unilateral ~~change order~~modification. If the Contractor timely submitted a ~~change order~~modification request as set forth above following receipt of a unilateral ~~change order~~modification within ninety (90) days after completion of the unilateral ~~change order~~modification work, the parties will meet informally in an effort to resolve any outstanding compensation issues.

In addition to the requirements set forth in the preceding paragraph, the Contractor waives all costs exceeding the TJPA's estimate for the unilateral ~~change order~~modification work unless the Contractor submits a written notice of a dispute within seven (7) days after one of the following, whichever occurs first: (1) the Contractor submits an invoice for completion of the work under the unilateral ~~change order~~modification; or (2) the Contractor's receipt of written notice from the TJPA that the TJPA accepts or otherwise considers the unilateral ~~change order~~modification work completed.

6.7. 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 Annual Work Plan/NTP with respect to the work covered under that Annual Work Plan/NTP.

b. Except as may be provided by laws governing emergency procedures, TJPA

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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 Annual Work Plan/NTP and in excess of the ~~total compensation~~ Contract Limit under this Agreement as stated in Section ~~56~~, unless the changed scope is authorized by written amendment and approved as required by law and this Agreement.

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 Agreement or Annual Work Plan/NTP is certified without certification of the additional amount by the Chief Financial Officer through written modification of the Annual Work Plan/NTP.

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

7.8. Intentionally Omitted

8.9. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for statutory penalties set forth in the code. 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.

9.10. Suspension and Debarment

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

10.11. Taxes

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor.

11.12. Payment Does Not Imply Acceptance of Work

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

12-13. Qualified Personnel

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the ~~services~~ Services as contemplated by this Agreement. The Contractor 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 Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. All personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13-14. Responsibility for Equipment

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the TJPA.

14-15. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses

Should the TJPA, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and

offsetting any credits for amounts already paid by the Contractor that can be applied against this liability). The TJPA shall then forward those amounts to the relevant taxing authority.

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement. The Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the TJPA's financial liability so that the TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determine that the Contractor was not an employee.

15.16. Insurance

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

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

(2) Commercial General Liability Insurance on an occurrence basis, with limits not less than \$2,000,000 each occurrence for Bodily Injury, Property Damage, Contractual Liability, Personal 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 \$10,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

(1) Name as Additional Insured the 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. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the TJPA sent to the address specified in Section 243, "Notices to the Parties."

d. Should any of the required insurance be provided under a claims-made form, (1) the retroactive date must be shown, and must be before the date of the Agreement or the beginning of contract work, (2) the insurance must be maintained continuously throughout the term of this Agreement, and without lapse, for a period of at least five (5) 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, and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years beyond the expiration of this Agreement.

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 Services under this Agreement, the Contractor shall do the following: (1) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with a current rating comparable to A.M. Best’s rating of no less than A: VII, that are authorized to conduct business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (2) for the Professional Liability Insurance, make available for the TJPA’s inspection a complete, certified copy of the declarations and applicable policy language, including all applicable conditions, exclusions, definitions, terms, endorsements and any other applicable language, effecting coverage required by this Article 15, which copy may be redacted to exclude proprietary information. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. The Contractor hereby grants to the TJPA a waiver of any right to subrogation which any insurer of the Contractor may acquire against the TJPA by virtue of the payment of any loss under such insurance. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TJPA has received a waiver of subrogation endorsement from the insurer.

i. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Contractor under this Agreement. If the Contractor 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

j. The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at

least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

k. The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein; provided, however, that subcontractors shall maintain Professional Liability Insurance limits appropriate to their scope of work, subject to TJPA approval, and the Contractor shall ensure that the TJPA is an additional insured on insurance required from subcontractors.

16.17. Indemnification

a. General Indemnity

To the fullest extent permitted by law, and consistent with California Civil Code § 2782.8(a), 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 ~~subconsultant~~ subcontractors) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages (collectively, "claims")) to the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.

Consistent with California Civil Code § 2782.8(e), if there is subsequently procured a project-specific general liability policy that insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis, then Contractor's duty and cost to defend the TJPA shall not be limited by "the extent that the claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor."

b. Limitations

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. Copyright Infringement

The Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its members, directors, officers, or employees of articles or ~~services~~ Services to be supplied in the performance of the Contractor's ~~services~~ Services under this Agreement.

17.18. Liability of Contractor

Contractor's liability to the TJPA for all damages that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, shall first be satisfied by the proceeds of any Project-wide liability insurance coverage procured by the TJPA, and, if such coverage is not procured or is insufficient or otherwise inapplicable, then from the proceeds of any applicable insurance required by Article 15 of this Agreement. Contractor's aggregate liability to the TJPA that is not satisfied by the proceeds of any Project-wide liability insurance coverage, however, shall not exceed the sum of \$20,000,000.00, inclusive of any amounts paid by Contractor's insurance required by Article 15 of this Agreement.

18-19. Liability of TJPA

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in Section 65, "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~~ Services performed in connection with this Agreement.

19-20. Delays and Extensions of Time

The Contractor acknowledges and agrees that its delay in prosecuting the work may result in monetary damages to the TJPA. The Contractor acknowledges and agrees that the TJPA will hold the Contractor responsible and liable for any delay costs to the extent caused by the Contractor.

In the event the Contractor is delayed in the timely prosecution of this Agreement by the TJPA's vendors, suppliers, officers, or employees, or by Uncontrollable Forces through no fault or lack of diligence on the part of the Contractor, the Contractor shall present a written request to the TJPA Executive Director for an extension of time of the performance of the work, together with supporting documents, within thirty (30) calendar days of commencement of the delay of the work. The Contractor shall be deemed to have waived the right to request a time extension if not requested within this period, and shall not have a cause to make a claim of the same TJPA-caused delay at a later date. Approval of such extension of time by the TJPA Executive Director shall not be unreasonably withheld and shall be added to the time for completion of the work.

Any such extensions of time shall be the exclusive remedy to the Contractor for TJPA-caused delays, with the exception of TJPA-caused delays in excess of one hundred twenty (120) days, in which case the Contractor may propose an equitable adjustment.

Neither the TJPA nor the Contractor shall be considered to be in default in the performance of any obligation under this Agreement (other than an obligation to make payment for invoices rendered pursuant to this Agreement) when a failure of performance is the result of Uncontrollable Forces. The term "Uncontrollable Forces" means any cause or causes beyond the control of the TJPA or the Contractor which renders either party unable to perform such obligation. These causes include, but are not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, drought, fire, pestilence, lightning and other natural catastrophes; epidemic, war, riot, civil disturbance or disobedience, sabotage strike, lockout, labor disturbances, and restraint by court order or public authority. Nothing contained in this Section shall be construed as requiring the TJPA or the Contractor to settle any strike, lockout or labor of dispute in which it may be involved, or to accept any permit, certificate or other authorization, or to enter into other contracts or commit to a financing arrangement, which contain conditions or terms

which the TJPA or the Contractor determines are unduly burdensome. However, to the extent the Contractor is or becomes aware of Uncontrollable Forces that could or will impact the Program, the Contractor is required to use all reasonable effort to mitigate the harm and damages which would be caused to the Program by such Uncontrollable Forces.

20-21. Default; Remedies

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

(1) The Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: Payment; Submitting False Claims, Monetary Penalties; Taxes; Insurance; Indemnification; Proprietary or Confidential Information of the TJPA; Protection of Private Information; Assignment; Drug-Free Workplace Policy; Compliance With Laws; USDOT Requirements.

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

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

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

b. On and after any Event of Default, the TJPA shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement 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 Contractor any Event of Default; the Contractor shall pay to the TJPA on demand all costs and expenses incurred by the TJPA in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The TJPA shall have the right to offset from any amounts due to the Contractor under this Agreement or any other agreement between the TJPA and the Contractor all damages, losses, costs or expenses incurred by the TJPA as a result of such Event of Default and any liquidated damages due from the Contractor pursuant to the terms of this Agreement or any other agreement.

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

21.22. Termination for Convenience

a. The TJPA shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience when it is in the TJPA's best interest, which best interest shall be determined at the TJPA's sole discretion. The TJPA shall exercise this option by giving the Contractor written notice of termination. The notice shall specify the date on which termination shall become effective, but in no case shall termination become effective less than fourteen (14) days from the date of the notice.

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

(1) Halting the performance of all ~~services~~ 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 Contractor's right, title and interest under the orders and subcontracts terminated. Upon such assignment, the TJPA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

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

(6) Completing performance of any ~~services~~ Services or work that the TJPA designates to be completed prior to the date of termination specified by the TJPA.

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

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to the TJPA an invoice, which shall set forth the reasonable cost to the Contractor for all services and other work the TJPA directed the Contractor to perform prior to the specified termination date, for which services or work the TJPA has not already tendered payment. The costs shall be determined as provided in Section 65, "Compensation." The Contractor may also recover the reasonable cost of preparing the invoice.

d. In no event shall the TJPA be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the TJPA, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs

include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to the Contractor under this Section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by the Contractor's final invoice; (2) any claim which the TJPA may have against the Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the TJPA, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and the TJPA's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22-23. 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 Contractor shall transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the TJPA. This subsection shall survive termination of this Agreement.

23-24. 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

To Contractor:

~~Name of Contact~~ Andrew Liu
~~Contractor Name~~ AECOM Technical Services, Inc
~~Address~~ 150 California Street, Suite 200
San Francisco, CA 94111
~~Phone number~~ 925.260.7027
~~Email address~~ andrew.liu@aecom.com

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

24-25. Proprietary or Confidential Information of the TJPA

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

25-26. San Francisco Protection of Private Information

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

26-27. News Releases/Interviews

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

27-28. Ownership of Results

Any interest of the Contractor 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 Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the TJPA. However, the Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

28-29. Works for Hire

If, in connection with services performed under this Agreement, the Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and

all copyrights in such works are the property of the TJPA. If it is ever determined that any works created by the Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, the Contractor hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA Executive Director, the Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

29-30. Audit and Inspection of Records

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

30-31. Intentionally Omitted

31-32. Intentionally Omitted

32-33. Subcontracting

Subject to specific direction in any Annual Work Plan/NTP, the Contractor is permitted to subcontract portions of this work under this Agreement as set forth in Appendix A-2 (Subcontractors). The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of the Services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed. The TJPA shall be provided with a copy of each subcontract promptly upon execution.

Any intended substitution of subcontractors listed in Appendix A-2 to this Agreement shall be submitted to the TJPA's Executive Director or their designee prior to the substitution of any subcontractor performing any work under the terms of this Agreement. In the event that a DBE/SBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original DBE/SBE subcontractor with another DBE/SBE subcontractor. No substitution of subcontractors shall be made at any time without the prior written approval of the TJPA Board of Directors.

33-34. Assignment

The Services to be performed by the Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless

first approved by the TJPA by written instrument executed and approved in the same manner as this Agreement. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

34-35. 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.

35-36. Services Provided by Attorneys

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

36-37. Conflict of Interest

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA pursuant to which the Contractor and any subcontractors may be required to prepare filings under state law; 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 certifies that it does not know of any facts which constitute a violation of said provisions.

37-38. San Francisco Limitations on Contributions

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

38-39. San Francisco Prohibition on Political Activity with TJPA Funds

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

39.40. Equal Employment Opportunity/Nondiscrimination; Penalties

a. The Contractor Shall Not Discriminate

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

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

b. Subcontracts

The Contractor shall incorporate by reference in all subcontracts the provisions of [Chapters 12B Sections 131.2\(a\), 131.2\(c\)-\(k\), and 131C.3](#) of the San Francisco [Administrative Code Labor and Employment Code](#) (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. The Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco [Administrative Code Section 12 Labor and Employment Code Article 131B.2](#).

d. Condition to Contract

As a condition to this Agreement, the Contractor shall execute the appropriate "San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101, HRC-12B-102, or HRC-12B-103) with supporting documentation and file the form with the TJPA.

- e. Intentionally Omitted
- f. Consideration of Salary History

The Contractor shall comply with San Francisco ~~Administrative Code Chapter 12K~~ [Labor and Employment Code Article 141](#), the Consideration of Salary History Ordinance or "Pay Parity Act." The Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in ~~Chapter 12K~~ [Article 141](#).

40.41. Disadvantaged Business Enterprise (DBE) Requirements

The TJPA has a race-neutral DBE Program, and there is no DBE goal on this contract.

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

Contractor must place the above clause in any subcontract agreement. Additionally, Contractor must provide the TJPA a copy of each subcontract agreement within 10 days of contractor receipt of a Notice to Proceed. The Contractor shall comply with the requirements of TJPA Board Policy No. 010 – Disadvantaged Business Enterprise Program Plan which can be found on TJPA’s website.

The Contractor shall comply with the requirements of Appendix D, USDOT Requirements for Agreements with the TJPA, Section 7. Disadvantaged Business Enterprise (DBE), d) DBE Contract Assurance (49 CFR 26.13), which are incorporated by reference in this Agreement.

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

44.42. Small Business Enterprise (SBE) Requirements

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal as submitted by the Contractor in its Proposal of twenty-five percent (25%). Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

[The Contractor shall comply with the requirements of TJPA Board Policy No. 015 – Small Business Enterprise Program Plan which can be found on TJPA's website.](#)

42.43. 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.

c. The reference to Section 7108.5 of the California Business and Professions Code in Subsections (a) and (b) applies to the extent said provision is ever determined to apply.

43.44. San Francisco Minimum Compensation

If San Francisco ~~Administrative Code Chapter 12P~~ Labor and Employment Code Article 111 applies to this Agreement, the Contractor shall pay covered employees no less than the minimum compensation required by San Francisco ~~Administrative Code Chapter 12P~~ Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in ~~Chapter 12P~~ Article 111. Contractor is required to comply with all of the applicable provisions of ~~12P~~ Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with ~~Article 111~~ Chapter 12P.

44.45. San Francisco Healthcare Accountability Ordinance

If San Francisco ~~Administrative Code Chapter 12Q~~ Labor and Employment Code Article 121 applies to this Agreement, the Contractor shall comply with the requirements of ~~Chapter 12Q~~ Article 121. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in ~~Section 12Q~~ Article 121.3 of the Health Care Accountability Ordinance (HCAO). If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Contractor is subject to the enforcement and penalty provisions in ~~Chapter 12Q~~ Article 121. Any ~~Subcontract-subcontract~~ entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

45.46. San Francisco First Source Hiring Program

If applicable to this Agreement, the Contractor 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 Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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

The Contractor agrees to comply fully with and be bound by all of the provisions of ~~San Francisco Administrative Code Chapter 12T~~ 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 ~~Chapter 12T~~ Article 142 are incorporated herein by reference and made a part of this Agreement as though fully set forth. The requirements of ~~Chapter 12T~~ Article 142 shall only apply to the Contractor’s or subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City and County of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency

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implementing federal or state law.

47.48. MacBride Principles – Northern Ireland

The provisions of San Francisco Administrative Code [Chapter](#) §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

48.49. Drug-Free Workplace Policy

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

49.50. Intentionally Omitted

50.51. San Francisco Tropical Hardwood/Virgin Redwood Ban

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

51.52. Intentionally Omitted

52.53. San Francisco Food Service Waste Reduction Requirements

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

53.54. Intentionally Omitted

54.55. 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.

55.56. Administrative Remedy for Agreement Interpretation

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

56-57. 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.

57-58. Construction

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

58-59. 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 54, “Modification of Agreement.”

59-60. 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.

60-61. USDOT Requirements

The provisions contained in “USDOT Requirements for Professional Services Contracts,” attached as Appendix D, are incorporated into this Agreement, and the Contractor agrees to abide by such provisions. 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.

61-62. Compliance With Laws

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

62-63. Compliance with Americans with Disabilities Act

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

further agree that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

63-64. 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.

64-65. Compliance with Naming Rights Agreement

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

65. Cooperative Drafting

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

The Agreement is amended only to the extent expressly provided herein; all other provisions of the Agreement shall remain in full force and effect.

The individuals executing this **Amended and Restated** Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have executed this **Amended and Restated** as of the day first mentioned above.
~~IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.~~

**TRANSBAY JOINT POWERS
AUTHORITY**

CONTRACTOR
AECOM Technical Inc.

Adam Van de Water
Executive Director

Signature

Printed Name and Title

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest: _____

Secretary, TJPA Board

Approved as to Form by:

TJPA Legal Counsel

~~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: _____

Professional Services Agreement Between TJPA and AECOM Technical Services, Inc.

Secretary, TJPA Board

CONTRACTOR

Authorized Signature

Address

Printed Name

City, State, Zip Code

Title

Phone Number

Contractor Name

Federal Employer ID Number

Appendix A: Scope of Services

Appendix A-1: Key Personnel

Appendix A-2: Subcontractors

Appendix B: Form of ~~Cost Reimbursement~~ Payment Terms and Rate Agreement

Appendix C: Additional Insureds

Appendix D: USDOT Requirements for Agreements with the TJPA

APPENDIX A

SCOPE OF SERVICES

Contractor is responsible for assisting and supporting TJPA with the general responsibilities described below. TJPA will contract separately to support work that is not included in Contractor's scope. Potential organizational conflict of interest will be reviewed on a case-by-case basis after specific tasks are defined. TJPA will determine at its sole discretion if an organizational conflict of interest exists.

This Appendix highlights the functions of Contractor that are required to support the project. Additional ancillary duties, assignments, and activities may be required and, if determined to be necessary, will be defined, documented, negotiated, and approved by TJPA.

1 Program Management

- a. Development of a Contract Management Plan (CMP) that supports an effective commencement of services by Contractor and management of the Construction Management (CM) Services Bench. The CMP shall be submitted to TJPA within 45 days of Annual Work Plan/NTP for review and approval. All Contractor work shall be performed in accordance with the approved CMP. A separate CMP specific to the construction management support services shall be submitted to TJPA for review and approval prior to the commencement of any work specific to the construction management support services scope.
- b. Development and implementation of a Program Management Plan (PMP) which shall include clearly defined roles and responsibilities for internal and external stakeholders and shall include documented procedures to manage following:
 - i. Project management
 - ii. Project schedules
 - iii. Project budgets
 - iv. Communication and decision-making protocols
 - v. Information management
- c. Effective coordination with FTA, Caltrain, external agencies having jurisdiction (AHJs), utility agencies and owners and several other applicable governmental entities in the life cycle of projects.
- d. Update and completion of the necessary documents required for federal and state funding approvals and oversight.
- e. Coordination with all parts of TJPA in the development and/or implementation of required plans and procedures to effectively manage the program during design, construction, and establishment of operations.
 - i. Provide writing, preparing, and maintaining program and project management plans, agreements, permits and administration with particular emphasis on meeting FTA and Caltrain requirements.
 - ii. Utilize industry best knowledge and experience in managing the implementation

- of highway design, utility interaction and relocations, construction, equipment, and materials.
- iii. Maintain and foster relationships with agencies, local governments, community stakeholders, and other consultants/contractors.
- iv. Organize peer reviews and industry reviews, executive partnering, and other strategic.
- v. Provide expertise in design, procurement and construction management of electrified commuter rail systems and transit tunnel construction.

2 Project Management

- a. Lead and support management and delivery of projects on time and within budget.
- b. Support developing, managing, and administering The Portal from inception to close-out.
- c. Support the management of all aspects of engineering and construction, utility coordination and relocation, technical support, schedules, budget, funding, grants management, staffing, agency reporting, and prioritization of work.
- d. Establish, maintain, implement, and audit cost and schedule management activities to ensure compliance with contract documents, and applicable policies, procedures, and plans.
- e. Identify problems and recommend resolutions to scope, budget, cost, and schedule- related activities.
- f. Participate with TJPA and its engineering consultants, other stakeholders, and contractors in the evaluation of value engineering analysis.
- g. Provide on-going project management and coordination.
- h. Support activities as required to close-out; this may include but is not limited to constructability reviews, feasibility and engineering reviews, design reviews, risk assessments; evaluation of utility relocations, preparing meeting minutes, establish agreements with stakeholders and utility owners, and right-of-way certification.

3 Construction Management and Construction Support Services

- a. Assist with oversight of the contractor(s) by providing construction management and support services for The Portal.
- b. Assist TJPA in the development and management of a visible safety and quality culture.
- c. Assist TJPA with fully enforcing any safety or quality related notices.
- d. Perform constructability analysis at various stages of the project. The analysis shall be performed in accordance with industry standards for cost estimating, construction techniques, value engineering, lean construction, and project management best practices.

- e. Assist in preparing and/or reviewing the scope of work and tasks, the contract documents and solicitation documents for construction contract.
- f. Provide geotechnical coordination services to advise and assist in the review of subsurface investigative reports/data to support the project. If requested, provide geotechnical field inspection services for earthwork and foundation construction to verify compliance with design criteria, standards, and contract specification.
- g. Perform or assist TJPAs in pre-construction survey activities and verify the preconstruction survey performed by the project contractor(s).
- h. Review, for compliance, all contractor submitted documents in accordance with TJPAs approved plans and procedures; process in a timely manner, verify all open issues are addressed, and following review by Caltrans, TJPAs, or TJPAs's engineering consultant, return the submittal back to the contractor. Contractor staff shall follow all Caltrans's related guidelines and documentation requirements as it pertains to submittal review for communication, track and systems items.
- i. Provide independent field survey verification checks on contractor provided survey. For all structure and Right of Way work, assist and support the verification check of contractor benchmarks and ensure contractor adheres to all applicable requirements of the Caltrans Surveys Manual. Coordinate construction activities as directed by TJPAs. Support TJPAs in the enforcement and ongoing management of construction contract terms and conditions. Provide timely and pertinent review and input on all correspondence. Support TJPAs in maintaining cost and schedule goals and commitments on projects. Implement project controls measures that provide real-time assessments of projects budget and schedule.
- j. Support and assist by providing timely and pertinent review of all changes, claims, Time Impact Analysis submittals, and other contract modifications and interpretations.
- k. Provide coordination and management of third-party work including and not limited to agreements, variances, permits, and utility relocations.
- l. Cooperate with TJPAs's Contract Compliance staff in the administration of Disadvantaged Business Enterprise (DBE) / Small Business Enterprise (SBE) requirements.
- m. Receive, review, and recommend for acceptance all operations and maintenance manuals prepared and submitted by contractors and/or suppliers and coordinate any required reviews by TJPAs Engineering or TJPAs engineering consultant.
- n. Ensure that operational and start-up tests of equipment are performed by the contractor to verify the proper operation, functioning of individual equipment, and compatibility of related systems.
- o. Assist TJPAs's Environmental Compliance and Sustainability Department in regulatory compliance.
- p. Assist with project and construction close-out processes, including but not limited to the transfer of key records and documents, the final inspections, testing, review of the as-built plans and resolution of outstanding contractual issues; all close-out activities shall be performed in accordance with the Quality Management Plan (QMP), as applicable.

- q. Support and assist TJPA with the implementation of the Quality Management Program (QMP). The QMP includes the following activities:
 - i. Design assessments (as applicable during construction)
 - ii. Construction assessments
 - iii. Management plan assessments
 - iv. Process assessments
 - v. Management System Audits
 - vi. Corrective action requests
 - vii. Quarterly Management Reviews
 - viii. Final Acceptance data monitoring
- r. Assist TJPA in the investigation and resolution of ~~quality-related~~quality-related issues as directed by the Project ~~Manager~~Director or Project Quality Manager.
- s. Perform materials verification testing, if necessary, per TJPA and Caltrain procedures.
- t. Provide health and safety management to oversee the contractor's compliance with environmental health and safety regulations and requirements. Contractor shall review and monitor contractor compliance with environmental health and safety requirements. Contractor will develop, implement, and manage the approved Environmental Health and Safety Plan which includes the following activities:
 - i. Hazardous material monitoring
 - ii. Health and Safety compliance and reporting
 - iii. Safety and security training
 - iv. Safety Hazards Analysis
 - v. Safety and Security Verification Certification
- u. Implement the materials testing program by observing and reporting on the contractor's compliance with materials testing requirements. Review and comment on the contractors' testing plans and submittals. Manage on-site tests and witness factory tests. Activities include:
 - i. Performing quality assurance and validation tests.
 - ii. Develop materials testing plans and reporting procedures.
 - iii. Review contractor materials testing submittals
 - iv. Report on results of materials testing by independent laboratories.
- v. Provide Start up Testing and Commissioning and Pre-revenue Services. Prepare Rail Activation Plan to include as a complete Caltrain operating system. Define an integrated test plan that includes TPSS, OCS, SCADA, train control, communications, LRT vehicles, PA system, VMS system, and CCTV system. Prepare integrated training plan based on Caltrain requirements. Activities include:
 - i. Rail activation plan including procedures, test, exercises, approvals and training
 - ii. Acceptance plan, test program and schedule (including integration test, readiness drills, pre- revenue service tests), approvals schedule, fallback planning and mitigation plans, training plan, procedures and schedule in compliance with Caltrain requirements.
 - iii. Documentation required for the safety and security certification under CPUC and FRA requirements.

- w. Provide field offices and supplies necessary to support all field operations and for the daily upkeep of offices, whether established by TJPA, Contractor, or a third party. Field supplies includes but is not limited to survey supplies, safety equipment and supplies, and small tools. Office supplies includes but is not limited to computer or Information Technology equipment and communication devices, janitorial supplies, office furniture, and daily use office items.
- x. Manage project vehicles, parking validation, and parking costs necessary to support projects. Project vehicles may be requested by TJPA and may be assigned by TJPA to any TJPA employee or Contractor staff.

4 Project Delivery and Contract Development/Compliance

- a. Advise on various project delivery methods including contract terms and conditions, procurement reviews, and state and federal transportation grant legislation and program requirements to support delivery of The Portal.
- b. Perform tasks to support project delivery and contract development/compliance, which include but are not limited to:
 - i. Support review of proposals and bids, especially in areas such as past performance, claims and litigation history, financial responsibility, and business ethics.
 - ii. Assist in the review, development, and implementation of overall project delivery and procurement strategy, document, plan, and schedules, including industry review process, key contract terms and conditions.
 - iii. Advise on proposer/bidder comments and requests for changes to solicitation requirements.
 - iv. Assist in reconciling contract documents and preparation of final contract terms and review of conformed Contract Documents.
 - v. Provide contract administration support under the direction of TJPA's Procurement/Contract Management.
 - vi. Provide DBE/SBE program requirements and Equal Employment Opportunity (EEO) workforce provisions compliance review and monitoring under the direction of TJPA requirements.
 - vii. Develop specifications, solicitation technical packages, and intergovernmental agreements.
- c. In addition to Design-Bid-Build (DBB) for the enabling works program, TJPA will be utilizing a Progressive Design-Build (PDB) for the Heavy Civil and Tunneling contract and Construction Manager/General Contractor (CMGC) for the implementation of Systems, Trackwork and Station Fit-out contracts. Contractor shall perform tasks to support TJPA for these Alternative Project Delivery processes including but not limited to:
 - i. Work with the engineering consultant(s), construction contractor(s), and TJPA staff to develop the approach to cost estimating method and the development of the Opinion of Probable Construction Cost (OPCC).
 - ii. Provide Independent Value Assessment capability to assist with contractor cost negotiations.
 - iii. Review the estimating methodology report submittal from the construction contractor(s).

- iv. Provide technical leadership and support team to:
 - 1. Develop an independent cost estimate at the designated milestones of the CMGC or PDB contract.
 - 2. Assist TJPA in reconciliation of cost estimates with the CMGC or PDB and documentation.
 - 3. Assist TJPA by leading and/supporting negotiations with the CMGC or PDB to establish the guaranteed maximum price or lump sum.
 - 4. Provide other cost estimating support as needed between development of the final estimate and issued for construction documents in support of the CMGC and PDB contract.
 - 5. Develop independent cost estimates for early works packages and additional field work.
 - 6. Review the cost estimates/OPCC provided by the construction contractor(s) and participate in quantity and estimate reconciliation meetings.
 - 7. Assist TJPA to negotiate with the construction contractor(s) to reach the final project construction value.

5 Configuration Management

Configuration Management encompasses a range of activities related to establishing and maintaining consistency across project lifespan, from project definition and preliminary engineering to closeout. This could include everything from a systems-level approach for requirements and contract interface management, to document management, including equipment/materials inventory (provided by the contractor), which involves managing most documents for project files, as well as change control for all contracts related to a project.

Contractor shall provide staffing, technical resources, knowledge, and expertise to manage TJPA Configuration Management tasks, which include but are not limited to:

- a. Manage project records through workflow process, including submittals, RFIs, correspondence, and similar.
- b. Maintain design standards related to specific projects.
- c. Maintain a record of baseline configuration and requirements and track changes across contract interfaces.
- d. Maintain the requirements checklist to assist in managing the program to verify that design and construction complies with all requirements and commitments established during the planning and environmental clearance phase and the requirements of the various entities whose funds will be used to deliver the Program have been met.
- e. Verify that physical and schedule interfaces are coordinated between the contracts and other components, projects and subprojects and contract packages within the program.
- f. Track changes to and maintain system-wide standards documents.

- g. Maintain TJPA Program Management Plan and Procedures documents.
- h. Manage the document exchange between TJPA and the contractor and other consultants.
- i. Track contract change activities related to projects, whether for contractors, consultants, engineers, designers, and similar.
- j. Work closely with projects Manager, Construction Manager, Resident; Engineer, Vendor/Contract Management, Project Controls, and Cost Estimating to track contract changes.
- k. Gather information regarding the cost estimate, scope of change, and issues to facilitate the procurement process to resolution and potentially contract issuance.
- l. Secure and manage equipment/materials inventory to be provided by the contractor as prescribed in Federal Acquisition Regulations (FAR).

6 Project Controls

Coordinate and support TJPA Program Controls for cost, scheduling, estimating, and risk management for environmental, engineering, construction, and maintenance/operations phases of The Portal project. Manage and maintain baseline reports to establish cost, budget, and schedule objectives for The Portal project, against which project controls report on the status and progress of the work; actual and projected costs; schedule progress; and trends.

Contractor shall provide technical staffing and resources, knowledge, and expertise to provide support for TJPA Program Controls tasks, which include but are not limited to:

- a. Project control support throughout all phases of a project that include scheduling, estimating, cost control, change control, document controls and records management.
- b. Utilize state-of-the-art knowledge of information technology and information systems practices as it relates to project controls. IT Architecture to be revisited every three years to revise or adjust as necessary.
- c. Review dispute avoidance claims mitigation and risk analysis.
- d. Identify, develop, and implement project and program controls practices, standards, procedures and tools for project controls-related reporting, and program controls.
- e. Provide BIM management, and support, to oversee the digital delivery through design, construction, and closeout. This includes supporting TJPA in developing a Building Information Modeling (BIM) and Digital Construction strategy, and the accompanying systems and standards, for effective communication, data driven decision making, and records management across the project.
- f. Track, monitor, and verify cost and schedule to ensure timely and cost-effective project execution.

- g. Advise and provide daily support on financial strategies and mechanisms related to cost, source of funding, cash flow, and long-term project implementation, operations, and maintenance under a cost-effective, cost of ownership, and life cycle framework.
- h. Refine, innovate, and implement project control practices, standards, procedures, and tools for project-wide reporting.
 - i. Perform the following project control tasks, which include but are not limited to: i. Analyze cost, scheduling, and risk issues.
 - ii. Conduct cost and schedule reviews and provide reporting.
 - iii. Support payment application and invoicing review.
 - iv. Review and comment on the contents of RFP(s) and IFB(s) for the design and construction.
 - v. Maintain, enhance, and enforce all document control and record management plans, policies, and procedures.
 - vi. Maintain Program Management subplans as needed, and when applicable create new project controls related subplans.
 - vii. Maintain an integrated Master Program Schedule for all activities including Real Estate Acquisitions, Design and Engineering Milestones, Third Party Agreements, Utility Relocations, Stakeholder Coordination, Procurements, Approvals and Inspections, and all Construction Schedules.
 - viii. Prepare Fiscal Year project budgets and make incremental adjustments as needed.
 - ix. Conduct internal risk assessments for the project.
 - x. Verify cost estimates are in line with risk assessments.
 - xi. Assist in conducting quality assurance of the financial data and analyzing the data for financial reconciliation.

7 Estimating Cost

Estimating develops and prepares cost estimates to support TJPA procurement activities for professional services planning, environmental, construction, maintenance, and operations contracts; develops TJPA design and construction (capital cost) budgets, and during the planning and design phases of projects for design optimization and value engineering studies, life-cycle cost analyses, and risk assessments.

Contractor shall provide technical staffing, resources, knowledge, and expertise to coordinate and support TJPA estimating tasks, which include but are not limited to:

- a. Develop and implement cost estimation practices, standards, procedures, and tools to support development of TJPA's design and construction (capital cost) budgets and to support economic optimization of TJPA project designs.
- b. Prepare Independent Cost Estimates for professional services, construction, maintenance, and operations contracts, changes, and claims.
- c. Furnish cost and price analyses of proposals from consultants and contractors.
- d. Prepare estimates to establish project budgets for planning, construction and procurement, value engineering studies, real estate and joint development purchase and exchange

decisions.

- e. Provide estimates and economic analyses to support design optimization, constructability, and project feasibility decisions.
- f. Review and provide comments on estimates prepared by other consultants for planning and construction.
- g. Prepare estimates to validate funding requests from other government agencies and third-party utilities.
- h. Provide design and construction technical analyses and support to TJPA Management Audit Services.
- i. Conduct construction market analysis by reviewing cost and bidding trends and evaluating factors that may influence construction bidding; and j. Design, develop, and deploy industry best practices, standards, procedures, and tools to continually improve the cost estimating function.

8 Community Outreach and Construction Relations

Contractor will support TJPA on project communication management and implementation of The Portal, which includes, but is not limited to, industry, public, and stakeholder communications and outreach, along with crisis and construction impact mitigation. In coordination with TJPA Communications, Contractor will coordinate programs to minimize and help address field construction issues and inquiries, make provisions to accommodate TJPA approved tours of the various project sites, and refer all media inquiries or requests for project related information to TJPA Communications. Contractor will assign a dedicated outreach professional to support TJPA with these requirements.

9 Other Activities

In the performance of the scope above, TJPA may require Contractor to provide the following equipment and services, not all inclusive:

- a. Project Office Space and Furniture
- b. Communications Equipment and Services
- c. Computer & Network Equipment and Services
- d. Software and Software Support
- e. Field Supplies
- f. Cameras
- g. Office Supplies
- h. Graphic Services
- i. Courier Services
- j. Copiers, Plotters and Scanners
- k. Signage/Banner Services
- l. Housekeeping/Custodial
- m. Safety Equipment & Training
- n. Survey Equipment and Supplies
- o. Preconstruction Survey Services

- p. Obtaining and maintaining permits, as required.
- q. Vehicles for TJPA and Consultant staff
- r. Code Books and Reference Manuals
- s. Professional Training & Seminars t. Such other services as are related or ancillary to the services described above and/or to accomplish the purpose of the Program Management/Construction Management services.

END OF SCOPE OF SERVICES

APPENDIX A-1
KEY PERSONNEL

	Position	Person
1	Construction Manager	Carter Rohan
2	Program Contract Manager	Stephen Polechronis
3	Engineering Manager	Meghan Murphy
4	Chief Tunneling Engineer	Derek Penrice
5	Project Controls Manager	Hans Hoppe <u>Rizwan Gill</u>
6	Progressive Design Build (PDB)/Construction Manager/General Contractor (CMGC) Procurement Lead	Ashish Patel <u>TBD</u>
7	Interface and Integration Lead	Joe Bayat

APPENDIX A-2

SUBCONTRACTORS

	Company	General Summary of Scope
1	Auriga Corporation*	Transit Systems Support; Construction Management Services
2	Civic Edge Consulting*	Communications Strategies, Community Outreach and Communications
3	Conсор PMCM, Inc.	Construction Management Services
4	Edgar Lopez & Associates*	Contract Devel. & Admin.; Contractor Relationship/ Negotiation; Strategic Advisory
5	Hollins Consulting, Inc.*	Doc. Control/ Admin. Support; Utility Relocation; ROW Support; Scheduling; Program Controls/Cost Support; Design Mgmt. (Stations); PMCM Staff Support
6	Intueor Consulting Inc.*	PMCM Support., Controls, Procure. Supp.; Rail & Comm. Sys. & Asset Mgt.; Org. Change Mgt.
7	ISI Inspection Services, Inc.	Inspection, Materials Testing, Other tasks to be determined
8	JRU Enterprises	Right-of-Way Support
9	KMC Construction Consulting*	Cost Estimating
10	Luster National, Inc.*	Program Management and Construction Management Support
11	M Lee Corporation*	Scheduling, Estimating and Other Project Controls Tasks
12	Mott MacDonald Group, Inc.	PMCM & Proj. Mgt; Sub. matter expertise - Tunnel, Geotech, Rail; Procure. Docs Development; Construct. & Risk Mgt.; Requirements Mgt., Safety Assurance, Digital Delivery
13	Pendergast Consulting Group*	S/L/DBE Support; Workforce Development and Community Outreach
<u>14</u>	<u>Risk International (Albert Risk)</u>	<u>Strategic Advisory Services, Insurance</u>
<u>15</u>	<u>Saylor Consulting, Inc.*</u>	<u>Estimating & Scheduling Services; Construction Management Support</u>
<u>16</u>	<u>Towill, Inc.*</u>	<u>Surveying</u>
<u>17</u>	<u>WSP USA Inc.</u>	<u>Program Management and Construction Management Support</u>

* Indicates SBE.

APPENDIX B

FORM OF COST REIMBURSEMENT AND RATE AGREEMENT

Pursuant to the Amended and Restated Professional Services Agreement between the Transbay Joint Powers Authority (hereinafter referred to as "TJPA") and AECOM Technical Services, Inc., a California corporation (hereinafter referred to as "Contractor") for Program Management and Construction Management Services ("PSA Agreement"), TJPA and Contractor hereby agree to enter into this Time and Materials Payment Terms and Rate Agreement ("TMA Rate Agreement") as follows:

TJPA will pay the Contractor as follows upon the submission of invoices approved by the TJPA Chief Financial Officer ("CFO") (or their designee):

(a) Hourly rate.

(1) *Hourly rate* means the rate(s) attached hereto as Attachment 1 for payment for labor that meets the labor category qualifications of a labor category specified in the PSA Agreement that are-

(i) Performed by the Contractor;

(ii) Performed by the subcontractors; or

(iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under common control.

(iv) Hourly rates for Contractor and ~~subconsultants~~ ~~subcontractors~~ are established in Attachment 1 and ~~will be approved~~ may be negotiated for adjustment by TJPA in an amended Rate Agreement, the annual Work Plan/NTP. If the average hourly rate adjustment submitted by Contractor exceeds the annual escalation factor used to determine the Contract Limit, the Contractor shall submit sufficient justification to the TJPA CFO, Project Director and Project Controls Manager in support of the request. The justification shall also indicate, in sufficient detail, adjustments to the staffing plan subtask category used to determine the Contract Limit in a manner acceptable to TJPA resulting in no increase within the subtask category. Upon review and approval of the TJPA CFO, the new rates shall be incorporated into an amended Rate Agreement to reflect the Contractor's and subcontractors' annual salary adjustments, effective with their upcoming accounting period. In addition to compliance with the Agreement Section 4(b) relative to Key Personnel and Section 32 relative to subcontractors, Staff staff additions, substitutions, or replacements may must be submitted to TJPA CFO, Project Director, and Project Controls Manager (or their designees) for approval and inclusion in annual Annual work Work plan Plan/NTP

accompanied by the updated work breakdown schedule that shows no changes to the scope and cost upon completion.

- (2) The appropriate hourly rates shall be multiplied by the number of direct labor hours performed.
- (3) The hourly rates shall be paid for all labor performed on the PSA Agreement and Annual Work Plan/NTP that meets the labor qualifications specified in the PSA Agreement or Annual Work Plan/NTP. Labor hours incurred to perform tasks for which labor qualifications were specified in the PSA will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Agreement and Annual Work Plan/NTP PSA, unless specifically authorized by the TJPA CFO (or their designee).
- (4) The hourly rates shall include wages, indirect costs, general and administrative expenses, and profit (at the rate of nine percent). The invoice shall reflect the approved mark-up (described below) on agreed to subcontracted effort. Fractional parts of an hour shall be payable on a prorated basis.
- (5) Invoices may not be submitted more than monthly to the TJPA CFO (or their designee). The Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate) by evidence of actual payment of non-labor costs and by-
 - (i) Individual daily job timekeeping records;
 - (ii) Records that verify the employees meet the qualifications for the labor categories specified in the PSA Agreement and Annual Work Plan/NTP; or
 - (iii) Other substantiation approved by the TJPA CFO (or their designee).
- (6) Promptly after receipt of each substantiated invoice, TJPA shall, except as otherwise provided in the PSA Agreement or this TMA Rate Agreement, and subject to the terms of paragraph (d) of this TMA Rate Agreement, pay the invoice as approved by the TJPA CFO (or their designee).
- (7) Unless otherwise prescribed in the PSA Agreement, the TJPA CFO (or their designee) may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the TJPA CFO (or their designee) considers necessary to protect TJPA's interests. The TJPA CFO (or their designee) may require a withhold of 5 percent of the amounts due under paragraph (a) of this TMA Rate Agreement, but the total amount withheld for the contract shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this TMA Rate Agreement.
- (8) Unless ~~the~~ this TMA Rate Agreement prescribes otherwise, the hourly rates shall not be varied by virtue of the Contractor having performed work on an overtime basis. If

no overtime rates are provided in the hourly rates and overtime work is approved in advance by the TJPA CFO (or their designee), overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under paragraph (k) of this ~~TMA~~Rate Agreement. If the hourly rates provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved in advance by the TJPA CFO (or their designee).

(b) Other Direct Costs.

(1) For the purposes of this clause-

(i) *Direct materials* mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Other Direct Costs* ("ODC") means-

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the Agreement ~~PSA~~; and

~~(A)(C)~~ (C) Other direct cost categories attached hereto as Attachment 2. Except for those ODCs fitting within the categories specified in Attachment 2, no other ODCs are permitted without the advanced written approval of the TJPA CFO and TJPA Project Manager-Director (or their designees). Planned ODC costs will be initially reviewed and authorized in the Contractor's detailed Annual Work Plan/NTP proposal. All costs incurred are subject to determination by TJPA that are allocable, allowable, and reasonable.

(2) If the Contractor furnishes its own materials, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, TJPA will reimburse the Contractor for allowable ODCs provided the Contractor-

(i) Has made payments for ODCs in accordance with the terms and conditions of the agreement or invoice for the ODCs; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to TJPA and such payment is in accordance with the terms and conditions of the agreement or invoice for the ODC.

- (4) The ODC categories ~~are~~ included in Attachment 2 (or otherwise have received advanced written approval from the TJPA) ~~and~~ are allowable if determined to be reasonable and allocable. The TJPA CFO (or their designee) will determine allowable costs in accordance with FAR subpart 31.2 and 2 CFR 403-406 and any other applicable federal law or regulation in effect on the date of this contract.
- (5) The Contractor may include allocable indirect costs and ODCs to the extent they are-
- (i) Comprised only of costs that are clearly excluded from the hourly rate and overhead;
 - (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
 - (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.
- (6) To the extent able, the Contractor shall-
- (i) Obtain ODCs at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the TJPA CFO (or their designee) and give the reasons. The Contractor shall give credit to TJPA for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor or lost through fault of TJPA.
- (7) TJPA will not pay profit or fee to the Contractor on materials or other ODCs. Contractor may apply a mark-up of 1.5% on agreed to subcontracted effort.
- (8) If the Contractor enters any subcontract that requires TJPA consent, TJPA is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of TJPA.
- (9) Contractor must receive the TJPA CFO's (or their designee's) prior written approval before incurring any ODC that exceeds \$5,000.
- (10) Travel Reimbursement. Travel will be reimbursed based on TJPA Travel, Business Expense, and Relocation Policy: Standard Practices and Guidelines for TJPA Consultants and Subconsultants, dated October 2009 and requires TJPA Project Director and CFO preapproval.

(c) Total cost.



It is estimated that the total cost to TJPA for the performance of the PSA Agreement and each Annual Work Plan/NTP shall not exceed the ~~ceiling-Ceiling price-Price~~ set forth in the PSA Agreement and sublimits set forth in an Annual Work Plan/NTP, and the Contractor agrees to use its best efforts to perform the work specified in the PSA Agreement and each Annual Work Plan/NTP and all obligations under the PSA Agreement within such ~~ceiling-Ceiling price-Price~~ and sublimits.

If at any time the Contractor has reason to believe that the hourly rate payments and Other Direct Costs that will accrue in performing the PSA Agreement in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ~~ceiling-Ceiling price-Price~~ in the PSA Agreement, the Contractor shall notify the TJPA CFO giving a revised estimate of the total price to TJPA for performing the PSA Agreement with supporting reasons and documentation. If at any time during performing the PSA Agreement, the Contractor has reason to believe that the total price to TJPA for performing the PSA Agreement will be substantially greater or less than the then stated ~~ceiling-Ceiling price-Price~~, the Contractor shall so notify the TJPA CFO, giving a revised estimate of the total price for performing the PSA Agreement with supporting reasons and documentation. If at any time during performing this contract, TJPA has reason to believe that the work to be required in performing this PSA Agreement will be substantially greater or less than the stated ~~ceiling-Ceiling price-Price~~, the TJPA CFO (or their designee) will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the PSA Agreement.

(d) Ceiling Price. TJPA will not be obligated to pay the Contractor any amount more than the ~~ceiling-Ceiling price-Price~~ in the PSA Agreement. The Contractor exceeds the ~~ceiling-Ceiling price-Price~~ at its own risk and expense.

(e) Audit. At any time before final payment under the PSA Agreement, the TJPA CFO (or their designee) may request audit of the invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the TJPA CFO (or their designee) not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of the PSA Agreement and this TMA Rate Agreement (including, without limitation, the terms of paragraph (f) of this TMA Rate Agreement), TJPA shall promptly pay any balance due the Contractor. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under the PSA Agreement, but in no event later than 120 days (or such longer period as the TJPA CFO (or their designee) may approve in writing) from the date of completion.

(f) Assignment and Release of Claims. The Contractor, and each assignee under an assignment entered into under the PSA Agreement and in effect at the time of final payment under the PSA Agreement, shall execute and deliver, at the time of and as a condition precedent to final payment under the PSA Agreement, a release discharging TJPA, its members, directors, officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the PSA Agreement and this TMA Rate Agreement, subject only to the following exceptions:

- (1) Specified claims in stated amounts, or in estimated amounts if the amounts

are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing the PSA Agreement, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the TJPA CFO (or their designee) not more than 6 years after the date of the release or the date of any notice to the Contractor that TJPA is prepared to make final payment, whichever is earlier.

(g) Invoice Reimbursement.

- (1) Allowable Costs – Costs will only be allowed if the proposed costs are consistent with cost principles of the Federal Acquisition Regulation (FAR) as set forth in 48 C.F.R. Part 31 and any other applicable federal law or regulation. TJPA will perform and audit the PSA Agreement and any subcontracts for compliance with these requirements.
- (2) Agency will accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods if those rates are not currently under dispute.
- (3) "Billing rates." Until final annual indirect cost rates are established for any period, TJPA will reimburse Contractor at billing rates established in the Contractor's proposal and audited by the Proposer's Certified Public Accountant, attached as Attachment 3, subject to adjustment when the final indirect cost rates are established. Final indirect cost rates ~~may~~must be established by an audit performed by the federal government or other governmental agency for every period.

These indirect cost rates—

- Shall be the anticipated final rates; and
 - May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (4) Final Payment. Until Contractor's compliance with all terms of the PSA Agreement, TJPA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (5) During the term of the PSA and for a period of five (5) years after final payment under the agreement, or until after a final audit has been resolved, whichever is later, Contractor shall:
 - Keep and maintain, in their original form, all records, books, papers, or documents related to Proposer's performance; and

- Permit TJPA or its authorized representative, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to Contractor's performance of the PSA including, but not limited to: direct and indirect charges, and detailed documentation, for work Contractor has performed or will perform under the PSA.
- (6) For a period of not less than five years after final payment under the PSA, TJPA may have Contractor's invoices or invoices and statements of cost audited. Any payment may be
- Reduced by amounts found by TJPA not to constitute allowable costs; or
 - Adjusted for prior overpayments or underpayments.

The parties have executed this Agreement as of [].

TRANSBAY JOINT POWERS AUTHORITY

AECOM Technical Services, Inc.

Adam Van de Water, Executive Director

Andrew Liu,
Sr. Vice President, Transportation West
Coast

Attachments:

Attachment 1. Hourly Rates

Attachment 2. Other Direct Cost

Attachment 3. Billing Rates

ATTACHMENT 1
HOURLY RATES

[to be attached after establishment of the indirect cost rate for an applicable period]

ATTACHMENT 2
OTHER DIRECT COSTS

Onsite Vehicles exclusively leased for construction management or inspection work in the field in compliance with Travel Policy.

Parking

Office Space Fit-out/Move in

Office Space Rent

InEight Setup

InEight Maintenance

Other Software

Computer equipment approved and tagged as TJPA asset by TJPA IT director

PPE

Printing

Travel *

Living Expenses for temporary duty assignment in compliance with lodging authorized under Travel Policy.

*Note: The Contractor has agreed that the Key Personnel shall be committed and assigned to work on the Agreement and shall be staffed at the Contractor's local offices within the San Francisco Bay Area for the duration of the Contract. Accordingly, TJPA does not expect ODCs to include travel of Key Personnel to/from their home and the Contractor's local offices.

ATTACHMENT 3 BILLING RATES

[applied prior to establishment of the indirect cost rate]

Downtown Transbay Extension Program Management and Construction Management Services 2024 RATES BY FIRM

Firm	Description	Name/Position	2024 Raw Rate	Home/ Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
AECOM	Assistant Contracts Manager	Jimmy Liu	\$56.11	Field	102.64%	0.00%	9.0%	\$123.93
AECOM	Assistant Office Engineer	AjayKanth Satti	\$41.00	Field	102.64%	0.00%	9.0%	\$90.56
AECOM	Assistant Resident Engineer	Armen Avanesian	\$51.45	Field	102.64%	0.00%	9.0%	\$113.64
AECOM	Change & Configuration Manager	Steven Reid	\$111.66	Field	102.64%	0.00%	9.0%	\$246.63
AECOM	Change Control Technician	Marianne Ghobreal	\$60.00	Field	102.64%	0.00%	9.0%	\$132.53
AECOM	Construction Manager **	Carter Rohan	\$205.96	Field	102.64%	0.00%	9.0%	\$454.92
AECOM	Construction Safety - Buildings	Patrick Walz	\$69.91	Field	102.64%	0.00%	9.0%	\$154.42
AECOM	Construction Safety - Tunnel	Mike Kirchanski	\$80.00	Field	102.64%	0.00%	9.0%	\$176.70
AECOM	Construction Safety - Tunnel	Mike McDowell	\$93.04	Field	102.64%	0.00%	9.0%	\$205.50
AECOM	Contracts Compliance - Payroll	Hannah Lee	\$69.75	Field	102.64%	0.00%	9.0%	\$154.06
AECOM	DBB Util Relocation - ACM	Audrey Brook1	\$121.04	Field	102.64%	0.00%	9.0%	\$267.35
AECOM	Engineering Manager **	Meghan Murphy	\$120.50	Field	102.64%	0.00%	9.0%	\$266.16
AECOM	Estimator	Leonard Calianno	\$112.07	Home	123.50%	0.00%	9.0%	\$273.02
AECOM	Health & Safety Manager	Mike Voudouris	\$90.00	Field	102.64%	0.00%	9.0%	\$198.79
AECOM	Information Management Lead	Matt Perna	\$115.94	Home	123.50%	0.00%	9.0%	\$282.45
AECOM	Inspector - Architectural	Bruce Farrell	\$105.93	Field	102.64%	0.00%	9.0%	\$233.98
AECOM	Inspector - Civil	Aaron Jayne	\$76.05	Field	102.64%	0.00%	9.0%	\$167.98
AECOM	Inspector - Civil	Arieto Manalo	\$81.92	Field	102.64%	0.00%	9.0%	\$180.94
AECOM	Inspector - Civil	Dave Vornberger	\$93.94	Field	102.64%	0.00%	9.0%	\$207.49
AECOM	Inspector - Civil	David Akers	\$75.38	Field	102.64%	0.00%	9.0%	\$166.50
AECOM	Inspector - Mechanical	Coleman Bailey (T&S)	\$68.75	Field	102.64%	0.00%	9.0%	\$151.85
AECOM	Inspector - Mechanical	Coleman Bailey (Tun)	\$68.75	Field	102.64%	0.00%	9.0%	\$151.85
AECOM	Inspector - Mechanical	Robert Alfasi	\$81.00	Field	102.64%	0.00%	9.0%	\$178.91
AECOM	Inspector - Plumbing	Vini Shah (Sta)	\$79.33	Field	102.64%	0.00%	9.0%	\$175.22
AECOM	Inspector - Plumbing	Vini Shah (Tun)	\$79.33	Field	102.64%	0.00%	9.0%	\$175.22
AECOM	Inspector - Structural	Carla Aguilar Rivera	\$97.04	Field	102.64%	0.00%	9.0%	\$214.34
AECOM	Inspector - Track	Bob Brosey	\$75.00	Field	102.64%	0.00%	9.0%	\$165.66
AECOM	Inspector - Track	Brian Price	\$75.58	Field	102.64%	0.00%	9.0%	\$166.94
AECOM	Inspector - Tunnel	Vishwam Sheth	\$57.55	Field	102.64%	0.00%	9.0%	\$127.12
AECOM	Lead Inspector	Isnard Estriplet	\$129.32	Field	102.64%	0.00%	9.0%	\$285.64
AECOM	Lead Inspector	Raffaele Aliberti	\$66.11	Field	102.64%	0.00%	9.0%	\$146.02
AECOM	Office Engineer	Ferdie Rodriguez (R Fernando)	\$70.42	Field	102.64%	0.00%	9.0%	\$155.54
AECOM	Office Engineer	Henry Diep	\$65.62	Field	102.64%	0.00%	9.0%	\$144.94
AECOM	Office Engineer	Juan Romero	\$55.96	Field	102.64%	0.00%	9.0%	\$123.60
AECOM	Office Engineer	Muataz Yaseen	\$91.35	Field	102.64%	0.00%	9.0%	\$201.77
AECOM	PDB Main Civil - ACM	Rich Redmond Jr.	\$161.91	Field	102.64%	0.00%	9.0%	\$357.62
AECOM	Principal Level Environmental Specialist	Rodney Jeung	\$127.42	Home	123.50%	0.00%	9.0%	\$310.41
AECOM	Procurement Manager	Ashish Patel	\$168.27	Field	102.64%	0.00%	9.0%	\$371.67
AECOM	Program Contract Manager **	Stephen Polechronis	\$185.57	Field	102.64%	0.00%	9.0%	\$409.88

Downtown Transbay Extension
Program Management and Construction Management Services
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/ Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
AECOM	Project Administrator	TBDd	\$47.50	Home	123.50%	0.00%	9.0%	\$115.71
AECOM	QA/QC	TBDe	\$88.40	Home	123.50%	0.00%	9.0%	\$215.36
AECOM	Senior Level Environmental Specialist	Anne Ferguson	\$62.50	Home	123.50%	0.00%	9.0%	\$152.26
AECOM	SME: Engineering	Osborne Anthony	\$97.77	Home	123.50%	0.00%	9.0%	\$238.18
AECOM	SME: Geotechnical Engineer	Stephen Huang, GE	\$98.57	Home	123.50%	0.00%	9.0%	\$240.13
AECOM	SME: Paleontologist/Archaeologist	Jay Rehor	\$66.84	Home	123.50%	0.00%	9.0%	\$162.83
AECOM	SME: Paleontologist/Archaeologist	Kat Kubal	\$54.65	Home	123.50%	0.00%	9.0%	\$133.14
AECOM	SME: Precast Specialist	Orin Brown	\$97.50	Home	123.50%	0.00%	9.0%	\$237.52
AECOM	SME: Principal Paleontologist	Mark Hale	\$62.44	Home	123.50%	0.00%	9.0%	\$152.11
AECOM	Station Fit-Out - ACM	Audrey Brook2	\$121.04	Field	102.64%	0.00%	9.0%	\$267.35
AECOM	Track & Systems - ACM	Sy Morales	\$127.40	Field	102.64%	0.00%	9.0%	\$281.40
AECOM	Utilities Package Lead	Audrey Brook	\$121.04	Field	102.64%	0.00%	9.0%	\$280.71
Auriga Corp.	Inspector - Communications	Clay McDonald	\$90.00	Field	154.75%	0.00%	9.0%	\$252.69
Auriga Corp.	Inspector - Electrical	Omar Hafud Al-Sudani	\$60.00	Field	154.75%	0.00%	9.0%	\$173.27
Auriga Corp.	Inspector - Signalling	Michael Moyer	\$90.00	Field	154.75%	0.00%	9.0%	\$259.91
Auriga Corp.	Inspector - Systems	Fathi Aljarrah	\$77.10	Field	154.75%	0.00%	9.0%	\$216.59
Civic Edge Consulting	Community Outreach Specialist	Paisley Strellis	\$68.28	Field	195.80%	0.00%	9.0%	\$220.15
Conсор PMCM, Inc.	Inspector - Civil	Corey Funkner	\$86.92	Field	117.59%	0.01%	9.0%	\$206.16
Conсор PMCM, Inc.	Inspector - Communications	Charles Smith	\$86.01	Field	117.59%	0.01%	9.0%	\$204.00
Conсор PMCM, Inc.	Inspector - Electrical	Darren Goodbar	\$90.00	Field	117.59%	0.01%	9.0%	\$213.46
Conсор PMCM, Inc.	Inspector - Electrical	David Taylor	\$93.88	Field	117.59%	0.01%	9.0%	\$222.67
Conсор PMCM, Inc.	Inspector - Electrical	Michael Johnson	\$88.40	Field	117.59%	0.01%	9.0%	\$209.67
Edgar Lopez & Associates	SME: Procurement	Edgar Lopez	\$224.56	Home	47.00%	0.00%	9.0%	\$359.81
Hollins Consulting, Inc.	Admin Support Manager	Laura Patino	\$93.75	Field	113.15%	0.00%	9.0%	\$220.70
Hollins Consulting, Inc.	Administrative Assistant	Megan Wong	\$55.00	Field	113.15%	0.00%	9.0%	\$127.77
Hollins Consulting, Inc.	Assistant Contracts Compliance - Payroll	Tsehai Netsereab	\$46.95	Field	113.15%	0.00%	9.0%	\$110.35
Hollins Consulting, Inc.	Assistant Office Engineer	Leah Rhodes	\$51.40	Field	113.15%	0.00%	9.0%	\$120.81
Hollins Consulting, Inc.	DBB Building Demo - ACM	Jermaine Smith	\$86.54	Field	113.15%	0.00%	9.0%	\$203.28
Hollins Consulting, Inc.	Document Control Technician	Jonathan Valencia	\$60.10	Field	113.15%	0.00%	9.0%	\$144.61
Hollins Consulting, Inc.	Junior Engineers	TBDc	\$81.12	Field	113.15%	0.00%	9.0%	\$188.47
Hollins Consulting, Inc.	Procurement Specialist	Cecilia Luu	\$80.29	Field	113.15%	0.00%	9.0%	\$191.66
Hollins Consulting, Inc.	Project Assistant	Leena Ahmadi	\$49.09	Field	113.15%	0.00%	9.0%	\$116.17
Hollins Consulting, Inc.	Utility Coordination Manager	Jermaine Smith	\$86.54	Field	113.15%	0.00%	9.0%	\$203.28
Hollins Consulting, Inc.	Utility Coordinator	Will Spargur	\$76.24	Field	113.15%	0.00%	9.0%	\$177.14
Intueor	Contracts Administrator	Charles Smith	\$94.61	Field	123.43%	0.00%	9.0%	\$230.41
Intueor	IT Specialist	Tarek Fahmy	\$62.25	Field	123.43%	0.00%	9.0%	\$151.60
Intueor	Project Control Scheduler	Parthiv Varma	\$80.28	Field	123.43%	0.00%	9.0%	\$195.51
Intueor	SME: Project Controls	Steve Lavelle	\$98.12	Home	123.43%	0.00%	9.0%	\$238.96
Intueor	Sr Project Controls Engineer	Jordan Taylor	\$92.25	Field	123.43%	0.00%	9.0%	\$224.66

Downtown Transbay Extension
Program Management and Construction Management Services
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
JHU Enterprises	ROW Manager	John Updike	\$215.00	Field	0.00%	0.00%	0.0%	\$215.00
KMC Construction Consulting	Independent Cost Estimator	Kelly McNutt	\$189.00	Home	76.55%	0.00%	9.0%	\$363.71
Luster National, Inc.	Administrative Analyst	John Luster	\$88.94	Field	133.01%	0.04%	9.0%	\$225.92
Luster National, Inc.	Assistant Contracts Administrator	Dan Coffee	\$96.68	Field	133.01%	0.04%	9.0%	\$245.58
Luster National, Inc.	Document Control Manager	Kara Turner	\$82.80	Field	133.01%	0.04%	9.0%	\$210.33
Luster National, Inc.	Quality Assurance Auditor	Bobby Butler	\$54.13	Field	133.01%	0.04%	9.0%	\$137.50
M Lee Corp.	Cost Estimator	Asia Kan	\$87.50	Field	110.60%	0.00%	9.0%	\$200.86
M Lee Corp.	Senior Cost/Schedule Analyst	Martin Lee	\$98.50	Home	128.80%	0.00%	9.0%	\$245.65
Mott MacDonald	4th & King Site Work Package Lead	Scott Waldron	\$59.63	Field	142.51%	0.00%	9.0%	\$157.62
Mott MacDonald	Assistant Resident Engineer	Ali Iqbal	\$125.46	Field	142.51%	0.00%	9.0%	\$331.64
Mott MacDonald	Assistant Resident Engineer	Eleanor Sillerico	\$102.97	Field	142.51%	0.00%	9.0%	\$272.19
Mott MacDonald	Assistant Resident Engineer	Shawna Von Stockhausen	\$89.94	Field	142.51%	0.00%	9.0%	\$237.74
Mott MacDonald	BIM Lead	Abraham Rodriguez	\$80.56	Home	166.49%	0.00%	9.0%	\$234.01
Mott MacDonald	Chief Tunneling Engineer **	Derek Penrice	\$137.69	Field	142.51%	0.00%	9.0%	\$363.96
Mott MacDonald	Digital Delivery Lead	Jay Mezher	\$117.63	Field	142.51%	0.00%	9.0%	\$310.94
Mott MacDonald	Graphics support	Stacy Lehrer	\$45.36	Home	166.49%	0.00%	9.0%	\$131.76
Mott MacDonald	Inspector - Civil	Eduardo Salvador	\$90.00	Field	142.51%	0.00%	9.0%	\$237.90
Mott MacDonald	Inspector - Systems	Bindy Dhillon	\$74.37	Field	142.51%	0.00%	9.0%	\$196.59
Mott MacDonald	Inspector - Tunnel	Carl Gellor	\$83.58	Field	142.51%	0.00%	9.0%	\$220.93
Mott MacDonald	Integration Manager	Dave Hunt	\$115.00	Field	142.51%	0.00%	9.0%	\$303.99
Mott MacDonald	Main Civil BIM Coordinator	Abraham Rodriguez	\$80.56	Home	166.49%	0.00%	9.0%	\$234.01
Mott MacDonald	Requirements Manager	Mandy Boyal	\$93.75	Field	142.51%	0.00%	9.0%	\$247.81
Mott MacDonald	Risk Analyst	David Chesser	\$60.16	Home	166.49%	0.00%	9.0%	\$174.75
Mott MacDonald	Risk Manager	Joe O'Carroll	\$147.14	Home	166.49%	0.00%	9.0%	\$427.40
Mott MacDonald	SME: Construction Claims (Analyst/Admin/Eng)	Paul Hetu	\$103.37	Home	166.49%	0.00%	9.0%	\$300.26
Mott MacDonald	SME: Engineering	Ian Ong	\$125.45	Home	166.49%	0.00%	9.0%	\$364.40
Mott MacDonald	SME: Engineering	Mark Ramsey	\$145.58	Home	166.49%	0.00%	9.0%	\$422.87
Mott MacDonald	SME: Engineering	Martin Walker	\$109.37	Home	166.49%	0.00%	9.0%	\$317.69
Mott MacDonald	SME: Engineering	Noel Vivar	\$82.59	Home	166.49%	0.00%	9.0%	\$239.90
Mott MacDonald	SME: Engineering	Randall Essex	\$188.00	Home	166.49%	0.00%	9.0%	\$546.09
Mott MacDonald	SME: Instrument Specialist	Michael Piepenburg	\$111.81	Home	166.49%	0.00%	9.0%	\$324.78
Mott MacDonald	SME: Procurement	Mary Cay O'Malley	\$144.98	Home	166.49%	0.00%	9.0%	\$421.13
Mott MacDonald	SME: Procurement	Steve Dowell	\$89.97	Home	166.49%	0.00%	9.0%	\$261.34
Mott MacDonald	SME: Project Controls	Michael Gaunt	\$115.39	Home	166.49%	0.00%	9.0%	\$182.94
Mott MacDonald	Systems Integration Lead	Joe Bayat	\$136.90	Field	142.51%	0.00%	9.0%	\$361.88
Mott MacDonald	Systems Integration Manager	Ben Williams	\$96.23	Field	142.51%	0.00%	9.0%	\$254.37
Mott MacDonald	Technical Editor	Karen Saux	\$80.50	Home	166.49%	0.00%	9.0%	\$233.83
Mott MacDonald	Track & Systems Package Lead	Raquel Rhoads	\$79.11	Field	142.51%	0.00%	9.0%	\$209.12
Mott MacDonald	Visualization Lead	Naomi Seto	\$62.56	Home	166.49%	0.00%	9.0%	\$181.72

Downtown Transbay Extension
Program Management and Construction Management Services
2024 RATES BY FIRM

Firm	Descr	Name/Position	2024 Raw Rate	Home/ Field	Overhead	FCCM	Fee	Fully Loaded Bill Rate
Pendergast Consulting Group	Community Outreach Specialist	Paul Pendergast	\$89.73	Home	121.00%	0.00%	9.0%	\$216.15
Saylor Consulting	Estimator	Drew Erickson	\$135.00	Home	148.92%	0.00%	9.0%	\$366.29
Saylor Consulting	Independent Cost Estimator	Brad Saylor	\$135.00	Home	148.92%	0.00%	9.0%	\$366.29
Towill	Survey Party (2-man)	Towill	\$159.12	Field	183.45%	0.20%	9.0%	\$491.94
Towill	Surveyor	Towill	\$104.00	Field	183.45%	0.20%	9.0%	\$321.53
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Lody Faddoul	\$28.68	Field	104.23%	0.22%	9.0%	\$63.91
WSP	Administrative Assistant	Rita Poon	\$48.44	Field	104.23%	0.22%	9.0%	\$107.94
WSP	Assistant Office Engineer	Frankie Kakar	\$75.09	Field	104.23%	0.22%	9.0%	\$167.32
WSP	Assistant Resident Engineer	Jake Jones	\$107.36	Field	104.23%	0.22%	9.0%	\$239.23
WSP	Construction Safety - Heavy Civil	James Gomez	\$122.87	Field	104.23%	0.22%	9.0%	\$273.78
WSP	Contracts Manager	Cynthia Holt	\$96.52	Field	104.23%	0.22%	9.0%	\$211.00
WSP	Deputy Construction Manager	Andy Klieber	\$142.65	Field	104.23%	0.22%	9.0%	\$314.82
WSP	Deputy Project Control Manager **	Hans Hoppe	\$145.16	Field	104.23%	0.22%	9.0%	\$323.46
WSP	Estimator	Tim Curtain	\$104.28	Home	140.30%	0.32%	9.0%	\$273.47
WSP	Information Management Clerk	TBDf	\$35.00	Field	104.23%	0.22%	9.0%	\$77.99
WSP	Inspector - Civil	Kelsey Littell	\$79.78	Field	104.23%	0.22%	9.0%	\$177.77
WSP	Inspector - Communications	Gino Spadafore	\$108.09	Field	104.23%	0.22%	9.0%	\$240.86
WSP	Inspector - Communications	Taiwo Gray	\$80.74	Field	104.23%	0.22%	9.0%	\$179.91
WSP	Inspector - Electrical	Taiwo Gray	\$80.74	Field	104.23%	0.22%	9.0%	\$179.91
WSP	Inspector - Mechanical	Filip Lyashenko	\$60.23	Field	104.23%	0.22%	9.0%	\$134.21
WSP	Inspector - Mechanical	Filip Lyashenko	\$60.23	Field	104.23%	0.22%	9.0%	\$134.21
WSP	Inspector - Plumbing	Michael Macniven	\$87.80	Field	104.23%	0.22%	9.0%	\$195.64
WSP	Inspector - Plumbing	Michael Macniven	\$87.80	Field	104.23%	0.22%	9.0%	\$195.64
WSP	Inspector - Structural	Brice Ehoff	\$81.39	Field	104.23%	0.22%	9.0%	\$188.62
WSP	Lead Inspector	David Ho	\$75.60	Field	104.23%	0.22%	9.0%	\$175.20
WSP	Main Civil Tunnel Package Lead	Sangmin Kim	\$105.79	Field	104.23%	0.22%	9.0%	\$235.73
WSP	Office Engineer	Chelsey McGrew	\$77.51	Field	104.23%	0.22%	9.0%	\$139.07
WSP	Quality Assurance Manager	Sissel Berntsen-Heber	\$137.01	Field	104.23%	0.22%	9.0%	\$305.30
WSP	Rail Activation Manager	Gary Kennerly	\$132.81	Field	104.23%	0.22%	9.0%	\$295.94
WSP	Rail Coordination Manager	Keith Seymour	\$110.75	Field	104.23%	0.22%	9.0%	\$237.38
WSP	Senior Cost/Schedule Analyst	Ed Rollerson	\$96.90	Home	140.30%	0.32%	9.0%	\$254.12
WSP	SME: Dewatering	Robert Roat	\$90.73	Home	140.30%	0.32%	9.0%	\$237.94
WSP	Stations Fitout Package Lead (and Building Demo Lead)	Douglas Keys	\$98.77	Field	104.23%	0.22%	9.0%	\$217.98
WSP	Third Party Coordinator	Zylah Doria	\$90.04	Field	104.23%	0.22%	9.0%	\$200.64
WSP	Utilities BIM Coordinator	Sergio Arellano	\$86.41	Field	104.23%	0.22%	9.0%	\$192.55

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 (1-25) apply to all Agreements.

1. DEFINITIONS

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

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

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

2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

*** This requirement applies to all Agreements.*

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

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

***This provision applies to all Agreements.*

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

fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

4. ACCESS TO DOCUMENTS

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

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

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

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

5. FEDERAL CHANGES

*** This requirement applies to all Agreements.*

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

6. CIVIL RIGHTS REQUIREMENT

*** This requirement applies to all Agreements.*

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

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

related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.

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

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

disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Contractor, its employees, agents, or assigns will constitute a material breach of this Agreement. The ADA Access requirements apply to all contracts. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

5) **Special DOL EEO Clause** – Applies to construction contracts >\$10,000; Contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit against all individuals based on their race color, religion, age, sex, sexual orientation, gender identity, status as a parent, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, age, sex, sexual orientation, gender identity, national origin, disability, status as a parent, or veteran status.

d) **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

e) During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or other action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

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

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

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

- b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR

Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR Section 26.13[b]).

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

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

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

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

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

d) DBE Contract Assurance (49 CFR 26.13)

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

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

Affirmative steps must include:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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

e) DBE Prompt Payment (49 CFR 26.29)

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

- 1) Not later than ten (10) days after receipt of each progress payment from the Agency, the successful Proposer shall pay to any sub-contractor performing any work, the respective amounts allowed to the successful Proposer for work performed by the sub-contractor, to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Proposer's receipt of released retention from the Agency upon completion of the project as defined in California Public Contract Code section 7107 the successful Proposer shall pay each of its sub-contractors from whom retention has been withheld, each sub-contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by the Agency, the successful Proposer shall pay each of its sub-contractors from whom retention has been withheld, each sub-contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-contractors.
- 2) Failure to comply with these provisions or delay in payment without prior written approval from the Agency will constitute noncompliance, which may result in appropriate administrative sanctions.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency. The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Payment Deductions – Noncompliance with DBE Requirements

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

8. AMERICANS WITH DISABILITIES ACT

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

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

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

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

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA’s agreements, whether or not expressly set forth in the preceding Agreement

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

10. FLY AMERICA REQUIREMENTS

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

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

11. CARGO PREFERENCE REQUIREMENTS

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

The Contractor agrees to:

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

12. ENERGY CONSERVATION REQUIREMENTS

*** This provision applies to all Agreements.*

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

for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

13. ASSIGNABILITY CLAUSE

*** This provision applies to all Agreements.*

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

14. SEVERABILITY

*** This provision applies to all Agreements.*

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

15. FEDERAL STANDARDS

*** This provision applies to all Agreements.*

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

16. NOTICE TO THIRD PARTY PARTICIPANTS

*** This provision applies to all Agreements.*

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

17. TRAFFICKING IN PERSONS

*** This provision applies to all Agreements.*

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

18. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

*** This provision applies to all Agreements.*

The contractor certifies that it: (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (b) Was not convicted of the felony criminal violation under any Federal law within the

preceding 24 months. The Contractor shall flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

19. SUBSTANCE ABUSE REQUIREMENTS (SAFETY SENSITIVE FUNCTION)

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

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

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

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

b) Alcohol Misuse and Prohibited Drug Use.

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

20. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

*** This provision applies to all Contracts Involving Federal Privacy Act Requirements. When the Contractor maintains files on drug and alcohol enforcement activities for FTA, and those files are*

organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply.

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

21. INDIRECT RATES

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

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

22. SAFE OPERATION OF MOTOR VEHICLES

** This provision applies to all Agreements.

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

The Contractor agrees to comply with the following:

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

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

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

** This provision applies to all Agreements.

The Contractor is prohibited from using federal funds to:

- a) Procure or obtain
- b) Extend or renew a contract to procure or obtain; or

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

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

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

*** This provision applies to all Agreements.*

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

25. PATENT AND RIGHTS IN DATA

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

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

a) Rights in Data

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

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

- 1) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
- 2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- 3) Unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- 4) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 5) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 6) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- 7) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

b) Patent Rights

- 1) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

- 2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- 3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

26. RECYCLED PRODUCTS

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

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

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

27. TERMINATION

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

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

- a) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
- b) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- c) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- d) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal

award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

- e) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

Termination for Convenience (General Provision)

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the

Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in

performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials. If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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

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

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

- a) This Agreement is a "covered transaction" for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180, and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its "principals," and its "affiliates" are not "excluded" or "disqualified," as defined by federal suspension and debarment laws.
- b) The Contractor shall submit the "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

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

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

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Agency, which will promptly notify the FTA Chief Counsel and FTA Regional

Counsel for the Region in which the Agency is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

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

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

Additional Notice to U.S. DOT Inspector General

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

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

30. CLEAN AIR

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

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

31. CLEAN WATER REQUIREMENTS

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

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The

Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.

- b) The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

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

32. BUY AMERICA REQUIREMENTS

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

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

33. BREACHES AND DISPUTE RESOLUTION

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

- a) **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- b) **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- c) **Breach of Contract**—The successful bidder shall be deemed in breach of contract if it fails to comply with any terms of the contract, fails to cure such noncompliance from the date of written notice from the Agency, or fails to submit a written response to the notification from the Agency within the amount of time specified from the Agency.
- d) **Force Majeure** - The successful bidder shall not be in breach of the contract as long as its default was due to causes beyond reasonable control (force majeure) and occurred without any fault or negligence on the part of both the successful bidder and its subcontractors.

- e) **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- f) **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the successful Proposer arising out of or relating to the Agreement or any breach thereof, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction.
- g) **Rights and Remedies of the Agency** - The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract:
- 1) The right to take over and complete the work or any part thereof and at the expense of the Contractor, either directly or through other contractors;
 - 2) The right to cancel this Contract as to any or all of the work yet to be performed;
 - 3) The right to specific performance, an injunction or any other appropriate equitable remedy; and
 - 4) The right to money damages.
- h) **Rights and Remedies** - The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- i) **Fees** - All costs, expenses and attorney fees incurred by the Contractor in connection with any appeal, suit or claim regarding a dispute that is brought by the Contractor shall be paid by the Contractor.

34. LOBBYING

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

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

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

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

35. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

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

- a) **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c) **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

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

36. BUILD AMERICA, BUY AMERICA ACT

*** This provision applies to all Agreements.*

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

37. SEISMIC SAFETY REQUIREMENTS

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

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

38. BONDING REQUIREMENTS

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

- a) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b) A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- c) A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

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

a) Bid Bond Requirements (Construction)

1) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.

2) Rights Reserved

In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

It is also understood and agreed that if a bidder should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of the TJPA, shall refuse or be

unable to enter into this Agreement, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or refuse or be unable to furnish adequate and acceptable insurance, it shall forfeit its bid security to the extent of TJPA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

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

b) Performance and Payment Bonding Requirements (Construction)

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

1) Performance Bonds

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

2) Payment Bonds

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

c) Performance and Payment Bonding Requirements (Non-Construction)

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

1) The following situations may warrant a performance bond:



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

d) Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.

e) Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.

f) Warranty of the Work and Maintenance Bonds

- 1) The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 2) The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

39. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

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

a) Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii). The classification is utilized in the area by the construction industry; and

(iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

3) Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall

either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- 4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 5) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- b) **Withholding** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under

this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c) Payrolls and Basic Records

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

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

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

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

- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- 3) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

d) Apprentices and Trainees

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

in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

3) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

e) **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.

f) **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.

g) **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor

as provided in 29 CFR Section 5.12.

h) **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

i) **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j) **Certification of Eligibility**

1) By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

2) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

FLY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

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

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

Date _____

Signature _____

Company Name _____

Title _____

Explanation: _____



Professional Services Agreement Between TJPA and AECOM Technical Services, Inc.

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/Offeree Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date: _____

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). **General and administrative (G&A)** means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.~~

- (k). ~~Government~~ means the United States of America and any executive department thereof.
- (l). ~~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.
- (m). ~~Recipient~~ means the TJPA or another entity that provides fund to the TJPA as a subgrantee.
- (n). ~~Secretary~~ means the U.S. DOT Secretary, including his or her duly authorized designee.
- (o). ~~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.
- (p). ~~U.S. DOT~~ is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (q). ~~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 loading for shipments originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill of lading 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 lading).~~

~~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 of 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.~~

20. ~~AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT~~

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

- (a). ~~**Overtime requirements** No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.~~
- (b). ~~**Violation; liability for unpaid wages; liquidated damages** In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.~~
- (c). ~~**Withholding for unpaid wages and liquidated damages** The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.~~

~~The following provisions (21-23) apply to Construction Agreements.~~

21. ~~SEISMIC SAFETY REQUIREMENTS~~

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

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

standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

22. ~~BONDING REQUIREMENTS~~

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

- ~~(a). A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.~~
- ~~(b). A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.~~
- ~~(c). A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.~~

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

(1). ~~Bid Bond Requirements (Construction)~~

(a). ~~Bid Security~~

~~A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.~~

(b). ~~Rights Reserved~~

~~In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.~~

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

~~It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the TJPA) shall prove inadequate to fully recompense the TJPA for the damages occasioned by default, then a bidder agrees to indemnify~~

~~the TJPA and pay over to the TJPA the difference between the bid security and the TJPA's total damages, so as to make the TJPA whole.~~

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

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

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

~~(a). **Performance Bonds**~~

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

~~(b). **Payment Bonds**~~

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

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

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

~~(a). The following situations may warrant a performance bond:~~

- ~~1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).~~
- ~~2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.~~
- ~~3. Substantial progress payments are made before delivery of end items starts.~~
- ~~4. Agreements are for dismantling, demolition, or removal of improvements.~~

~~(b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:~~

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

(c). ~~A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.~~

(d). ~~When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:~~

1. ~~The penal amount of payment bonds shall equal:~~

(i) ~~50 percent of the Agreement price if the Agreement price is not more than \$1 Million;~~

(ii) ~~40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or~~

(iii) ~~\$2.5 Million if the Agreement price is increased.~~

(4). ~~Advance Payment Bonding Requirements~~

~~The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.~~

(5). ~~Patent Infringement Bonding Requirements (Patent Indemnity)~~

~~The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.~~

(6). ~~Warranty of the Work and Maintenance Bonds~~

(a). ~~The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~

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

23. ~~DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS~~

~~** This requirement applies to any Agreement for construction greater than \$2,000.~~

~~"Construction," for purposes of this requirement, includes "actual construction, alteration and/or repair, including painting and decorating." (29 CFR Section 5.5[a]).~~

(a). ~~Minimum Wages~~

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

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

- (2).—(A).—The TJPA CFO (or their designee) shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The TJPA CFO (or their designee) shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii).—The classification is utilized in the area by the construction industry; and
- (iii).—The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv).—With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B).—If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the TJPA CFO (or their designee) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the TJPA CFO (or their designee) to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The

~~Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the TJPA CFO (or their designee) or will notify the TJPA CFO (or their designee) within the 30-day period that additional time is necessary.~~

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

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

~~(3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.~~

~~(4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.~~

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

~~(i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and~~

~~(ii). The classification is utilized in the area by the construction industry; and~~

~~(iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.~~

~~(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the TJPA CFO (or their designee) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the TJPA CFO (or their designee) to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized~~

representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the TJPA CFO (or their designee) or will notify the TJPA CFO (or their designee) within the 30-day period that additional time is necessary.

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

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

~~(b).—**Withholding**—The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.~~

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

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

~~actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.~~

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

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

- ~~(i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;~~
- ~~(ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;~~
- ~~(iii).—That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.~~

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

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

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

~~request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.~~

~~(d). — Apprentices and Trainees~~

- ~~(1). — Apprentices — Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.~~
- ~~(2). — Trainees — Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage~~

and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). ~~Equal employment opportunity~~ The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). ~~Compliance with Copeland Act Requirements~~ The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). ~~Subcontracts~~ The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- (g). ~~Agreement Termination: Debarment~~ A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h). ~~Compliance with Davis Bacon and Related Act Requirements~~ All rulings and interpretations of the Davis Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (i). ~~Disputes Concerning Labor Standards~~ Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j). ~~Certification of Eligibility~~
- (1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
- (2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(3). ~~The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.~~

~~FLY AMERICA CERTIFICATION~~

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

Certificate of Compliance

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

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

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

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

Date _____

Signature _____

Company Name _____

Title _____

Explanation: _____

~~BUY AMERICA CERTIFICATION~~

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

~~Certificate of Compliance~~

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

~~Date _____~~

~~Contractor Name _____~~

~~Authorized Representative Name _____~~

~~Signature _____~~

~~Title _____~~

OR

~~Certificate of Non-Compliance~~

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

~~Date _____~~

~~Contractor Name _____~~

~~Authorized Representative Name _____~~

~~Signature _____~~

~~Title _____~~

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

~~Certificate of Compliance~~

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

~~Date _____~~

~~Contractor Name _____~~

~~Authorized Representative Name _____~~

~~Signature _____~~

~~Title _____~~

~~OR~~

~~Certificate of Non-Compliance~~

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

~~Date _____~~

~~Contractor Name _____~~

~~Authorized Representative Name _____~~

~~Signature _____~~

~~Title _____~~

~~NEW RESTRICTIONS ON LOBBYING CERTIFICATION~~

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

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

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

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

~~This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995) and U.S. DOT regulations, "New Restrictions on Lobbying," specifically 49 CFR 20.110. Pursuant to 31 U.S.C. 1352(e)(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: _____

